

118TH CONGRESS
1ST SESSION

S. 2202

To amend the Omnibus Public Land Management Act of 2009 to authorize the modification of transferred works to increase public benefits and other project benefits as part of extraordinary operation and maintenance work, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mrs. FEINSTEIN (for herself and Mr. PADILLA) 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 authorize the modification of transferred works to increase public benefits and other project benefits as part of extraordinary operation and maintenance work, 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 “Restore Aging Infra-
5 structure Now Act” or the “RAIN Act”.

1 **SEC. 2. EXTRAORDINARY OPERATION AND MAINTENANCE**

2 **WORK; PROJECT MODIFICATION.**

3 (a) DEFINITIONS.—Section 9601 of the Omnibus
4 Public Land Management Act of 2009 (43 U.S.C. 510)
5 is amended—

6 (1) by redesignating paragraphs (1), (2), (3),
7 (4), (5), (6), and (7) as paragraphs (4), (7), (9),
8 (10), (11), (12), and (3), respectively, and moving
9 the paragraphs so as to appear in numerical order;
10 (2) by inserting before paragraph (3) (as so re-
11 designated) the following:

12 “(1) ADVERSE IMPACT.—The term ‘adverse im-
13 pact’ means, with respect to a project modification,
14 a reduction in water quantity or quality or a change
15 in the timing of water deliveries available to a
16 project beneficiary from the modified project as com-
17 pared to the water quantity or quality or timing of
18 water deliveries from—

19 “(A) the project with restored capacity, if
20 the extraordinary operation and maintenance
21 work under section 9603 is intended to restore
22 lost project capacity;

23 “(B) the project prior to undertaking the
24 extraordinary operation and maintenance work
25 under section 9603, if the extraordinary oper-

1 ation and maintenance work is for any purpose
 2 other than to restore lost project capacity; or

3 “(C) project operations of the modified
 4 project without an increase in benefits for a
 5 new project beneficiary under section
 6 9603(e)(1)(E).

7 “(2) DISADVANTAGED COMMUNITY.—The term
 8 ‘disadvantaged community’ has the meaning given
 9 the term ‘low-income community’ in section 45D(e)
 10 of the Internal Revenue Code of 1986.”;

11 (3) in paragraph (3) (as so redesignated)—

12 (A) in subparagraph (A), by striking
 13 “and” at the end;

14 (B) in subparagraph (B), by striking the
 15 period at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(C) inclusive of any modifications to the
 18 facilities or facility components authorized
 19 under section 9603(e).”;

20 (4) by inserting after paragraph (4) (as so re-
 21 designated) the following:

22 “(5) NEW BENEFIT.—The term ‘new benefit’
 23 means the increase in benefits of the modified
 24 project compared to the benefits provided by—

1 “(A) the project with restored capacity, if
2 the extraordinary operation and maintenance
3 work under section 9603 is intended to restore
4 lost project capacity; or

5 “(B) the project as the project existed
6 prior to undertaking the extraordinary oper-
7 ation and maintenance work under section
8 9603, if the extraordinary operation and main-
9 tenance work is for any purpose other than to
10 restore lost project capacity.

11 “(6) PROJECT BENEFICIARY.—The term
12 ‘project beneficiary’ means any entity that has a re-
13 payment, long-term water service, or other form of
14 long-term contract or agreement executed pursuant
15 to the Act of June 17, 1902 (32 Stat. 388, chapter
16 1093), and Acts supplemental to and amendatory of
17 that Act (43 U.S.C. 371 et seq.), for water supply
18 from the project.”; and

19 (5) by inserting after paragraph (7) (as so re-
20 designated) the following:

21 “(8) PUBLIC BENEFIT.—The term ‘public ben-
22 efit’, with respect to a modified project, means—

23 “(A) a public benefit identified under the
24 reclamation laws; or

1 “(B) a drinking water benefit for 1 or
2 more disadvantaged communities, including
3 through groundwater recharge, if—

4 “(i) the drinking water meets applica-
5 ble regulatory standards;

6 “(ii) the drinking water benefit ex-
7 ceeds express mitigation or compliance re-
8 quirements under Federal or State law;

9 “(iii) the modified project reduces the
10 unit cost per volume, improves water qual-
11 ity, or increases the reliability or quantity
12 of the drinking water supply of the dis-
13 advantaged community as compared to the
14 condition of the drinking water or other
15 sources of drinking water available before
16 the modification of the project;

17 “(iv) the drinking water benefit is
18 quantified in a public process, including
19 outreach to representatives of the affected
20 disadvantaged community at the earliest
21 practicable opportunity, to determine the
22 scope of funding; and

23 “(v) negative impacts on water quality
24 for other communities are not caused as
25 part of the modified project.”.

