

118TH CONGRESS
2D SESSION

S. 5439

To provide for water conservation, drought operations, and drought resilience at water resources development projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2024

Mr. KELLY (for himself and Mr. PADILLA) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for water conservation, drought operations, and drought resilience at water resources development projects, 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 “Drought Resilient In-
5 frastructure Act of 2024”.

6 **SEC. 2. DEFINITION OF SECRETARY.**

7 In this Act, the term “Secretary” means the Sec-
8 retary of the Army.

1 **SEC. 3. DECLARATION OF POLICY.**

2 (a) IN GENERAL.—It is the policy of the United
3 States for the Corps of Engineers, consistent with applica-
4 ble statutory authorities—

5 (1) to maximize opportunities for water supply,
6 water conservation measures, and drought resiliency
7 efforts at and in the operation of water resources de-
8 velopment projects;

9 (2) in accordance with section 301(a) of the
10 Water Supply Act of 1958 (43 U.S.C. 390b(a)), to
11 participate and cooperate with States and local in-
12 terests in developing water supplies for domestic,
13 municipal, industrial, and other authorized purposes
14 in connection with the construction, maintenance,
15 and operation of water resources development
16 projects; and

17 (3) in coordination with non-Federal interests,
18 to enable the adoption of water conservation meas-
19 ures and drought resiliency measures that are in
20 alignment with the authorized purposes of water re-
21 sources development projects.

22 (b) FULL CONSIDERATION.—In support of subsection
23 (a), the Secretary shall give full consideration to requests
24 and proposals from non-Federal interests to utilize the au-
25 thorities of the Corps of Engineers in furtherance of water
26 supply features, water conservation measures, and

1 drought resiliency efforts that are in alignment the au-
2 thorized purposes of water resources development projects.

3 (c) LIMITATION.—Nothing in this section—

4 (1) affects, modifies, or changes—

5 (A) the authority of a State to manage,
6 use, or allocate the water resources of that
7 State;

8 (B) any water right in existence on the
9 date of enactment of this Act;

10 (C) any existing water supply agreements
11 between the Secretary and a non-Federal inter-
12 est;

13 (D) the authorized purposes of a water re-
14 sources development project; or

15 (E) any existing Corps of Engineers au-
16 thorities;

17 (2) preempts or affects any State water law or
18 interstate compact governing water;

19 (3) diminishes the other priorities and the pri-
20 mary or secondary missions of the Corps of Engi-
21 neers; or

22 (4) shall be interpreted to supersede or modify
23 any written agreement between the Federal Govern-
24 ment and a non-Federal interest that is in effect on
25 the date of enactment of this Act.

1 **SEC. 4. FORECAST-INFORMED RESERVOIR OPERATIONS.**

2 (a) IN GENERAL.—In updating a water control man-
3 ual for any reservoir constructed, owned, or operated by
4 the Secretary, including a reservoir for which the Sec-
5 retary is authorized to prescribe regulations for the use
6 of storage allocated for flood control or navigation pursu-
7 ant to section 7 of the Act of December 22, 1944 (com-
8 monly known as the “Flood Control Act of 1944”) (58
9 Stat. 890, chapter 665; 33 U.S.C. 709), the Secretary
10 shall, to the maximum extent practicable, incorporate the
11 use of forecast-informed reservoir operations, subject to
12 the availability of appropriations.

13 (b) GUIDELINES.—The Secretary, in coordination
14 with relevant Federal and State agencies and non-Federal
15 interests, shall issue clear and concise guidelines for incor-
16 porating the use of forecast-informed reservoir operations
17 into water control manuals for reservoirs described in sub-
18 section (a).

19 (c) ASSESSMENT.—

20 (1) REQUIREMENT.—The Secretary shall carry
21 out an assessment of geographically diverse res-
22 ervoirs described in subsection (a) to determine the
23 viability of using forecast-informed reservoir oper-
24 ations at such reservoirs.

1 (2) PRIORITY AREAS.—In carrying out the as-
2 sessment described in paragraph (1), the Secretary
3 shall include an assessment of—

4 (A) each reservoir located in the South Pa-
5 cific Division of the Corps of Engineers; and

6 (B) reservoirs located in each of the
7 Northwestern Division and the South Atlantic
8 Division of the Corps of Engineers.

9 (3) CONSULTATION.—In carrying out this sub-
10 section, the Secretary shall consult with relevant
11 Federal and State agencies and non-Federal inter-
12 ests.

13 (d) SAVINGS PROVISION.—Nothing in this section
14 preempts or affects any State water law or any interstate
15 compact governing water, or otherwise restricts, affects,
16 or amends any other law or the authority of any depart-
17 ment, instrumentality, or agency of the United States re-
18 lated to the operation of reservoirs described in subsection
19 (a).

20 **SEC. 5. UPDATES TO CERTAIN WATER CONTROL MANUALS.**

21 Section 8109 of the Water Resources Development
22 Act of 2022 (136 Stat. 3702) is amended by inserting “or
23 that incorporate the use of forecast-informed reservoir op-
24 erations into such manuals” before the period at the end.

