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SENATE

{ REPORT
{ 111-358

COLUMBIA RIVER BASIN RESTORATION ACT

DECEMBER 8, 2010.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, having considered the Columbia River Basin Restoration Act, an original bill to amend the Federal Water Pollution Control Act to establish within the Environmental Protection Agency a Columbia Basin Restoration Program, reports an original bill favorably thereon and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

Including seven states and 259,000 square miles, the Columbia River Basin drains the major rivers of the Northwest. The Snake River is the basin's longest tributary, running more than 1,000 miles from near the continental divide in Yellowstone Park in Wyoming through Idaho's Snake River Plain to its mouth with the Columbia in eastern Washington. Additionally, Montana's largest river by volume, the Clark Fork, drains much of western Montana and turns into the Pend Oreille River in Idaho before flowing into the Columbia just across the border in Canada. The watershed also drains northern portions of Nevada and Utah.

The Columbia River Basin is the lifeblood of the region's economy and has been the foundation of a trade-based economy stretching back thousands of years. Today the Basin stands as the cornerstone of the region's shipping network, with ports dotting the river as far upstream as Lewiston, Idaho, the farthest inland seaport in the West. The Basin remains a significant resource to much of the Northwest's commercial and recreational fishing industries. The Basin is the backbone of the region's energy supply, with a network of dams providing the majority of the region's electricity. Over

6,000,000 acres of agricultural land relies on irrigation from the Basin.

Like many of the nation's large aquatic ecosystems, a legacy of toxic contamination has created challenges. In 2002, EPA completed its Columbia River Basin Fish Contaminant Survey. The survey identified 92 chemicals in the tissues of fish, which can pass up through the food chain to humans who consume fish. All 11 species of fish tested had some level of contamination in their tissue. Contamination of fish tissues poses a health threat, particularly for tribal populations. A survey conducted by the Columbia River Intertribal Fish Commission found that tribal members consumed between 6 and 10 times as much fish as the national average.

Stakeholders across the region are working on voluntary efforts to clean up and restore the river. While EPA has designated the Columbia River Basin as among the Large Aquatic Ecosystems to enhance coordination among stakeholders, the Columbia River Basin does not have a congressionally authorized program or dedicated appropriations to support its toxic contamination reduction efforts.

OBJECTIVES OF THE LEGISLATION

The Act amends the Federal Water Pollution Control Act to establish within the Environmental Protection Agency a Columbia Basin Restoration Program, which will work with stakeholders to assist coordination of voluntary toxic contamination activities throughout the basin, authorize EPA to provide funding to implement projects that the stakeholder working group develops and prioritizes, and authorizes a program for the Flathead River Basin, a sub-basin of the Columbia River Basin.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 notes that this Act may be cited as the "Columbia River Basin Restoration Act of 2010."

Section 2. Findings

This section establishes Congressional findings relating to the importance of the Columbia River Basin to the ecology and economy of the nation and the Pacific Northwest, the significance of toxic contamination in the Basin, and, with regard to the Flathead River Basin, the importance of that basin and the history of international and intergovernmental agreements regarding the Flathead River Basin.

Section 3. Columbia River Basin Restoration

Section 3 amends the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) by adding at the end a new Section 123 on Columbia River Basin Restoration.

Subsection (a) establishes definitions for certain terms used in the section.

Subsection (b) directs the Administrator of the Environmental Protection Agency to establish a Columbia Basin Restoration Program within the agency, defines the scope of the Program, clarifies that the Program should build on the work of the existing Colum-

bia River Toxics Reduction Working Group (and, in the lower Columbia River Estuary, the work of the Estuary Partnership) and coordinate with other Federal agencies, and clarifies that the establishment of the Program does not modify the authorities or roles of Federal agencies in the Columbia Basin. This subsection defines the duties of the Administrator, which primarily relate to assisting the Working Group established in subsection (c) by providing data and technical assistance to help with monitoring conditions and developing, updating, or implementing plans and projects; by coordinating with other Federal agencies; by completing and updating plans; and by implementing projects identified by the Working Group (including by providing funding to implement the projects).

Subsection (c) establishes the Stakeholder Working Group that is central to the program, establishes requirements for representation of specific constituencies on the Working Group as well as geographic representation, and establishes a process for appointing members. It provides for the Working Group's duties to include assessing trends in toxic contamination in the Basin, developing updates to the Columbia River Basin Toxics Reduction Action Plan, submitting to the Administrator annually a prioritized list of projects to implement the plan, and monitoring the effectiveness of actions taken under this act. The subsection also stipulates that in the Lower Columbia River Estuary, the Estuary Partnership will execute all the duties of the Working Group and allows a Governor to elect not to have the State participate in the Working Group.

