

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.**

**S. 2044**

To amend the Omnibus Public Land Management Act of 2009 to establish an Aging Infrastructure Account, to amend the Reclamation Safety of Dams Act of 1978 to provide additional funds under that Act, to establish a review of flood control rule curves pilot project within the Bureau of Reclamation, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Supply Infra-  
5 structure Rehabilitation and Utilization Act”.

6 **SEC. 2. AGING INFRASTRUCTURE ACCOUNT.**

7 Section 9603 of the Omnibus Public Land Manage-  
8 ment Act of 2009 (43 U.S.C. 510b) is amended by adding  
9 at the end the following:

10 “(d) AGING INFRASTRUCTURE ACCOUNT.—

1           “(1) ESTABLISHMENT.—There is established in  
2 the general fund of the Treasury a special account,  
3 to be known as the ‘Aging Infrastructure Account’  
4 (referred to in this subsection as the ‘Account’), to  
5 provide funds to, and provide for the extended re-  
6 payment of the funds by, transferred works oper-  
7 ating entities or project beneficiaries responsible for  
8 repayment of reimbursable costs for the conduct of  
9 extraordinary operation and maintenance work at a  
10 project facility, which shall consist of—

11                   “(A) any amounts that are authorized to  
12 be appropriated to the Account under section  
13 9605; and

14                   “(B) any amounts deposited in the Ac-  
15 count under paragraph (3)(B).

16           “(2) EXPENDITURES.—Subject to appropria-  
17 tions and paragraph (3), the Secretary may expend  
18 amounts in the Account to fund and provide for ex-  
19 tended repayment of the funds for eligible projects  
20 identified in a report submitted under paragraph  
21 (5)(A).

22           “(3) REPAYMENT CONTRACT.—

23                   “(A) IN GENERAL.—The Secretary may  
24 not expend amounts under paragraph (2) with  
25 respect to an eligible project described in that

1 paragraph unless the transferred works oper-  
2 ating entity or project beneficiary responsible  
3 for repayment of reimbursable costs has entered  
4 into a contract to repay the amounts under sub-  
5 section (b)(2).

6 “(B) DEPOSIT OF REPAID FUNDS.—  
7 Amounts repaid by a transferred works oper-  
8 ating entity or project beneficiary responsible  
9 for repayment of reimbursable costs receiving  
10 funds under a repayment contract entered into  
11 under this subsection shall be deposited in the  
12 Account without further appropriation.

13 “(4) APPLICATION FOR FUNDING.—

14 “(A) IN GENERAL.—Not less than once per  
15 fiscal year, the Secretary shall accept, during  
16 an application period established by the Sec-  
17 retary, applications from transferred works op-  
18 erating entities or project beneficiaries respon-  
19 sible for payment of reimbursable costs for  
20 funds and extended repayment for eligible  
21 projects.

22 “(B) ELIGIBLE PROJECT.—A project eligi-  
23 ble for funds and extended repayment under  
24 this subsection is a project that—

1           “(i) qualifies as an extraordinary op-  
2           eration and maintenance work under this  
3           section;

4           “(ii) is for the major, non-recurring  
5           maintenance of a mission-critical asset;  
6           and

7           “(iii) is not eligible to be carried out  
8           or funded under the repayment provisions  
9           of section 4(c) of the Reclamation Safety  
10          of Dams Act of 1978 (43 U.S.C. 508(c)).

11          “(C) GUIDELINES FOR APPLICATIONS.—  
12          Not later than 60 days after the date of enact-  
13          ment of this subsection, the Secretary shall  
14          issue guidelines describing the information re-  
15          quired to be provided in an application for  
16          funds and extended repayment under this sub-  
17          section that require, at a minimum—

18                 “(i) a description of the project for  
19                 which the funds are requested;

20                 “(ii) the amount of funds requested;

21                 “(iii) the repayment period requested  
22                 by the transferred works operating entity  
23                 or project beneficiary responsible for re-  
24                 payment of reimbursable costs;

1                   “(iv) alternative non-Federal funding  
2 options that have been evaluated;

3                   “(v) the financial justification for re-  
4 questing an extended repayment period;  
5 and

6                   “(vi) the financial records of the  
7 transferred works operating entity or  
8 project beneficiary responsible for repay-  
9 ment of reimbursable costs.

10                  “(D) REVIEW BY THE SECRETARY.—The  
11 Secretary shall review each application sub-  
12 mitted under subparagraph (A)—

13                   “(i) to determine whether the project  
14 is eligible for funds and an extended repay-  
15 ment period under this subsection;

16                   “(ii) to determine if the project has  
17 been identified by the Bureau of Reclama-  
18 tion as part of the major rehabilitation and  
19 replacement of a project facility; and

20                   “(iii) to conduct a financial analysis  
21 of—

22                   “(I) the project; and

23                   “(II) the transferred works oper-  
24 ating entity or project beneficiary re-

1                   sponsible for repayment of reimburs-  
2                   able costs.

