

Calendar No. 276

116TH CONGRESS
1ST SESSION**S. 1570****[Report No. 116-155]**

To provide flexibility to allow greater aquifer recharge, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2019

Mr. RISCH introduced the following bill; which was read twice and referred
to the Committee on Energy and Natural Resources

OCTOBER 29, 2019

Reported by Ms. MURKOWSKI, with an amendment

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

A BILL

To provide flexibility to allow greater aquifer recharge, 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 “Aquifer Recharge
5 Flexibility Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) BUREAU.—The term “Bureau” means the
4 Bureau of Reclamation.

5 (2) COMMISSIONER.—The term “Commis-
6 sioner” means the Commissioner of the Bureau.

7 (3) ELIGIBLE LAND.—The term “eligible land”,
8 with respect to a Reclamation project, means land
9 that—

10 (A) is authorized to receive water under
11 State law; and

12 (B) shares a groundwater source with land
13 located in the service area of the Reclamation
14 project.

15 (4) IN-LIEU RECHARGE.—The term “in-lieu re-
16 charge” means the use of surface water instead of
17 pumped groundwater if that use of surface water
18 will cause the direct reduction or elimination of
19 groundwater withdrawals.

20 (5) NET WATER STORAGE BENEFIT.—The term
21 “net water storage benefit” means an increase in the
22 volume of water that is—

23 (A) stored in 1 or more aquifers; and

24 (B)(i) available for use within the area
25 served by a Reclamation project; or

1 (ii) stored on a long term basis to avoid or
2 reduce groundwater overdraft.

3 (6) RECLAMATION FACILITY.—The term “Ree-
4 lamation facility” means each of the infrastructure
5 assets that are owned by the Bureau at a Reclama-
6 tion project.

7 (7) RECLAMATION PROJECT.—The term “Ree-
8 lamation project” means any reclamation or irriga-
9 tion project, including incidental features thereof,
10 authorized by Federal reclamation law, or con-
11 structed by the United States pursuant to such law,
12 or in connection with which there is a repayment or
13 water service contract executed by the United States
14 pursuant to such law, or any project constructed by
15 the Secretary through the Bureau of Reclamation
16 for the reclamation of land.

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

19 **SEC. 3. FLEXIBILITY TO ALLOW GREATER AQUIFER RE-**
20 **CHARGE IN WESTERN STATES.**

21 (a) USE OF BUREAU FACILITIES.—

22 (1) IN GENERAL.—The Commissioner may
23 allow the use of excess capacity in Bureau convey-
24 ance facilities for carriage of non-Reclamation
25 project water for aquifer recharge, subject to appli-

1 eable rates, charges, and public participation re-
 2 quirements, on the condition that—

3 ~~(A)~~ the use—

4 (i) shall not be implemented in a man-
 5 ner that is detrimental to—

6 ~~(I)~~ any water or power service
 7 contract for the Reclamation project;
 8 or

9 ~~(II)~~ any existing obligations for
 10 fish, wildlife, or water quality protec-
 11 tion;

12 (ii) shall be consistent with existing
 13 water quality guidelines for the Reclama-
 14 tion project; and

15 (iii) shall comply with all applicable
 16 Federal and State law and policies of the
 17 Bureau of Reclamation; and

18 ~~(B)~~ the non-Federal party to an existing
 19 contract for water or water capacity in a Rec-
 20 lamation facility shall consent to the use of the
 21 Reclamation facility under this subsection.

22 ~~(2) EFFECT ON EXISTING CONTRACTS.—~~Notth-
 23 ing in this subsection affects a contract—

24 ~~(A)~~ in effect on the date of enactment of
 25 this Act; and

1 ~~(B)~~ under which the use of excess capacity
2 in a Bureau conveyance facility for carriage of
3 ~~non-Reclamation~~ project water for aquifer re-
4 charge is allowed.

5 ~~(b) AQUIFER RECHARGE ON ELIGIBLE LAND.—~~

6 ~~(1) IN GENERAL.—~~Subject to paragraphs ~~(3)~~
7 and ~~(4)~~, a holder of a water service or repayment
8 contract for a Reclamation project may—

9 ~~(A)~~ directly use water available under the
10 contract for aquifer recharge on eligible land; or

11 ~~(B)~~ enter into an agreement with an indi-
12 vidual or entity to transfer water available
13 under the contract for aquifer recharge on eligi-
14 ble land.

15 ~~(2) AUTHORIZED PROJECT USE.—~~Notwith-
16 standing any other provision of law, the use of water
17 for aquifer recharge under paragraph ~~(1)~~ shall be
18 considered an authorized use for the Reclamation
19 project under the reclamation laws.