Subsection (d) consists of the Transboundary Flathead River Basin Protection Act, which directs the President to take steps to protect the river, authorizes negotiations with the Government of Canada, authorizes participation in cross-border collaboration with Canada to assess projects of cross-border significance, and specifies uses for which the Administrator may provide funding under subsection (e).

Subsection (e) authorizes the Administrator to provide funding to implement the activities authorized by the bill. It specifies that the federal share will not exceed 75%, but allows the Administrator to increase the Federal share and clarifies that an Indian tribe may use Federal funds to provide the non-Federal share. The subsection also specifies that in fiscal years 2012 and 2013, the 1/3 of the funds must be used for activities in the Lower Columbia River Estuary and 1/3 must be used for activities in the Middle and Upper Columbia River Basin.

Subsection (f) requires the President to submit budget information to Congress that communicates amounts obligated and amounts budgeted for restoration projects in the Columbia River Basin by agencies across the Federal government.

LEGISLATIVE HISTORY

On February 24, 2010, the Full Senate Committee on Environment and Public Works and the Subcommittee on Water and Wildlife held a joint hearing on legislative approaches to protecting Great Water Bodies. The hearing included a discussion of legislation to address toxic contamination issues and reduction activities in the Columbia River basin.

The Columbia River Basin Restoration Act of 2010 is an original bill authored by Senator Merkley.

During committee consideration of the bill, Senators Merkley, Crapo, and Baucus offered a substitute amendment making changes to the findings, adding the requirement for geographic distribution of funds, and adding the provision allowing Governors to elect not to participate in the Working Group but providing for them to have opportunity to comment to EPA on projects proposed by the Working Group.

Senators Merkley, Crapo, and Baucus also offered a second-degree amendment to their first-degree amendment, also in the nature of a substitute. The second-degree amendment made changes of a technical nature and also added a requirement that electric, water, and wastewater utilities be represented on the Stakeholder Working Group.

The second-degree amendment was adopted by voice vote and the first-degree amendment, as amended, was also adopted by voice vote. The committee approved the bill, as amended, by voice vote.

S. 3550, a bill identical to the version reported by the Committee, was introduced by Senator Merkley on June 29, 2010 and has 4 co-sponsors. The bill was received, read twice, and referred to the Senate Committee on Environment and Public Works.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider the Columbia River Basin Restoration Act of 2010 on June 30, 2010. The bill was ordered to be reported favorably with an amendment in the nature of a substitute by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that the Columbia River Restoration Act of 2010 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee noted that the Congressional Budget Office (CBO) has found, "The bill contains no intergovernmental or private-sector mandates as defined in UMRA."

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 13, 2010.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Columbia River Basin Restoration Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

Columbia River Basin Restoration Act of 2010

Summary: The bill would establish the Columbia Basin Restoration Program of the Environmental Protection Agency (EPA) and the Columbia River Basin Toxics Reduction Working Group, composed of relevant stakeholders. The legislation would authorize EPA to distribute grants to assess, restore, and protect water quality and natural resources in the Columbia River Basin.

This legislation would authorize the annual appropriation of \$33 million over the 2012–2017 period for program costs and grants to nonprofit organizations, state and local governments, Indian tribes, and other eligible entities for various activities, including developing and implementing projects in the Flathead River Basin. Assuming appropriation of the authorized funds, CBO estimates that implementing the bill would cost \$109 million over the 2011–2015 period and an additional \$89 million after 2015.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the legislation is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	33	33	33	33	132
Estimated Outlays	0	15	28	33	33	109

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2011 and that authorized amounts will be appropriated in each year. Estimated outlays are based on historical spending patterns for similar grants and programs.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA. State, local, and tribal governments would benefit from grants and technical assistance authorized in the bill. Any costs to those governments would be incurred voluntarily as a condition of federal assistance.

Estimate prepared by: Federal Costs: Martin von Gnechten; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is en-

closed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

* * * * *

FEDERAL WATER POLLUTION CONTROL ACT

SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1)* * *

* * * * *

SEC. 122. WET WEATHER WATERSHED PILOT PROJECTS.

(a) IN GENERAL.—* * *

* * * * *

SEC. 123. COLUMBIA RIVER BASIN RESTORATION.

(a) DEFINITIONS.—

(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

(2) COLUMBIA RIVER BASIN.—The term 'Columbia River Basin' means the entire United States portion of the Columbia River watershed.