1 **SEC. 6. EMERGENCY DROUGHT OPERATIONS PILOT PRO-**
2 **GRAM.**

3 (a) DEFINITION OF COVERED PROJECT.—In this sec-
4 tion, the term “covered project” means a project—

5 (1) that is located in the State of California,
6 the State of Nevada, or the State of Arizona; and

7 (2)(A) of the Corps of Engineers for which
8 water supply is an authorized purpose; or

9 (B) for which the Secretary develops a water
10 control manual under section 7 of the Act of Decem-
11 ber 22, 1944 (commonly known as the “Flood Con-
12 trol Act of 1944”) (58 Stat. 890, chapter 665; 33
13 U.S.C. 709).

14 (b) EMERGENCY OPERATION DURING DROUGHT.—
15 Consistent with other authorized project purposes and in
16 coordination with the non-Federal interest, in operating
17 a covered project during a drought emergency in the
18 project area, the Secretary may carry out a pilot program
19 to operate the covered project with water supply as the
20 primary project purpose.

21 (c) UPDATES.—In carrying out this section, the Sec-
22 retary may update the water control manual for a covered
23 project to include drought operations and contingency
24 plans.

25 (d) REQUIREMENTS.—In carrying out subsection (b),
26 the Secretary shall ensure that—

1 (1) operations described in that subsection—

2 (A) are consistent with water management
3 deviations and drought contingency plans in the
4 water control manual for the covered project;

5 (B) impact only the flood pool managed by
6 the Secretary; and

7 (C) shall not be carried out in the event of
8 a forecast or anticipated flood or weather event
9 that would require flood risk management to
10 take precedence;

11 (2) to the maximum extent practicable, the Sec-
12 retary uses forecast-informed reservoir operations;
13 and

14 (3) the covered project returns to the operations
15 that were in place prior to the use of the authority
16 provided under that subsection at a time determined
17 by the Secretary, in coordination with the non-Fed-
18 eral interest.

19 (e) CONTRIBUTED FUNDS.—The Secretary may re-
20 ceive and expend funds contributed by a non-Federal in-
21 terest to carry out activities under this section.

22 (f) REPORT.—

23 (1) IN GENERAL.—Not later than 2 years after
24 the date of enactment of this Act, the Secretary
25 shall submit to the Committee on Environment and

1 Public Works of the Senate and the Committee on
2 Transportation and Infrastructure of the House of
3 Representatives a report on the pilot program car-
4 ried out under this section.

5 (2) INCLUSIONS.—The Secretary shall include
6 in the report under paragraph (1) a description of
7 the activities of the Secretary that were carried out
8 for each covered project and any lessons learned
9 from carrying out those activities.

10 (g) LIMITATIONS.—Nothing in this section—

11 (1) affects, modifies, or changes the authorized
12 purposes of a covered project;

13 (2) affects existing Corps of Engineers authori-
14 ties, including authorities with respect to navigation,
15 hydropower, flood damage reduction, and environ-
16 mental protection and restoration;

17 (3) affects the ability of the Corps of Engineers
18 to provide for temporary deviations;

19 (4) affects the application of a cost-share re-
20 quirement under section 101, 102, or 103 of the
21 Water Resources Development Act of 1986 (33
22 U.S.C. 2211, 2212, 2213);

23 (5) supersedes or modifies any written agree-
24 ment between the Federal Government and a non-

1 Federal interest that is in effect on the date of en-
2 actment of this Act;

3 (6) supersedes or modifies any amendment to
4 an existing multistate water control plan for the Col-
5 orado River Basin, if applicable;

6 (7) affects any water right in existence on the
7 date of enactment of this Act;

8 (8) preempts or affects any State water law or
9 interstate compact governing water;

10 (9) affects existing water supply agreements be-
11 tween the Secretary and a non-Federal interest; or

12 (10) affects any obligation to comply with the
13 provisions of any Federal or State environmental
14 law, including—

15 (A) the National Environmental Policy Act
16 of 1969 (42 U.S.C. 4321 et seq.);

17 (B) the Federal Water Pollution Control
18 Act (33 U.S.C. 1251 et seq.); and

19 (C) the Endangered Species Act of 1973
20 (16 U.S.C. 1531 et seq.).

21 **SEC. 7. LEVERAGING FEDERAL INFRASTRUCTURE FOR IN-**
22 **CREASED WATER SUPPLY.**

23 Section 1118(i) of Water Resources Development Act
24 of 2016 (43 U.S.C. 390b–2(i)) is amended by striking
25 paragraph (2) and inserting the following:

1 “(2) CONTRIBUTED FUNDS FOR OTHER FED-
2 ERAL RESERVOIR PROJECTS.—

3 “(A) IN GENERAL.—The Secretary is au-
4 thorized to receive and expend funds from a
5 non-Federal interest or a Federal agency that
6 owns a Federal reservoir project described in
7 subparagraph (B) to formulate, review, or re-
8 vise operational documents pursuant to a pro-
9 posal submitted in accordance with subsection
10 (a) for such a Federal reservoir project.

