

## S 2902

### Western Water Supply and Planning Enhancement Act of 2016

**Congress:** 114 (2015–2017, Ended)

**Chamber:** Senate

**Policy Area:** Water Resources Development

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## Sponsor

**Name:** Sen. Flake, Jeff [R-AZ]

**Party:** Republican • **State:** AZ • **Chamber:** Senate

## Cosponsors (5 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Barrasso, John [R-WY]	R · WY		May 9, 2016
Sen. Daines, Steve [R-MT]	R · MT		May 9, 2016
Sen. Heller, Dean [R-NV]	R · NV		May 9, 2016
Sen. McCain, John [R-AZ]	R · AZ		May 9, 2016
Sen. Risch, James E. [R-ID]	R · ID		May 9, 2016

## Committee Activity

Committee	Chamber	Activity	Date
Energy and Natural Resources Committee	Senate	Hearings By (subcommittee)	May 17, 2016

## Subjects & Policy Tags

### Policy Area:

Water Resources Development

## Related Bills

Bill	Relationship	Last Action
114 HR 2273	Related bill	<b>Jul 6, 2016:</b> Received in the Senate. Read twice. Placed on Senate Legislative Calendar under General Orders. Calendar No. 546.
114 S 438	Related bill	<b>Apr 27, 2016:</b> Placed on Senate Legislative Calendar under General Orders. Calendar No. 443.
114 HR 1107	Related bill	<b>Dec 3, 2015:</b> Placed on the Union Calendar, Calendar No. 279.
114 HR 3867	Related bill	<b>Nov 2, 2015:</b> Referred to the Subcommittee on Water, Power and Oceans.
114 S 593	Related bill	<b>Sep 9, 2015:</b> Placed on Senate Legislative Calendar under General Orders. Calendar No. 208.
114 S 1305	Related bill	<b>Sep 9, 2015:</b> Placed on Senate Legislative Calendar under General Orders. Calendar No. 215.
114 S 1533	Related bill	<b>Jun 18, 2015:</b> Committee on Energy and Natural Resources Senate Subcommittee on Water and Power. Hearings held. With printed Hearing: S.Hrg. 114-399.
114 S 1552	Related bill	<b>Jun 18, 2015:</b> Committee on Energy and Natural Resources Senate Subcommittee on Water and Power. Hearings held. With printed Hearing: S.Hrg. 114-399.
114 HR 2097	Related bill	<b>May 26, 2015:</b> Referred to the Subcommittee on Water, Power and Oceans.

## **Western Water Supply and Planning Enhancement Act of 2016**

### **TITLE I--LONG-TERM IMPROVEMENTS FOR WESTERN STATES SUBJECT TO DROUGHT**

#### **Subtitle A--Water Supply Improvements**

(Sec. 101) This bill directs the U.S. Army Corps of Engineers to: (1) submit a report including, for any state in which a county designated by the Department of Agriculture (USDA) as a drought disaster area during water year 2015 is located, a list of projects operated for flood control in accordance with rules prescribed under the Flood Control Act of 1944; and (2) carry out at least 15 pilot projects, including at least 6 nonfederal projects, to implement revisions of operational documents (water control plans, manuals, diagrams, release schedules, rule curves, operational agreements with nonfederal entities, and environmental documentation) based on the best available science.

The Corps of Engineers must report to Congress regarding the components of the forecast-based reservoir operations plan incorporated into an operational document change.

(Sec. 102) The Department of the Interior, in cooperation with Wyoming, may amend the Definite Plan Report for the Seedskadee Project authorized under the Colorado River Storage Project Act to provide for the study, design, planning, and construction activities that will enable the use of all active storage capacity of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of the dam to allow such storage capacity to be used for authorized project purposes.

Interior may enter into: (1) any contract, grant, cooperative agreement, or other agreement that is necessary to carry out such activities; and (2) contracts with Wyoming for division of any additional active capacity made available by the activities.

Interior shall enter into a cooperative agreement with Wyoming for planning, design, related preconstruction activities, and construction of any modification of the Fontenelle Dam, which shall specify the responsibilities of Interior and Wyoming regarding: (1) completing the planning and final design of such modification, (2) any environmental and cultural resource compliance activities required for such modification, and (3) the construction of such modification. As a condition of providing additional storage, Wyoming shall provide to Interior funds for any work carried out to do so.