1 (b) REIMBURSEMENT OF COSTS.—Section 9603(b) of
 2 the Omnibus Public Land Management Act of 2009 (43
 3 U.S.C. 510b(b)) is amended—

4 (1) in paragraph (2), by striking “the costs”
 5 and inserting “from the Aging Infrastructure Ac-
 6 count established by subsection (d)(1) or any other
 7 applicable available account the costs, including re-
 8 imburseable costs and nonreimbursable costs,”; and

9 (2) by adding at the end the following:

10 “(4) DETERMINATION OF NONREIMBURSABLE
 11 COSTS.—Any costs advanced under paragraph (2)
 12 that are allocated to nonreimbursable purposes of
 13 the project, including public benefits described in
 14 section 9601(8)(B), shall be considered to be nonre-
 15 imburseable costs.”.

16 (c) AGING INFRASTRUCTURE ACCOUNT CONFORMING
 17 AMENDMENTS.—Section 9603(d) of the Omnibus Public
 18 Land Management Act of 2009 (43 U.S.C. 510b(d)) is
 19 amended—

20 (1) in paragraph (1), in the matter preceding
 21 subparagraph (A), by striking “the funds” and in-
 22 serting “reimbursable funds”;

23 (2) in paragraph (2)—

24 (A) by striking “to fund” and inserting “to
 25 fund,”; and

1 (B) by striking “the funds for” and insert-
 2 ing “reimbursable funds for,”;

3 (3) in paragraph (3)(A), by striking “the
 4 amounts” and inserting “the reimbursable
 5 amounts”; and

6 (4) in paragraph (4)(B)(i), by inserting “, in-
 7 cluding projects under subsection (e)” after “this
 8 section”.

9 (d) AUTHORIZATION TO MODIFY TRANSFERRED
 10 WORKS TO INCREASE PUBLIC BENEFITS AND OTHER
 11 PROJECT BENEFITS AS PART OF EXTRAORDINARY OPER-
 12 ATION AND MAINTENANCE WORK.—Section 9603 of the
 13 Omnibus Public Land Management Act of 2009 (43
 14 U.S.C. 510b) is amended by adding at the end the fol-
 15 lowing:

16 “(e) AUTHORIZATION TO MODIFY TRANSFERRED
 17 WORKS TO INCREASE PUBLIC BENEFITS AND OTHER
 18 PROJECT BENEFITS AS PART OF EXTRAORDINARY OPER-
 19 ATION AND MAINTENANCE WORK.—

20 “(1) AUTHORIZATION; REQUIREMENTS.—

21 “(A) IN GENERAL.—The Secretary, in con-
 22 sultation with any transferred works operating
 23 entity and any project beneficiaries and as part
 24 of extraordinary operation and maintenance
 25 work under this section, may develop and carry

1 out a proposal to modify project features for
 2 transferred works to increase public benefits
 3 and other project benefits, including carrying
 4 out a feasibility study and conducting any ap-
 5 plicable environmental analysis required for the
 6 proposal, subject to subparagraphs (B) through
 7 (G).

8 “(B) MAXIMUM COST.—The maximum
 9 amount that may be added to the original
 10 project cost as a result of a project modification
 11 under subparagraph (A) shall not exceed—

12 “(i) an amount equal to 25 percent of
 13 the original cost of the planned extraor-
 14 dinary operation and maintenance work, in
 15 the case of a project for which the original
 16 cost of the planned extraordinary operation
 17 and maintenance work exceeds
 18 \$100,000,000; or

19 “(ii) \$25,000,000, in the case of a
 20 project for which the original cost of the
 21 planned extraordinary operation and main-
 22 tenance work is not more than
 23 \$100,000,000.

24 “(C) PUBLIC BENEFITS.—In the case of a
 25 project modification under subparagraph (A),

1 not less than 50 percent of the new benefits
2 provided by the modification of the project, as
3 compared to the original planned extraordinary
4 operation and maintenance work, shall be public
5 benefits.

6 “(D) WRITTEN CONSENT REQUIRED.—A
7 project modification under subparagraph (A)
8 shall not be constructed until the date on which
9 the Secretary has obtained the written consent
10 of—

11 “(i) the transferred works operating
12 entity; and

13 “(ii) consistent with paragraph (2),
14 any project beneficiary that would experi-
15 ence an adverse impact as a result of the
16 modification of the project.

17 “(E) ADVERSE IMPACT.—Any benefits that
18 accrue to a new project beneficiary resulting
19 from operations of the modified project shall
20 not be increased without the consent of existing
21 project beneficiaries that would experience an
22 adverse impact as a result of the modification
23 of the project.

24 “(F) REIMBURSEMENT OF COSTS.—The
25 costs of planning, design, and environmental

1 compliance for a project modification under
2 subparagraph (A) shall be reimbursed in ac-
3 cordance with subsection (b), except that any of
4 the costs that would otherwise be allocated to a
5 project beneficiary shall be considered nonreim-
6 bursable if the project beneficiary does not re-
7 ceive any increase in long-term average annual
8 water deliveries as a result of the modification.

