

Calendar No. 455

106TH CONGRESS
2^D SESSION

H. R. 1444

[Report No. 106-239]

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1999

Received

NOVEMBER 19, 1999

Read twice and referred to the Committee on Energy and Natural Resources

MARCH 9, 2000

Reported by Mr. MURKOWSKI, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italic*]

AN ACT

To authorize the Secretary of the Interior to plan, design, and construct fish screens, fish passage devices, and related features to mitigate adverse impacts associated with irrigation system water diversions by local governmental entities in the States of Oregon, Washington, Montana, Idaho, and California.

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. AQUATIC RESOURCES RESTORATION IN THE**
4 **NORTHWEST AND IN CALIFORNIA.**

5 (a) **IN GENERAL.**—In cooperation with other Federal
6 agencies, the Secretary of the Interior, acting through the
7 Director of the United States Fish and Wildlife Service
8 and in consultation with the Bureau of Reclamation, may
9 develop and implement projects for fish screens, fish pas-
10 sage devices, and related features agreed to by non-Fed-
11 eral interests, relevant Federal agencies, and affected
12 States to mitigate adverse impacts to fisheries resulting
13 from the construction and operation of water diversions
14 by local governmental entities in the States of Oregon,
15 Washington, Montana, Idaho, and California. Priority
16 shall be given to any project that has a total cost of less
17 than \$2,500,000.

18 (b) **GOALS.**—The goals of the program under sub-
19 section (a) shall be—

20 (1) to decrease the incidence of juvenile and
21 adult fish entering water supply systems; and

22 (2) to decrease fish mortality associated with
23 the withdrawal of water for irrigation and other pur-
24 poses without impairing the continued withdrawal of
25 water for that purpose.

1 (c) ~~PARTICIPATION BY NON-FEDERAL ENTITIES.—~~
2 Non-Federal participation in the program under sub-
3 section (a) shall be voluntary. The Secretary shall take
4 no action that would result in any non-Federal entity
5 being held financially responsible for any action unless the
6 entity applies to participate in the program.

7 (d) ~~EVALUATION AND PRIORITIZATION OF~~
8 ~~PROJECTS.—~~Evaluation and prioritization of projects for
9 development and implementation under this section shall
10 be conducted on the basis of—

11 (1) ~~assisting entities in their compliance with~~
12 ~~the Endangered Species Act of 1973 (16 U.S.C.~~
13 ~~1531 et seq.);~~

14 (2) ~~cost effectiveness;~~

15 (3) ~~size of diversion;~~

16 (4) ~~availability of other funding sources; and~~

17 (5) ~~opportunity for biological benefit to be~~
18 ~~achieved with improved conditions.~~

19 (e) ~~REQUIREMENTS.—~~A fish screen, fish passage de-
20 vice, or related feature shall not be eligible for funding
21 under subsection (a) unless—

22 (1) ~~it meets the requirements of the United~~
23 ~~States Fish and Wildlife Service or the National Ma-~~
24 ~~rine Fisheries Service, as applicable; and any State~~
25 ~~requirements; and~~

1 (2) it is agreed to by all interested Federal and
2 non-Federal entities:

3 (f) COST SHARING.—

4 (1) IN GENERAL.—(A) Development and imple-
5 mentation of projects under this section on lands
6 owned by the United States shall be at full Federal
7 expense:

8 (B) The non-Federal share of the cost of devel-
9 opment and implementation of any project under
10 this section on lands that are not owned by the
11 United States shall be 35 percent.

12 (2) IN-KIND CONTRIBUTIONS.—(A) For any
13 project under this section on lands that are not
14 owned by the United States, the non-Federal partici-
15 pants shall provide any lands, easements, rights-of-
16 way, dredged material disposal areas, and reloca-
17 tions that are necessary for the project.

18 (B) The value of lands, easements, rights-of-
19 way, dredged material disposal areas, and reloca-
20 tions provided under this paragraph for a project
21 shall be credited toward the non-Federal share of
22 the costs of the project under paragraph (1).

23 (3) OMRR&R.—(A) The non-Federal interests
24 shall be responsible for all costs associated with op-
25 erating, maintaining, repairing, rehabilitating, and

1 replacing all projects carried out under this section
2 on lands that are not owned by the United States.

3 (B) Costs associated with operating, maintain-
4 ing, repairing, rehabilitating, and replacing all
5 projects carried out under this section on lands
6 owned by the United States shall be a Federal ex-
7 pense.

8 (g) CONSULTATION AND USE OF EXISTING DATA
9 AND STUDIES.—In carrying out this section, the Secretary
10 shall consult with other Federal, State, and local agencies
11 and make maximum use of data and studies in existence
12 on the date of the enactment of this Act.