(Sec. 103) Interior must: (1) enter into an arrangement with the National Academy of Sciences for a comprehensive study of the effectiveness and environmental impacts of saltcedar biological and mechanical control efforts on increasing water supplies and improving riparian habitats, and (2) report a feasible plan to implement a tamarisk control plan as described in the Bureau of Reclamation (Reclamation) study entitled "Colorado River Basin Water Supply and Demand Study."

(Sec. 104) Interior must: (1) fund or participate in projects to increase Colorado River System water in Lake Mead and the initial units of Colorado River Storage Project reservoirs to address the effects of historic drought conditions, and (2) report before FY2027 on the effectiveness of such projects.

#### **Subtitle B--Protecting Critical Water Supply Watersheds**

(Sec. 112) Interior (for National Forest System land) and USDA (for public land) must study, develop, and describe only the management activity or the alternative of no action in an environmental assessment or environmental impact statement for a management activity that is developed through a collaborative process, proposed by a resource advisory

committee, or covered by a community wildfire protection plan, or that covers an area with a high national fire danger rating, and for which the primary purpose is:

- to address an insect or disease infestation;
- to reduce hazardous fuel loads;
- to control a noxious or invasive weed;
- to protect a municipal water source;
- to maintain, enhance, or modify critical habitat to ensure protection from catastrophic disturbances;
- to increase water yield; or
- any combination thereof.

(Sec. 113) A categorical exclusion to the requirements of the National Environmental Policy Act of 1969 shall be available to USDA or Interior to develop and carry out such a management activity on National Forest System land or public land.

(Sec. 114) A management activity covered by such a categorical exclusion must be consistent with the land use plan for those lands.

Subtitle C--Bureau of Reclamation Transparency Act

*Bureau of Reclamation Transparency Act*

(Sec. 124) Interior must submit to Congress, make publicly available, and biennially update an Asset Management Report that describes Reclamation's efforts to maintain in a reliable manner all reserved works (buildings, structures, facilities, or equipment owned by Reclamation for which operations and maintenance are performed by Reclamation employees or through a contract with Reclamation) at Reclamation facilities (infrastructure assets that are owned by Reclamation at each Reclamation-owned project) and to standardize and streamline data reporting and processes across regions and areas for the purpose of maintaining such works.

The report must include: (1) a detailed assessment of major repair and rehabilitation needs for all such works; and (2) an itemized list of major repair and rehabilitation needs of individual Reclamation facilities at each Reclamation project, including a budget level cost estimate of appropriations needed to complete each item and an assignment of a categorical rating for each item consistent with existing uniform categorization systems to inform the annual budget process and agency requirements.

(Sec. 125) Interior must: (1) coordinate with the nonfederal entities responsible for the operation and maintenance of transferred works (Reclamation facilities at which operations and maintenance are carried out by a nonfederal entity under a formal agreement with Reclamation) in developing reporting requirements for Asset Management Reports regarding major repair and rehabilitation needs for transferred works; and (2) develop and implement a categorical rating system for transferred works.

(Sec. 126) The maximum amount of the federal share of the cost of the Central Valley Water Recycling Project otherwise available as of the enactment of this bill is reduced by \$2 million.

Subtitle D--Water Supply Permitting Act

*Water Supply Permitting Coordination Act*

(Sec. 133) This subtitle establishes Reclamation as the lead agency for purposes of coordinating all reviews, analyses,

opinions, statements, permits, licenses, or other approvals or decisions (reviews) required under federal law to construct new surface water storage projects in certain states on lands administered by Interior or USDA, exclusive of any easement, right-of-way, lease, or any private holding (qualifying projects).

Reclamation must: (1) identify any federal agency that may have jurisdiction over a required review upon receipt of an application for a qualifying project; and (2) notify such agency that it has been designated as a cooperating agency unless the agency notifies Reclamation that the agency has no jurisdiction or authority over the project, has no expertise or information relevant to the project or any associated review, or does not intend to submit comments other than in cooperation with Reclamation.