9 “(G) ELIGIBILITY OF CERTAIN PROJECT
10 MODIFICATIONS.—If a project modification that
11 is otherwise eligible under subparagraph (A) is
12 in the planning, design, or construction phase
13 as of December 31, 2022, the project modifica-
14 tion shall remain eligible to be developed under
15 that subparagraph.

16 “(2) PROCEDURE FOR OBTAINING CONSENT
17 AND TIME LIMITATION.—

18 “(A) INITIAL DETERMINATION.—The Sec-
19 retary shall initially determine whether the con-
20 sent of a project beneficiary is required prior to
21 construction under paragraph (1)(D) based on
22 whether the modification or subsequent oper-
23 ations of the modified project would have any
24 adverse impacts on a project beneficiary.

1 “(B) WRITTEN REQUEST FOR CONSENT.—

2 The Secretary shall provide to the transferred
3 works operating entity, and any project bene-
4 ficiaries, in writing—

5 “(i) a description of the proposed
6 modification and subsequent operations of
7 the project; and

8 “(ii)(I) a request for consent under
9 paragraph (1)(D); or

10 “(II)(aa) an explanation that the Sec-
11 retary has determined that no consent is
12 required under paragraph (1)(D); and

13 “(bb) a statement that if the project
14 beneficiary believes that the consent of the
15 project beneficiary is required, the project
16 beneficiary shall send to the Secretary a
17 reply not later than 30 days after the date
18 of receipt of the notice that includes an ex-
19 planation of the reasons that the project
20 beneficiary would experience adverse im-
21 pacts as a result of the project modifica-
22 tion.

23 “(C) FINAL DETERMINATION.—

24 “(i) WRITTEN RESPONSE.—The Sec-
25 retary shall respond in writing to any reply

1 from a project beneficiary under subpara-
2 graph (B)(ii)(II)(bb) stating whether or
3 not the Secretary determines that the
4 project beneficiary would experience ad-
5 verse impacts as a result of the project
6 modification.

7 “(ii) FINAL AGENCY ACTION.—A writ-
8 ten determination by the Secretary under
9 clause (i) shall be considered to be a final
10 agency action for purposes of section 704
11 of title 5, United States Code.

12 “(iii) WRITTEN REQUEST.—If the
13 Secretary determines under clause (i) that
14 the project beneficiary would experience
15 adverse impacts as a result of the project
16 modification, the Secretary shall send to
17 the project beneficiary a written request
18 for consent in accordance with subpara-
19 graph (B)(ii).

20 “(D) TIME PERIOD FOR CONSENT.—

21 “(i) IN GENERAL.—If written consent
22 required under paragraph (1)(D) is not ob-
23 tained by the date that is 1 year after the
24 date on which written consent is requested
25 under subparagraph (B)(ii), the trans-

ferred works operating entity shall proceed with extraordinary operation and maintenance work of the project without the modification, unless the Secretary extends the time for consent under clause (ii).

“(ii) EXTENSION.—At the discretion of the Secretary, the Secretary may elect to extend the time for obtaining consent under paragraph (1)(D) by 1 year.

“(3) REALLOCATION OF COSTS BASED ON PROJECT CHANGES AND INCREASED PUBLIC BENEFITS.—The Secretary shall allocate costs, including capital repayment costs and operation and maintenance costs, for a project modification under paragraph (1), to provide that—

“(A) annual operation and maintenance costs associated with nonreimbursable purposes of the project shall be nonreimbursable; and

“(B) the cost allocation of reimbursable costs to each project beneficiary reflects any changes in the benefits that the modified project is providing to the project beneficiary.

“(4) INCENTIVE FOR BENEFITTING ENTITIES TO PARTICIPATE IN PROJECTS WITH INCREASED PUBLIC BENEFITS.—

1 “(A) IN GENERAL.—The total amount of
 2 reimbursable capital costs, as determined under
 3 paragraph (3), for extraordinary operation and
 4 maintenance work described in subparagraph
 5 (B) shall be reduced by 15 percent, with each
 6 project beneficiary to be responsible for 85 per-
 7 cent of the reimbursable costs that would other-
 8 wise be allocated to the project beneficiary.

9 “(B) DESCRIPTION OF EXTRAORDINARY
 10 OPERATION AND MAINTENANCE WORK.—The
 11 extraordinary operation and maintenance work
 12 referred to in subparagraph (A) is extraor-
 13 dinary operation and maintenance work involv-
 14 ing a project modification that would increase
 15 nonreimbursable public benefits without in-
 16 creasing reimbursable municipal, industrial, or
 17 irrigation benefits from the original design of
 18 the planned extraordinary operation and main-
 19 tenance work.

20 “(5) REIMBURSABLE FUNDS.—All reimbursable
 21 costs under this subsection shall be repaid in accord-
 22 ance with subsection (b).”.

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