(3) COLUMBIA RIVER BASIN PROVINCES.—The term 'Columbia River Basin Provinces' means the United States portion of each of the Columbia River Basin Provinces identified in the Fish and Wildlife Plan of the Northwest Power and Conservation Council.

(4) COLUMBIA RIVER BASIN TOXICS REDUCTION ACTION PLAN.—

(A) IN GENERAL.—The term 'Columbia River Basin Toxics Reduction Action Plan' means the plan developed by the Environmental Protection Agency and the Columbia River Toxics Reduction Working Group in 2010.

(B) INCLUSIONS.—The term 'Columbia River Basin Toxics Reduction Action Plan' includes any amendments to the plan.

(5) ESTUARY PARTNERSHIP.—The term 'Estuary Partnership' means the Lower Columbia River Estuary Partnership, an entity created by the States of Oregon and Washington and the Environmental Protection Agency under section 320.

(6) ESTUARY PLAN.—

(A) IN GENERAL.—The term 'Estuary Plan' means the Estuary Partnership Comprehensive Conservation and Management Plan adopted by the Environmental Protection Agency and the Governors of Oregon and Washington on October 20, 1999, under section 320.

(B) INCLUSIONS.—The term 'Estuary Plan' includes any amendments to the plan.

(7) LOWER COLUMBIA RIVER ESTUARY.—The term 'Lower Columbia River Basin and Estuary' means the mainstem Columbia River from the Bonneville Dam to the Pacific Ocean and tidally influenced portions of tributaries to the Columbia River in that region.

(8) MIDDLE AND UPPER COLUMBIA RIVER BASIN.—

(A) *IN GENERAL.*—The term ‘Middle and Upper Columbia River Basin’ means the region consisting of the United States portion of the Columbia River Basin above Bonneville Dam.

(B) *INCLUSIONS.*—The term ‘Middle and Upper Columbia River Basin’ includes—

(i) the Snake River and associated tributaries; and

(ii) the Clark Fork and Pend Oreille Rivers and associated tributaries.

(9) *NORTH FORK OF THE FLATHEAD RIVER.*—The term ‘North Fork of the Flathead River’ means the region consisting of the North Fork of the Flathead River watershed, beginning in British Columbia, Canada, ending at the confluence of the North Fork and the Middle Fork of the Flathead River in the State of Montana.

(10) *PROGRAM.*—The term ‘Program’ means the Columbia River Basin Restoration Program established under subsection (b)(1).

(11) *TRANSBOUNDARY FLATHEAD RIVER BASIN.*—The term ‘transboundary Flathead River Basin’ means the region consisting of the Flathead River watershed, beginning in British Columbia, Canada, and ending at Flathead Lake, Montana.

(12) *WORKING GROUP.*—The term ‘Working Group’ means—

(A) the Columbia River Basin Toxics Reduction Working Group established under subsection (c); and

(B) with respect to the Lower Columbia River Estuary, the Estuary Partnership.

(b) *COLUMBIA RIVER BASIN RESTORATION PROGRAM.*—

(1) *ESTABLISHMENT.*—The Administrator shall establish within the Environmental Protection Agency a Columbia Basin Restoration Program.

(2) *DELEGATION OF AUTHORITY; STAFFING.*—The Administrator shall delegate such authority and provide such additional staff as are necessary to carry out the Program.

(3) *SCOPE OF PROGRAM.*—

(A) *IN GENERAL.*—The Program shall consist of a collaborative stakeholder-based approach to reducing toxic contamination throughout the Columbia River Basin.

(B) *RELATIONSHIP TO EXISTING ACTIVITIES.*—The Program shall—

(i) build on the work and collaborative structure of the existing Columbia River Toxics Reduction Working Group representing the Federal Government, State, tribal, and local governments, industry, and non-governmental organizations, which was convened in 2005 to develop a collaborative toxic contamination reduction approach for the Columbia River Basin;

(ii) in the Lower Columbia River Basin and Estuary, build on the work and collaborative structure of the Estuary Partnership; and

(iii) coordinate with other efforts, including activities of other Federal agencies in the Columbia River Basin, to avoid duplicating activities or functions.

(C) *NO EFFECT ON EXISTING AUTHORITY.*—The Program shall not modify any legal or regulatory authority or pro-

gram in effect as of the date of enactment of this section, including the roles of Federal agencies in the Columbia River Basin.