A state in which a qualifying project is being considered may choose to: (1) participate as a cooperating agency; and (2) make subject to the processes of this subtitle all state agencies that have jurisdiction over the project, are required to conduct or issue a review, or are required to make a determination on issuing a permit, license, or approval for the project.

(Sec. 134) The principal responsibilities of Reclamation under this subtitle are to: (1) serve as the point of contact for applicants, state agencies, Indian tribes, and others regarding proposed qualifying projects; (2) coordinate preparation of unified environmental documentation that will serve as the basis for all federal decisions necessary to authorize the use of federal lands for qualifying projects; and (3) coordinate all federal agency reviews necessary for the development and construction of qualifying projects.

(Sec. 135) Reclamation must establish project schedules using reasonable time frames submitted by cooperating agencies. Cooperating agencies must also submit to Reclamation environmental review materials and project data in an electronic format.

(Sec. 136) Interior may accept and expend funds contributed by a nonfederal public entity to expedite the evaluation of a permit of that entity related to a qualifying project. Interior must ensure that all final permit decisions are made publicly available on the Internet.

#### **Subtitle E--Bureau of Reclamation Project Streamlining Act**

##### *Bureau of Reclamation Project Streamlining Act*

(Sec. 143) This subtitle requires that a surface water or water supply project feasibility study initiated after enactment of this bill shall: (1) result in the completion of a final feasibility report within three years; (2) have a maximum federal cost of \$3 million; and (3) ensure that personnel from the local project area, region, and headquarters levels of Reclamation concurrently conduct the required review. It sets forth factors for extending such time line for complex projects.

Interior shall, within 90 days after the initiation of a project study: (1) initiate the process for completing reviews, including environmental reviews, required to be completed as part of such study; (2) convene a meeting of federal, tribal, and state agencies required to act; and (3) provide information that will enable required reviews and analyses to be conducted by other agencies in a thorough and timely manner.

Interior must: (1) expedite the completion of any ongoing project study initiated before the enactment of this bill; and (2) proceed directly to preconstruction planning, engineering, and design of a project that it determines is justified.

Interior must report on the implementation status of the planning process and each project study.

(Sec. 144) Interior must: (1) expedite the completion of any ongoing project study initiated before the enactment of this title; and (2) proceed directly to preconstruction planning, engineering, and design of a project that it determines is justified.

(Sec. 145) The subtitle sets forth requirements applicable to: (1) project studies initiated after enactment of this bill for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (NEPA); (2) other project studies initiated before enactment for which an environmental review process document is prepared under NEPA; and (3) any project study for the development of a nonfederally owned and operated surface water storage project for which Interior determines there is a demonstrable federal interest and that is located in a river basin where other Reclamation water projects are located, that will create additional water supplies that support Reclamation water projects, or that will become integrated into the operation of Reclamation water projects. Interior shall:

- annually prepare a list of all such studies that do not have adequate funding for study completion;
- develop and implement a coordinated environmental review process for the development of such studies;
- identify early all federal, state, and local government agencies and Indian tribes that may have jurisdiction and that may be required to act, which the federal lead agency shall invite to become participating or cooperating agencies;
- issue guidance regarding the use of programmatic approaches to carry out the environmental review process; and
- establish an electronic database and issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable NEPA requirements and other action required for a project study.

The subtitle sets forth the authorities and responsibilities of the joint lead agency, which may be a project sponsor, and the federal lead agency in the environmental review process, including: (1) the preparation and use of environmental documents; (2) establishing a plan for coordinating public and agency participation; (3) working with cooperating and participating agencies to identify and resolve issues that could delay process completion or result in the denial of any approval required for the project study; and (4) establishing, upon request, memoranda of agreement with the project sponsor, Indian tribes, and state and local governments to carry out the early coordination activities. A federal lead agency shall serve in that capacity for the entirety of all nonfederal projects that will be integrated into a larger system owned, operated, or administered by Reclamation. Interior, upon determining that a project can be expedited by a nonfederal sponsor and that there is a demonstrable federal interest in expediting the project, shall advance it as a nonfederal project.