3                   “(5) REPORT.—Not later than 90 days after  
4                   the date on which an application period closes under  
5                   paragraph (4)(A), the Secretary shall submit to the  
6                   Committees on Energy and Natural Resources and  
7                   Appropriations of the Senate and the Committees on  
8                   Natural Resources and Appropriations of the House  
9                   of Representatives a report that—

10                   “(A) identifies each project eligible for  
11                   funds and extended repayment under this sub-  
12                   section;

13                   “(B) with respect to each eligible project  
14                   identified under subparagraph (A), includes—

15                   “(i) a description of—

16                   “(I) the eligible project;

17                   “(II) the anticipated cost and du-  
18                   ration of the eligible project; and

19                   “(III) any remaining engineering  
20                   or environmental compliance that is  
21                   required before the eligible project  
22                   commences;

23                   “(ii) an analysis of—

24                   “(I) the repayment period pro-  
25                   posed in the application; and

1                   “(II) if the Secretary rec-  
2                   ommends a minimum necessary repay-  
3                   ment period that is different than the  
4                   repayment period proposed in the ap-  
5                   plication, the minimum necessary re-  
6                   payment period recommended by the  
7                   Secretary; and

8                   “(iii) an analysis of alternative non-  
9                   Federal funding options; and

10                  “(C) describes the balance of funds in the  
11                  Account as of the date of the report.

12                  “(6) EFFECT OF SUBSECTION.—Nothing in this  
13                  subsection affects—

14                         “(A) any funding provided, or contracts  
15                         entered into, under subsection (a) before the  
16                         date of enactment of this subsection; or

17                         “(B) the use of funds otherwise made  
18                         available to the Secretary to carry out sub-  
19                         section (a).”.

20 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE**  
21 **RECLAMATION SAFETY OF DAMS ACT OF 1978.**

22                  Section 5 of the Reclamation Safety of Dams Act of  
23 1978 (43 U.S.C. 509) is amended, in the first sentence,  
24 by inserting “, and, effective October 1, 2019, not to ex-

1 ceed an additional \$550,000,000 (October 1, 2019, price  
2 levels)” before “ , plus or minus”.

3 **SEC. 4. REVIEW OF FLOOD CONTROL RULE CURVES PILOT**  
4 **PROJECT.**

5 (a) DEFINITIONS.—In this section:

6 (1) BUREAU.—The term “Bureau” means the  
7 Bureau of Reclamation.

8 (2) ELIGIBLE WORKS.—

9 (A) IN GENERAL.—The term “eligible  
10 works” means a reserved works, or a trans-  
11 ferred works for which—

12 (i) the flood control rule curve has not  
13 been substantially adjusted during the 10-  
14 year period ending on the date of enact-  
15 ment of this Act; and

16 (ii) the Secretary receives a request in  
17 accordance with subsection (c)(1)(A).

18 (B) EXCLUSIONS.—The term “eligible  
19 works” does not include—

20 (i) any project authorized by the  
21 Boulder Canyon Project Act (43 U.S.C.  
22 617 et seq.);

23 (ii) any project authorized by the Act  
24 of April 11, 1956 (commonly known as the



1 “Colorado River Storage Project Act”) (43  
2 U.S.C. 620 et seq.); or

3 (iii) any project of the Pick-Sloan  
4 Missouri River Basin Program (authorized  
5 by section 9 of the Act of December 22,  
6 1944 (commonly known as the “Flood  
7 Control Act of 1944”) (58 Stat. 891, chap-  
8 ter 665)).

9 (3) PILOT PROJECT.—The term “pilot project”  
10 means the pilot project established under subsection  
11 (b).

12 (4) RESPONSIBLE PARTY.—The term “respon-  
13 sible party” means—

14 (A) with respect to a reserved works—

15 (i) a non-Federal water user or power  
16 contractor that has an active repayment,  
17 water service, or power service contract  
18 with the Bureau;

19 (ii) a power contractor that has an ac-  
20 tive contract with a Federal power mar-  
21 keting administration for energy, capacity,  
22 or energy and capacity, from a hydropower  
23 facility owned by the Bureau; or

24 (iii) a non-Federal operating entity,  
25 such as a joint powers authority or board

1 of control, that has assumed responsibility  
2 on behalf of multiple water users, through  
3 a contract with the Bureau, for the oper-  
4 ation and maintenance of the reserved  
5 works; and

6 (B) with respect to a transferred works,  
7 the operating entity of the transferred works.

8 (5) SECRETARY.—The term “Secretary” means  
9 Secretary of the Interior.

10 (b) ESTABLISHMENT OF PILOT PROJECT.—The Sec-  
11 retary shall establish within the Bureau a pilot project to  
12 provide a major deviation or adjustment of a flood control  
13 rule curves in accordance with subsection (d).

14 (c) SELECTION OF ELIGIBLE WORKS.—

15 (1) REQUEST.—

16 (A) IN GENERAL.—In order for an eligible  
17 works to be selected for inclusion in the pilot  
18 project, a responsible party shall submit a writ-  
19 ten request to the Secretary describing whether  
20 the responsible party is seeking—

21 (i) a major deviation; or

22 (ii) a flood control rule curve adjust-  
23 ment.