13 (h) LIMITATION ON ELIGIBILITY FOR FUNDING.—No
14 project applicant pursuant to this section may obtain
15 funds under this section if they are also receiving funds
16 from another federally funded program for the same pur-
17 pose.

18 (i) AUTHORIZATION OF APPROPRIATIONS.—

19 (1) IN GENERAL.—There are authorized to be
20 appropriated to carry out this section \$25,000,000
21 for each of fiscal years 2001 through 2005.

22 (2) LIMITATIONS.—(A) Not more than one-
23 third of the total amount of funds appropriated
24 under this section may be used for projects in any
25 single State.

1 (B) Not more than 6 percent of the amount of
2 funds appropriated under this section for a fiscal
3 year may be used for administration of this section.

4 (3) INTERIM REPORT.—Upon the expiration of
5 the third fiscal year for which amounts are available
6 to carry out this section, the Secretary of the Inte-
7 rior shall report to the Congress describing the ac-
8 complishments to date under this section and the
9 projects that will be completed with amounts pro-
10 vided under this section for the fourth and fifth fis-
11 cal years for which such amounts are available.

12 **SECTION. 1. SHORT TITLE.**

13 *This Act may be cited as the “Irrigation Mitigation*
14 *and Restoration Partnership Act of 1999”.*

15 **SEC. 2. DEFINITIONS.**

16 *In this Act:*

17 (1) *PACIFIC OCEAN DRAINAGE AREA.*—*The term*
18 *“Pacific Ocean drainage area” means the area com-*
19 *prised of portions of the States of Oregon, Wash-*
20 *ington, Montana, and Idaho from which water drains*
21 *into the Pacific Ocean.*

22 (2) *PROGRAM.*—*The term “Program” means the*
23 *Irrigation Mitigation and Restoration Partnership*
24 *Program established by section 3(a).*

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

3 **SEC. 3. ESTABLISHMENT OF THE PARTNERSHIP PROGRAM.**

4 (a) *ESTABLISHMENT.*—*There is established the Irriga-*
5 *tion Mitigation and Restoration Partnership Program*
6 *within the Department of the Interior.*

7 (b) *GOALS.*—*The goals of the Program are—*

8 (1) *to decrease fish mortality associated with the*
9 *withdrawal of water for irrigation and other purposes*
10 *without impairing the continued withdrawal of water*
11 *for those purposes; and*

12 (2) *to decrease the incidence of juvenile and*
13 *adult fish entering water supply systems.*

14 (c) *IMPACTS ON FISHERIES.*—

15 (1) *IN GENERAL.*—*Under the Program, the Sec-*
16 *retary, in consultation with the heads of other appro-*
17 *priate agencies, shall develop and implement projects*
18 *to mitigate impacts to fisheries resulting from the*
19 *construction and operation of water diversions by*
20 *local governmental entities, including water and soil*
21 *conservation districts, in the Pacific Ocean drainage*
22 *area.*

23 (2) *TYPES OF PROJECTS.*—*Projects eligible under*
24 *the Program may include the development, improve-*
25 *ment, or installation of—*

1 (A) fish screens;

2 (B) fish passage devices;

3 (C) other facilities agreed to by non-Federal
4 interests, relevant Federal and tribal agencies,
5 and affected States; and

6 (D) inventories by the States on the need
7 and priority for projects described in subpara-
8 graphs (A) through (C).

9 (3) *PRIORITY.*—The Secretary shall give priority
10 to any project that has a total cost of less than
11 \$5,000,000.

12 **SEC. 4. PARTICIPATION IN THE PROGRAM.**

13 (a) *NON-FEDERAL.*—

14 (1) *IN GENERAL.*—Non-Federal participation in
15 the Program shall be voluntary.

16 (2) *FEDERAL ACTION.*—The Secretary shall take
17 no action that would result in any non-Federal entity
18 being held financially responsible for any action
19 under the Program, unless the entity applies to par-
20 ticipate in the Program.

21 (b) *FEDERAL.*—Development and implementation of
22 projects under the Program on land or facilities owned by
23 the United States shall be nonreimbursable Federal expendi-
24 tures.