A federal jurisdictional agency must complete any required approval or decision for the environmental review process on an expeditious basis. If the agency fails to render a decision relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, the amount of funds made available to support the office of the head of the agency shall be reduced by specified amounts that must be transferred to the division of the agency charged with rendering the decision. Agencies must notify Congress of the amounts of such transfers and describe the decisions and project studies involved.

Interior shall: (1) survey the use by Reclamation of categorical exclusions in projects since 2005 and propose a new categorical exclusion for a category of activities if merited, and (2) establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(Sec. 146) Interior must develop and submit annually a Report to Congress on Future Water Project Development that identifies: (1) the costs and benefits of, the nonfederal interests associated with, and the support for project reports, proposed project studies, and proposed modifications to authorized water projects and project studies that are related to

Reclamation's missions and authorities, that require specific congressional authorization, that have not been congressionally authorized, that have not been included in any previous annual report, and that, if authorized, could be carried out by Reclamation; and (2) any project study that was expedited under this subtitle.

## TITLE II--PROTECTING EXISTING WATER RIGHTS

### *Water Rights Protection Act*

(Sec. 204) This title prohibits USDA or Interior from conditioning or withholding an action to issue, renew, amend, or extend any permit, approval, right-of-way, or other land use or occupancy agreement on:

- the transfer of any state water right to the United States or any other designee;
- the acquisition of a state water right in the name of the United States;
- limiting the date, time, quantity, location of diversion or pumping, or place of use of a state water right beyond any applicable limitations under state water law; or
- the modification of the terms and conditions of groundwater withdrawal, guidance and reporting procedures, and conservation and source protection measures established by a state.

(Sec. 205) In developing any rule, policy, directive, or management plan relating to such an action, Interior or USDA: (1) shall recognize the long-standing authority of the states relating to groundwater and coordinate with the states to ensure that any such rule, policy, directive, or management plan is consistent with, and imposes no greater restriction or regulatory requirement than, applicable state groundwater law; and (2) shall not assert any connection between surface and groundwater that is inconsistent with such a connection recognized by state water laws or adversely affect any authority of a state in adjudicating water rights, any definition established by a state with respect to the term "beneficial use," "priority of water rights," or "terms of use," or any other right or obligation of a state established under state law.

## TITLE III-- COMPLETING AND MAINTAINING RURAL WATER SUPPLY INFRASTRUCTURE

### Subtitle A--Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Economies

#### *Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Their Economies Act or the IRRIGATE Act*

##### Part I--Indian Irrigation Fund

(Sec. 311) This part establishes the Indian Irrigation Fund (IIF), from which Interior may make expenditures to carry out this subtitle.

(Sec. 312) The Department of the Treasury shall deposit into the IIF for each of FY2017-FY2038 specified amounts of revenues that would otherwise be deposited in the reclamation fund established by the Reclamation Act of 1902.

(Sec. 313) The part sets forth requirements for IIF expenditures, investments, and transfers.

(Sec. 315) The IIF shall terminate on September 30, 2038, and the unexpended and unobligated balance shall be transferred to the reclamation fund.

##### PART II--Repair, Replacement, and Maintenance of Certain Indian Irrigation Projects

(Sec. 321) Interior shall establish a program to address the deferred maintenance and water storage needs of Indian irrigation projects that: (1) create risks to public or employee safety or natural or cultural resources, and (2) unduly

impede the management and efficiency of the Indian irrigation program.

Interior shall use or transfer specified amounts in the IIF to the Bureau of Indian Affairs (BIA) for each of FY2017-FY2038 to carry out maintenance, repair, replacement, and water storage construction activities for Indian irrigation projects in the western United States that are owned by the federal government and managed and operated by the BIA and that have deferred maintenance documented. Such amounts shall not be: (1) subject to reimbursement by the owners of the land served by the Indian irrigation projects; or (2) assessed as debts or liens against the land served by such projects.