11 “(B) FEDERAL RESERVOIR PROJECTS DE-
12 SCRIBED.—A Federal reservoir project referred
13 to in subparagraph (A) is a reservoir for which
14 the Secretary is authorized to prescribe regula-
15 tions for the use of storage allocated for flood
16 control or navigation pursuant to section 7 of
17 the Act of December 22, 1944 (commonly
18 known as the ‘Flood Control Act of 1944’) (58
19 Stat. 890, chapter 665; 33 U.S.C. 709).”.

20 **SEC. 8. STUDIES FOR MODIFICATION OF PROJECT PUR-**
21 **POSES IN THE COLORADO RIVER BASIN IN**
22 **ARIZONA.**

23 (a) STUDY.—The Secretary shall carry out a study
24 of a project of the Corps of Engineers in the Colorado
25 River Basin in the State of Arizona to determine whether

1 to include water supply as a project purpose of that
2 project if a request for such a study to modify the project
3 purpose is made to the Secretary by—

- 4 (1) the non-Federal interest for the project; or
5 (2) in the case of a project for which there is
6 no non-Federal interest, the Governor of the State
7 of Arizona.

8 (b) COORDINATION.—The Secretary, to the max-
9 imum extent practicable, shall coordinate with relevant
10 State and local authorities in carrying out this section.

11 (c) RECOMMENDATIONS.—If, after carrying out a
12 study under subsection (a) with respect to a project de-
13 scribed in that subsection, the Secretary determines that
14 water supply should be included as a project purpose for
15 that project, the Secretary shall submit to the Committee
16 on Environment and Public Works of the Senate and the
17 Committee on Transportation and Infrastructure of the
18 House of Representatives a recommendation for the modi-
19 fication of the project purpose of that project.

20 **SEC. 9. INVASIVE SPECIES THAT EXACERBATE DROUGHT.**

21 Section 206 of the Water Resources Development Act
22 of 1996 (33 U.S.C. 2330) is amended—

- 23 (1) in subsection (a), by adding at the end the
24 following:

1 “(4) DROUGHT RESILIENCE.—A project under
 2 this section may include measures that enhance
 3 drought resilience through the restoration of wet-
 4 lands or the removal of invasive species.”;

5 (2) in subsection (b), by adding at the end the
 6 following:

7 “(3) ANADROMOUS FISH.—Notwithstanding
 8 paragraph (1), for projects carried out under sub-
 9 section (a)(3), the non-Federal interest shall provide
 10 15 percent of the cost of construction, including pro-
 11 vision of all lands, easements, rights-of-way, and
 12 necessary relocations.”;

13 (3) in subsection (d), by striking
 14 “\$10,000,000” and inserting “\$15,000,000”; and

15 (4) in subsection (f), by striking “\$62,500,000”
 16 and inserting “\$75,000,000”.

17 **SEC. 10. PROJECT MODIFICATIONS FOR IMPROVEMENT OF**
 18 **ENVIRONMENT OR DROUGHT RESILIENCY.**

19 Section 1135 of the Water Resources Development
 20 Act of 1986 (33 U.S.C. 2309a) is amended—

21 (1) in the section heading, by inserting “OR
 22 DROUGHT RESILIENCY” after “ENVIRONMENT”;

23 (2) in subsection (a)—

1 (A) by striking “for the purpose of improv-
2 ing” and inserting the following: “for the pur-
3 pose of—

4 “(1) improving”;

5 (B) in paragraph (1) (as so designated), by
6 striking the period at the end and inserting “;
7 or”; and

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

9 “(2) providing drought resiliency.”;

10 (3) in subsection (b), by striking “(2) will im-
11 prove” and inserting “(2) will provide for drought
12 resilience or will improve”;

13 (4) in subsection (d), in the third sentence, by
14 striking “\$10,000,000” and inserting
15 “\$15,000,000”;

16 (5) in subsection (h), by striking
17 “\$50,000,000” and inserting “\$62,000,000”; and

18 (6) by adding at the end the following:

19 “(j) DROUGHT RESILIENCE.—Drought resilience
20 measures carried out under this section may include—

21 “(1) water conservation measures to mitigate
22 and address drought conditions;

23 “(2) removal of sediment captured behind a
24 dam for the purpose of restoring or increasing the
25 authorized storage capacity of the project concerned;

1 “(3) the planting of native plant species that
2 will reduce the risk of drought and the incidence of
3 nonnative species; and

4 “(4) other actions that increase drought resil-
5 ience, water conservation, or water availability.”.

6 **SEC. 11. SILVER JACKETS PROGRAM.**

7 The Secretary shall continue the Silver Jackets pro-
8 gram established by the Secretary pursuant to section 206
9 of the Flood Control Act of 1960 (33 U.S.C. 709a) and
10 section 204 of the Robert T. Stafford Disaster Relief and
11 Emergency Assistance Act (42 U.S.C. 5134).

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