(4) *DUTIES.—The Administrator shall—*

(A) *provide the Working Group with data, analysis, reports, or other information;*

(B) *provide technical assistance to the Working Group, and to States, local government entities, and Indian tribes participating in the Working Group, to assist those agencies and entities in—*

(i) *planning or evaluating potential projects;*

(ii) *implementing plans;*

(iii) *implementing projects; and*

(iv) *monitoring and evaluating the effectiveness of projects and the implementation of plans and projects;*

(C) *provide information to the Working Group on plans already developed by the Administrator or by other Federal agencies to enable the Working Group to avoid unnecessary or duplicative projects or activities;*

(D) *provide coordination with other Federal agencies to avoid duplication of activities or functions;*

(E)(i) *complete and periodically update the Columbia River Basin Toxics Reduction Action Plan and the Estuary Plan; and*

(ii) *ensure that those plans, when considered together and in light of relevant plans developed by other Federal or State agencies, form a coherent toxic contamination reduction strategy for the entire Columbia River Basin; and*

(F) *implement, including by providing grants pursuant to subsection (e), projects and conduct activities, including monitoring, assessment, and toxic contamination reduction activities, that are—*

(i) *identified by the Working Group;*

(ii) *included in the Columbia River Basin Toxics Reduction Action Plan and the Estuary Plan; or*

(iii) *identified under subsection (d) and located in the Transboundary Flathead River Basin.*

(c) *STAKEHOLDER WORKING GROUP.—*

(1) *ESTABLISHMENT.—The Administrator shall establish a Columbia River Basin Toxics Reduction Working Group.*

(2) *MEMBERSHIP.—The members of the Working Group shall include, at a minimum, representatives of—*

(A) *each State located in whole or in part within the Columbia River Basin;*

(B) *each Indian tribe with legally defined rights and authorities in the Columbia River Basin that elects to participate on the Working Group;*

(C) *local governments located in the Columbia River Basin;*

(D) *industries operating in the Columbia River Basin that affect or could affect water quality;*

(E) *electric, water, and wastewater utilities operating in the Columbia River Basin;*

(F) *private landowners in the Columbia River Basin;*

- (G) soil and water conservation districts in the Columbia River Basin;
- (H) environmental organizations that have a presence in the Columbia River Basin; and
- (I) the general public in the Columbia River Basin.
- (3) *GEOGRAPHIC REPRESENTATION.*—*The Working Group shall include representation from each of the Columbia River Basin Provinces located in the Columbia River Basin.*
- (4) *APPOINTMENT.*—
- (A) *NONTRIBAL MEMBERS.*—*The Administrator, with the consent of the Governor of each State located in whole or in part within the Columbia River Basin, shall appoint nontribal members of the Working Group not later than 180 days after the date of enactment of this section.*
- (B) *TRIBAL MEMBERS.*—*The governing body of each Indian tribe described in paragraph (2)(B) shall appoint tribal members of the Working Group not later than 180 days after the date of enactment of this section.*
- (5) *DUTIES.*—*The Working Group shall—*
- (A) *assess trends in water quality and toxic contamination or toxics reduction, including trends that affect uses of the water of the Columbia River Basin;*
- (B) *collect, characterize, and assess data on toxics and water quality to identify possible causes of environmental problems;*
- (C) *develop periodic updates to the Columbia River Basin Toxics Reduction Action Plan and, in the Estuary, the Estuary Plan;*
- (D) *submit to the Administrator annually a prioritized list of projects, including monitoring, assessment, and toxic contamination reduction projects, that would implement the Columbia River Basin Toxics Reduction Action Plan or, in the Lower Columbia River Estuary, the Estuary Plan, for consideration for funding pursuant to subsection (e); and*
- (E) *monitor the effectiveness of actions taken pursuant to this section.*
- (6) *LOWER COLUMBIA RIVER ESTUARY.*—*In the Lower Columbia River Estuary, the Estuary Partnership shall function as the Working Group and execute the duties of the Working Group described in this subsection for such time as the Estuary Partnership is the management conference for the Lower Columbia River National Estuary Program.*
- (7) *PARTICIPATION BY STATES.*—*At the discretion of the Governor of a State, the State—*
- (A) *may elect not to participate in the Working Group established under this paragraph; and*
- (B) *may provide comments to the Administrator on the prioritized list of projects submitted pursuant to paragraph (5)(D).*
- (d) *TRANSBOUNDARY FLATHEAD RIVER BASIN.*—
- (1) *SHORT TITLE.*—*This subsection may be cited as the ‘Transboundary Flathead River Basin Protection Act of 2010’.*
- (2) *ACTION BY PRESIDENT.*—*The President shall take steps to preserve and protect the unique, pristine area of the*

transboundary Flathead River, with a particular focus on the North Fork of the Flathead River.