(Sec. 323) Interior shall submit to Congress: (1) programmatic goals to carry out this part that would enable the completion of repairing, replacing, modernizing, or performing maintenance on projects as expeditiously as possible, facilitate or improve the BIA's ability to carry out its mission in operating a project, ensure that the results of government-to-government consultation with the Indian tribe that has jurisdiction over the land on which an eligible project is located are addressed, and facilitate the construction of new water storage using nonfederal contributions to address tribal, regional, and watershed-level supply needs; and (2) funding prioritization criteria to serve as a methodology for distributing funds under this part. Such criteria must take into account:

- the extent to which deferred maintenance of projects threatens public or employee safety or health, natural or cultural resources, or the BIA's ability to operate the project;
- the methodology of the rehabilitation priority index;
- the potential economic benefits of the expenditures on job creation and general economic development in the affected tribal communities; and
- the ability of the qualifying project to address tribal, regional, and watershed level water supply needs.

(Sec. 324) Interior shall: (1) complete a study that evaluates options for improving programmatic and project management and performance of irrigation projects managed and operated by the BIA, and (2) submit status reports biennially on progress made and deficiencies remaining regarding addressing the deferred maintenance needs of Indian irrigation projects.

(Sec. 325) Before expending funds on an Indian irrigation project under this part, Interior must consult with Indian tribes with jurisdiction over the land and solicit input from landowners served by the project and irrigators from adjacent irrigation districts.

(Sec. 326) Interior shall ensure that, for each of FY2017-FY2038, each eligible Indian irrigation project that has critical maintenance needs receives funding.

In allocating funding under this bill, Interior: (1) shall give priority to projects serving more than one Indian tribe within an Indian reservation and to projects for which funding has not been made available during the previous 10 years under any other Act of Congress that expressly addresses the deferred maintenance, repair, or replacement needs of such project; and (2) shall not provide more than a specified amount to any individual project during any consecutive 3-year period.

## Subtitle B--Clean Water for Rural Communities

### *Clean Water for Rural Communities Act*

(Sec. 334) This subtitle authorizes Interior to carry out water supply projects in Montana and North Dakota entitled: (1) the "Dry-Redwater Regional Water Authority System" in accordance with the Dry-Redwater Regional Water System Feasibility Study, which received funding from Reclamation on September 1, 2010; and (2) the "Musselshell-Judith Rural

Water System" in accordance with the Musselshell-Judith Rural Water System Feasibility Report.

Interior shall enter into a cooperative agreement with the Dry-Redwater Regional Water Authority (DRWA) and the Central Montana Regional Water Authority to provide federal assistance for the planning, design, and construction of such water systems. The bill sets forth the federal share of such costs and the authorized uses of federal funds, which exclude operation, maintenance, or replacement of the water systems.

(Sec. 335) The Western Area Power Administration shall make available to the Dry-Redwater System a quantity of power (up to one and a half megawatt capacity) required to meet the system's pumping and incidental operation requirements between May 1 and October 31 of each year: (1) from the water intake facilities; and (2) through all pumping stations, water treatment facilities, reservoirs, storage tanks, and pipelines up to the point of delivery of water to all storage reservoirs and tanks and each entity that distributes water at retail to individual users.

The Dry-Redwater Regional Water Authority System shall be eligible to receive such power only if it: (1) operates on a nonprofit basis, and (2) is constructed pursuant to Interior's cooperative agreement with DRWA.

DRWA shall be responsible for: (1) charges for additional power needed to meet pumping requirements, (2) the costs of nonfederal transmission and distribution system delivery and service arrangements, and (3) funding any upgrades to the transmission system owned by the Western Area Power Administration Basin Electric Power District and the Heartland Consumers Power District required to deliver power to the system.

#### TITLE IV--OFFSET

##### *Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act*

(Sec. 401) This title requires Interior, upon request from a water users association, to convert certain water service contracts between the United States and the association to allow for prepayment of repayment contracts.

#### **Actions Timeline**

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- **Sep 15, 2016:** Committee on Energy and Natural Resources. Reported by Senator Murkowski with amendments. With written report No. 114-353.
- **Sep 15, 2016:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 631.
- **Jul 13, 2016:** Committee on Energy and Natural Resources. Ordered to be reported with amendments favorably.
- **May 17, 2016:** Committee on Energy and Natural Resources Senate Subcommittee on Water and Power. Hearings held. With printed Hearing: S.Hrg. 114-495.
- **May 9, 2016:** Introduced in Senate
- **May 9, 2016:** Read twice and referred to the Committee on Energy and Natural Resources.