24 (B) NOTICE.—Not later than 30 days  
25 after the date on which the Secretary receives

1 a request under subparagraph (A), the Sec-  
2 retary shall notify—

3 (i) each responsible party of that re-  
4 quest, using lists maintained by the Bu-  
5 reau; and

6 (ii) if applicable, the appropriate Fed-  
7 eral power marketing administration.

8 (2) SELECTION.—Each year, the Secretary  
9 shall—

10 (A) select 1 or more eligible works for in-  
11 clusion in the pilot project;

12 (B) specify whether the eligible work is  
13 seeking—

14 (i) a major deviation; or

15 (ii) a flood control rule curve adjust-  
16 ment; and

17 (C) submit a list of those eligible works  
18 to—

19 (i) the Secretary of the Army;

20 (ii) the Committee on Natural Re-  
21 sources of the House of Representatives;

22 and

23 (iii) the Committee on Energy and  
24 Natural Resources of the Senate.

1           (3) EXCLUSION.—The Secretary shall not select  
2           an eligible works for inclusion in the pilot project  
3           under paragraph (2)(A) if, not later than 60 days  
4           after the date on which the notice is provided to  
5           each responsible party under paragraph (1)(B)(i), a  
6           majority of the responsible parties submit to the  
7           Secretary an objection to the inclusion of the eligible  
8           works in the pilot project.

9           (d) GRANTING A MAJOR DEVIATION OR ADJUST-  
10          MENT OF A FLOOD CONTROL RULE.—

11           (1) IN GENERAL.—If **the Secretary/ the Sec-**  
12           **retary of the Army** determines that the major devi-  
13           ation or adjustment of the flood control rule would  
14           enhance the authorized purposes of the eligible  
15           works—

16                   (A) in the case of an eligible works re-  
17                   questing a major deviation under subsection  
18                   (c)(1)(A)(i), the Forecast-Informed Reservoir  
19                   Operations Steering Committee shall conduct a  
20                   forecast-informed viability assessment; and

21                   (B) in the case of eligible works requesting  
22                   an adjustment under subsection (c)(1)(A)(ii),  
23                   the flood control rule curve of an eligible works  
24                   shall be adjusted pursuant to section 7 of the  
25                   Act of December 22, 1944 (33 U.S.C. 709).

1           (2) CONSIDERATIONS.—In **【**a major deviation  
2 or adjustment of**】** a flood control rule curve under  
3 paragraph (1), the following factors shall be consid-  
4 ered:

5           (A) Forecast-informed reservoir operations.

6           (B) Improved hydrologic forecasting for—

7               (i) precipitation;

8               (ii) snowpack;

9               (iii) runoff; and

10              (iv) soil moisture conditions.

11           (C) Any new watershed data, including  
12 data provided by a responsible party for the eli-  
13 gible works.

14           (3) CONSULTATION.—In **【**a major deviation or  
15 adjustment of**】** a flood control rule curve under  
16 paragraph (1), the following entities shall be con-  
17 sulted:

18           (A) Each responsible party for the eligible  
19 works.

20           (B) In the case of an eligible works that  
21 produces power marketed by the Federal Gov-  
22 ernment, the Federal power marketing adminis-  
23 tration that markets the power.

24           (C) The Secretary.

1 (e) CONSULTATION.—The Secretary shall consult  
2 with the Secretary of the Army with respect to any action  
3 taken by the Secretary of the Army—

4 (1) pursuant to section 7 of the Act of Decem-  
5 ber 22, 1944 (33 U.S.C. 709); and

6 (2) that relates to the pilot project.

7 (f) FUNDING.—The Secretary or the Secretary of the  
8 Army, as appropriate, may accept amounts from respon-  
9 sible parties for eligible works to fund all or a portion of  
10 the cost of carrying out [a major deviation or adjustment  
11 of a flood control rule] under subsection (d), including  
12 a review or revision of operational documents (including  
13 water control plans, water control manuals, water control  
14 diagrams, release schedules, rule curves, operational  
15 agreements with non-Federal entities, and any associated  
16 environmental documentation).

17 (g) EFFECT.—Nothing in this section—

18 (1) affects or modifies any existing authority to  
19 review or modify—

20 (A) reservoir operations, including any ex-  
21 isting forecast-informed reservoir operations at  
22 a facility of the Corps of Engineers, such as  
23 Coyote Dam; and

24 (B) flood control operations; or

1           (2) affects or modifies any authorized purpose  
2 of any project carried out by the Secretary.

3 (h) TERMINATION.—

4           (1) IN GENERAL.—The pilot project shall termi-  
5 nate on the date that is 15 years after the date of  
6 enactment of this Act.

7           (2) EFFECT.—Termination of the pilot project  
8 under paragraph (1) shall not affect any flood con-  
9 trol rule curve developed as part of the pilot project.