(3) *TRANSBOUNDARY COOPERATION.—In taking such steps, the President may engage in negotiations with the Government of Canada to establish an executive agreement, or other appropriate tool, to ensure permanent protection for the North Fork of the Flathead River watershed and the adjacent area of Glacier-Waterton National Park.*

(4) *PARTICIPATION IN COOPERATIVE EFFORTS.—*

(A) *IN GENERAL.—The President may participate in cross-border collaborations with Canada on environmental assessments of any project of cross-border significance that has the potential to degrade land or water resources by providing for on-going involvement of appropriate Federal agencies of the United States in such assessments.*

(B) *COLLABORATION.—In carrying out subparagraph (A), the President shall include in collaborations under that subparagraph appropriate Federal agencies, such as—*

- (i) the Environmental Protection Agency;*
- (ii) the Department of Interior;*
- (iii) the United States Fish and Wildlife Service;*
- (iv) the National Park Service;*
- (v) the Forest Service; and*
- (vi) such other agencies as the President determines to be appropriate.*

(5) *ASSESSMENTS AND PROJECTS.—The President, acting through the Administrator, may provide grants under subsection (e) for the following purposes:*

(A) *Developing baseline environmental conditions in the transboundary Flathead River Basin.*

(B) *Assessing the impact of any proposed projects on the natural resources, water quality, wildlife, or environmental conditions in the transboundary Flathead River Basin.*

(C) *Implementation of transboundary cooperative efforts identified by the governments of the United States and Canada under subsection (b)(2).*

(D) *Projects to protect and preserve the natural resources, water quality, wildlife, and environmental conditions in the transboundary Flathead River Basin.*

(e) *GRANTS.—*

(1) *IN GENERAL.—The Administrator may provide grants to State and regional water pollution control agencies and entities, other State and local government entities, Indian tribes, non-profit private agencies, institutions, organizations, and individuals for use in paying costs incurred in carrying out activities that would develop or implement plans or projects updated, developed, or authorized under this section (including for purposes described in subsection (d)(4)).*

(2) *FEDERAL SHARE.—*

(A) *IN GENERAL.—Except as provided in subparagraph (B), the Federal share of the cost of any project or activity carried out using funds from a grant provided to any person (including a State, interstate, or regional agency, an Indian tribe, or a local government entity) under this subsection for a fiscal year—*

(i) shall not exceed 75 percent of the total cost of the project or activity; and

(ii) shall be made on condition that the non-Federal share of that total cost shall be provided from non-Federal sources.

(B) *EXCEPTIONS.*—With respect to cost-sharing for a grant provided under this subsection—

(i) an Indian tribe may use Federal funds for the non-Federal share; and

(ii) the Administrator may increase the Federal share under such circumstances as the Administrator determines to be appropriate.

(3) *ALLOCATION.*—In making grants using funds appropriated to carry out this section for fiscal years 2012 and 2013, the Administrator shall use—

(A) not less than $\frac{1}{3}$ of the funds to make grants for projects, programs, and studies in the Lower Columbia River Estuary; and

(B) not less than $\frac{1}{3}$ of the funds to make grants for projects, programs, and studies in the Middle and Upper Columbia River Basin.

(4) *REPORTING.*—Not later than 18 months after the date of receipt of a grant under this subsection, and biennially thereafter for the duration of the grant, a person (including a State, interstate, or regional agency, an Indian tribe, or a local government entity) that receives a grant under this subsection shall submit to the Administrator a report that describes the progress being made in achieving the purposes of this section using funds from the grant.

(f) *ANNUAL BUDGET PLAN.*—The President, as part of the annual budget submission of the President to Congress under section 1105(a) of title 31, United States Code, shall submit information regarding each Federal agency involved in protection and restoration of the Columbia River Basin, including an interagency crosscut budget that displays for each Federal agency—

(1) the amounts obligated for the preceding fiscal year for protection and restoration projects, programs, and studies relating to the Columbia River Basin;

(2) the estimated budget for the current fiscal year for protection and restoration projects, programs, and studies relating to the Columbia River Basin; and

(3) the proposed budget for protection and restoration projects, programs, and studies relating to the Columbia River Basin.

(g) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to the Administrator to carry out this section \$33,000,000 for each of fiscal years 2012 through 2017, to remain available until expended.