20 ~~(3) MODIFICATIONS TO CONTRACTS.—~~The Sec-
21 retary may modify an existing water contract de-
22 scribed in paragraph ~~(1)~~ if the Secretary determines
23 that the modification is—

1 (A) necessary to allow for the use of water
2 available under the contract for aquifer re-
3 charge under this subsection;

4 (B) in the best interest of the Reclamation
5 project and the United States; and

6 (C) approved by the association of water
7 users that is responsible for repaying the cost
8 of construction, operations, and maintenance of
9 the facility that delivers the water under the
10 contract.

11 (4) REQUIREMENTS.—The use or transfer of
12 water for aquifer recharge under this subsection
13 shall be subject to the requirements that—

14 (A) the use or transfer shall not be imple-
15 mented in a manner that is detrimental to any
16 water or power service for the Reclamation
17 project; and

18 (B) before the use or transfer, the Sec-
19 retary shall determine that the use or trans-
20 fer—

21 (i)(I) results in a net water storage
22 benefit for the Reclamation project; or

23 (ii)(II) contributes to the recharge of a
24 depleted aquifer on eligible land; and

1 (ii) complies with all applicable Fed-
2 eral and State laws and policies.

3 (c) ~~IN-LIEU RECHARGE.~~—To the extent consistent
4 with State laws and policies, in-lieu recharge may be ear-
5 ried out under this Act.

6 (d) ~~SENSE OF CONGRESS.~~—It is the sense of Con-
7 gress that—

8 (1) the Secretary should encourage the use of
9 public land administered by the Bureau of Land
10 Management for aquifer recharge, where appro-
11 priate, consistent with—

12 (A) the existing grant of right-of-way;

13 (B) as applicable, the Federal Land Policy
14 and Management Act of 1976 (43 U.S.C. 1701
15 et seq.); and

16 (C) applicable land and resource manage-
17 ment plans; and

18 (2) the Secretary should consider whether aquifer
19 recharge may be appropriate in certain areas of
20 critical environmental concern, if aquifer recharge—

21 (A) would enhance the values for which the
22 area of critical environmental concern has been
23 designated; and

1 (B) is consistent with the management re-
 2 quirements for the area of critical environ-
 3 mental concern.

4 (e) CONVEYANCE FOR AQUIFER RECHARGE PUR-
 5 POSES.—The holder of a right-of-way, easement, permit,
 6 or other authorization to transport water across public
 7 land administered by the Bureau of Land Management
 8 is authorized to transport water for aquifer recharge pur-
 9 poses, including outside of the regular period of use, with-
 10 out requiring additional authorization from the Secretary
 11 where the use does not expand or interfere with the oper-
 12 ation of the right-of-way, easement, permit, or other au-
 13 thorization across public land.

14 (f) EXEMPTION.—This Act shall not apply to the
 15 State of California.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Aquifer Recharge Flexi-*
 18 *bility Act”.*

19 **SEC. 2. DEFINITIONS.**

20 *In this Act:*

21 (1) BUREAU.—*The term “Bureau” means the*
 22 *Bureau of Reclamation.*

23 (2) COMMISSIONER.—*The term “Commissioner”*
 24 *means the Commissioner of Reclamation.*

1 (3) *ELIGIBLE LAND*.—The term “eligible land”,
2 with respect to a Reclamation project, means land
3 that—

4 (A) is authorized to receive water under
5 State law; and

6 (B) shares an aquifer with land located in
7 the service area of the Reclamation project.

8 (4) *NET WATER STORAGE BENEFIT*.—The term
9 “net water storage benefit” means an increase in the
10 volume of water that is—

11 (A) stored in 1 or more aquifers; and

12 (B)(i) available for use within the author-
13 ized service area of a Reclamation project; or

14 (ii) stored on a long-term basis to avoid or
15 reduce groundwater overdraft.

16 (5) *RECLAMATION FACILITY*.—The term “Rec-
17 lamation facility” means each of the infrastructure
18 assets that are owned by the Bureau at a Reclama-
19 tion project.

20 (6) *RECLAMATION PROJECT*.—The term “Rec-
21 lamation project” means any reclamation or irriga-
22 tion project, including incidental features thereof, au-
23 thorized by Federal reclamation law or the Act of Au-
24 gust 11, 1939 (commonly known as the “Water Con-
25 servation and Utilization Act”) (53 Stat. 1418, chap-

1 *ter 717; 16 U.S.C. 590y et seq.), or constructed by the*
 2 *United States pursuant to such law, or in connection*
 3 *with which there is a repayment or water service con-*
 4 *tract executed by the United States pursuant to such*
 5 *law, or any project constructed by the Secretary*
 6 *through the Bureau for the reclamation of land.*

7 (7) *SECRETARY.*—*The term “Secretary” means*
 8 *the Secretary of the Interior.*