1 **SEC. 5. EVALUATION AND PRIORITIZATION OF PROJECTS.**

2 *Evaluation and prioritization of projects for develop-*
3 *ment under the Program shall be conducted on the basis*
4 *of—*

5 (1) *benefits to fish species native to the project*
6 *area, particularly to species that are listed as being,*
7 *or considered by Federal or State authorities to be,*
8 *endangered, threatened, or sensitive;*

9 (2) *the size and type of water diversion;*

10 (3) *the availability of other funding sources;*

11 (4) *cost effectiveness; and*

12 (5) *additional opportunities for biological or*
13 *water delivery system benefits.*

14 **SEC. 6. ELIGIBILITY REQUIREMENTS.**

15 (a) *IN GENERAL.*—*A project carried out under the*
16 *Program shall not be eligible for funding unless—*

17 (1) *the project meets the requirements of the Sec-*
18 *retary, as applicable, and any applicable State re-*
19 *quirements; and*

20 (2) *the project is agreed to by all Federal and*
21 *non-Federal entities with authority and responsibility*
22 *for the project.*

23 (b) *DETERMINATION OF ELIGIBILITY.*—*In determining*
24 *the eligibility of a project under this Act, the Secretary*
25 *shall—*

1 (1) *consult with other Federal, State, tribal, and*
2 *local agencies; and*

3 (2) *make maximum use of all available data.*

4 **SEC. 7. COST SHARING.**

5 (a) *NON-FEDERAL SHARE.*—*The non-Federal share of*
6 *the cost of development and implementation of any project*
7 *under the Program on land or at a facility that is not*
8 *owned by the United States shall be 35 percent.*

9 (b) *NON-FEDERAL CONTRIBUTIONS.*—*The non-Federal*
10 *participants in any project under the Program on land or*
11 *at a facility that is not owned by the United States shall*
12 *provide all land, easements, rights-of-way, dredged material*
13 *disposal areas, and relocations necessary for the project.*

14 (c) *CREDIT FOR CONTRIBUTIONS.*—*The value of land,*
15 *easements, rights-of-way, dredged material disposal areas,*
16 *and relocations provided under subsection (b) for a project*
17 *shall be credited toward the non-Federal share of the costs*
18 *of the project.*

19 (d) *ADDITIONAL COSTS.*—

20 (1) *NON-FEDERAL RESPONSIBILITIES.*—*The non-*
21 *Federal participants in any project carried out under*
22 *the Program on land or at a facility that is not*
23 *owned by the United States shall be responsible for all*
24 *costs associated with operating, maintaining, repair-*
25 *ing, rehabilitating, and replacing the project.*

1 (2) *FEDERAL RESPONSIBILITY.*—*The Federal*
2 *Government shall be responsible for costs referred to*
3 *in paragraph (1) for projects carried out on Federal*
4 *land or at a Federal facility.*

5 **SEC. 8. LIMITATION ON ELIGIBILITY FOR FUNDING.**

6 *A project that receives funds under this Act shall be*
7 *ineligible to receive Federal funds from any other source*
8 *for the same purpose.*

9 **SEC. 9. REPORT.**

10 *On the expiration of the third fiscal year for which*
11 *amounts are made available to carry out this Act, the Sec-*
12 *retary shall submit to Congress a report describing—*

13 (1) *the projects that have been completed under*
14 *this Act;*

15 (2) *the projects that will be completed with*
16 *amounts made available under this Act during the re-*
17 *maining fiscal years for which amounts are author-*
18 *ized to be appropriated under section 10; and*

19 (3) *recommended changes to the Program as a*
20 *result of projects that have been carried out under this*
21 *Act.*

22 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) *IN GENERAL.*—*There is authorized to be appro-*
24 *priated to carry out this Act \$25,000,000 for each of fiscal*
25 *years 2001 through 2005.*

1 **(b) LIMITATIONS.—**

2 **(1) SINGLE STATE.—**

3 **(A) IN GENERAL.—***Except as provided in*
4 *subparagraph (B), not more than 25 percent of*
5 *the total amount of funds made available under*
6 *this section may be used for 1 or more projects*
7 *in any single State.*

8 **(B) WAIVER.—***On notification to Congress,*
9 *the Secretary may waive the limitation under*
10 *subparagraph (A) if a State is unable to use the*
11 *entire amount of funding made available to the*
12 *State under this Act.*

13 **(2) ADMINISTRATIVE EXPENSES.—***Not more than*
14 *6 percent of the funds authorized under this section*
15 *for any fiscal year may be used for Federal adminis-*
16 *trative expenses of carrying out this Act.*

Amend the title so as to read: “A bill to authorize the Secretary of the Interior to establish a program to plan, design, and construct facilities to mitigate impacts associated with irrigation system water diversions by local governmental entities in the Pacific Ocean drainage of the States of Oregon, Washington, Montana, and Idaho.”.

Passed the House of Representatives November 9, 1999.

Attest:

JEFF TRANDAHL,

Clerk.

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