9 **SEC. 3. FLEXIBILITY TO ALLOW GREATER AQUIFER RE-**
 10 **CHARGE IN WESTERN STATES.**

11 *(a) USE OF RECLAMATION FACILITIES.*—

12 (1) *IN GENERAL.*—*The Commissioner may allow*
 13 *the use of excess capacity in Reclamation facilities for*
 14 *aquifer recharge of non-Reclamation project water,*
 15 *subject to applicable rates, charges, and public par-*
 16 *ticipation requirements, on the condition that—*

17 *(A) the use—*

18 *(i) shall not be implemented in a man-*
 19 *ner that is detrimental to—*

20 *(I) any power service or water*
 21 *contract for the Reclamation project; or*

22 *(II) any obligations for fish, wild-*
 23 *life, or water quality protection appli-*
 24 *cable to the Reclamation project;*

1 (ii) shall be consistent with water qual-
2 ity guidelines for the Reclamation project;

3 (iii) shall comply with all applicable—

4 (I) Federal laws; and

5 (II) policies of the Bureau; and

6 (iv) shall comply with all applicable
7 State laws and policies; and

8 (B) the non-Federal party to an existing
9 contract for water or water capacity in a Rec-
10 lamation facility consents to the use of the Rec-
11 lamation facility under this subsection.

12 (2) *EFFECT ON EXISTING CONTRACTS.*—Nothing
13 in this subsection affects a contract—

14 (A) in effect on the date of enactment of this
15 Act; and

16 (B) under which the use of excess capacity
17 in a Bureau conveyance facility for carriage of
18 non-Reclamation project water for aquifer re-
19 charge is allowed.

20 (b) *AQUIFER RECHARGE ON ELIGIBLE LAND.*—

21 (1) *IN GENERAL.*—Subject to paragraphs (3) and
22 (4), the Secretary may contract with a holder of a
23 water service or repayment contract for a Reclama-
24 tion project to allow the contractor, in accordance
25 with applicable State laws and policies—

1 (A) to directly use water available under
2 the contract for aquifer recharge on eligible land;
3 or

4 (B) to enter into an agreement with an in-
5 dividual or entity to transfer water available
6 under the contract for aquifer recharge on eligi-
7 ble land.

8 (2) *AUTHORIZED PROJECT USE.*—The use of a
9 Reclamation facility for aquifer recharge under para-
10 graph (1) shall be considered an authorized use for
11 the Reclamation project if requested by a holder of a
12 water service or repayment contract for the Reclama-
13 tion facility.

14 (3) *MODIFICATIONS TO CONTRACTS.*—The Sec-
15 retary may contract with a holder of a water service
16 or repayment contract for a Reclamation project
17 under paragraph (1) if the Secretary determines that
18 a new contract or contract amendment described in
19 that paragraph is—

20 (A) necessary to allow for the use of water
21 available under the contract for aquifer recharge
22 under this subsection;

23 (B) in the best interest of the Reclamation
24 project and the United States; and

1 (C) approved by the contractor that is re-
 2 sponsible for repaying the cost of construction,
 3 operations, and maintenance of the facility that
 4 delivers the water under the contract.

5 (4) *REQUIREMENTS.*—*The use of Reclamation*
 6 *facilities for the use or transfer of water for aquifer*
 7 *recharge under this subsection shall be subject to the*
 8 *requirements that—*

9 (A) *the use or transfer shall not be imple-*
 10 *mented in a manner that materially impacts*
 11 *any power service or water contract for the Rec-*
 12 *lamation project; and*

13 (B) *before the use or transfer, the Secretary*
 14 *shall determine that the use or transfer—*

15 (i) *results in a net water storage ben-*
 16 *efit for the Reclamation project; or*

17 (ii) *contributes to the recharge of an*
 18 *aquifer on eligible land; and*

19 (C) *the use or transfer complies with all ap-*
 20 *plicable—*

21 (i) *Federal laws and policies; and*

22 (ii) *interstate water compacts.*

23 (c) *CONVEYANCE FOR AQUIFER RECHARGE PUR-*
 24 *POSES.*—*The holder of a right-of-way, easement, permit, or*
 25 *other authorization to transport water across public land*

1 *administered by the Bureau of Land Management may*
2 *transport water for aquifer recharge purposes without re-*
3 *quiring additional authorization from the Secretary where*
4 *the use does not expand or modify the operation of the right-*
5 *of-way, easement, permit, or other authorization across*
6 *public land.*

7 *(d) EFFECT.—Nothing in this Act creates, impairs, al-*
8 *ters, or supersedes a Federal or State water right.*

9 *(e) EXEMPTION.—This Act shall not apply to the State*
10 *of California.*

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1ST Session

S. 1570

[Report No. 116-155]

A BILL

To provide flexibility to allow greater aquifer recharge, and for other purposes.

OCTOBER 29, 2019

Reported with an amendment