

Second Degree

AMENDMENT NO. _____

Calendar No. _____

Purpose: To improve the amendment.

IN THE SENATE OF THE UNITED STATES—ENR, 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 intended to be proposed by
_____ to the amendment (No. 12) pro-
posed by Ms. MURKOWSKI *AND MR. MANCHIU.*

Viz:

1 Beginning on page 1 of the amendment, strike line
2 6 and all that follows through page 14, line 16, and insert
3 the following:

4 **SEC. 2. AGING INFRASTRUCTURE ACCOUNT.**

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

8 “(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, a transferred works oper-
7 ating entity or project beneficiary responsible for re-
8 payment of reimbursable costs for the conduct of ex-
9 traordinary operation and maintenance work at a
10 project facility, which shall consist of—

11 “(A) any amounts that are specifically ap-
12 propriated to the Account under section 9605;
13 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 and shall be available to the Secretary
13 for expenditure in accordance with this sub-
14 section without further appropriation.

15 “(4) APPLICATION FOR FUNDING.—

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

1 “(B) ELIGIBLE PROJECT.—A project eligi-
2 ble for funding and extended repayment under
3 this subsection is a project that—

4 “(i) qualifies as an extraordinary op-
5 eration and maintenance work under this
6 section;

7 “(ii) is for the major, non-recurring
8 maintenance of a mission-critical asset;
9 and

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

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

21 “(i) a description of the project for
22 which the funds are requested;

23 “(ii) the amount of funds requested;

24 “(iii) the repayment period requested
25 by the transferred works operating entity

1 or project beneficiary responsible for re-
2 payment of reimbursable costs;

3 “(iv) alternative non-Federal funding
4 options that have been evaluated;

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

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

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

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

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

22 “(iii) to conduct a financial analysis
23 of—

24 “(I) the project; and

1 “(II) the transferred works oper-
2 ating entity or project beneficiary re-
3 sponsible for repayment of reimburs-
4 able costs.

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

12 “(A) identifies each project eligible for
13 funds⁶ and extended repayment under this sub-
14 section;

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

17 “(i) a description of—

18 “(I) the eligible project;

19 “(II) the anticipated cost and du-
20 ration of the eligible project; and

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

25 “(ii) an analysis of—

1 “(I) the repayment period pro-
2 posed in the application; and

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

10 “(iii) an analysis of alternative non-
11 Federal funding options; and

12 “(C) describes the balance of funds in the
13 Account as of the date of the report.

14 “(6) EFFECT OF SUBSECTION.—Nothing in this
15 subsection affects—

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

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

22 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE**
23 **RECLAMATION SAFETY OF DAMS ACT OF 1978.**

24 Section 5 of the Reclamation Safety of Dams Act of
25 1978 (43 U.S.C. 509) is amended, in the first sentence,

1 by inserting “, and, effective October 1, 2019, not to ex-
2 ceed an additional \$550,000,000 (October 1, 2019, price
3 levels)” before “, plus or minus”.

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

6 (a) **DEFINITIONS.**—In this section:

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

9 (2) **ELIGIBLE WORKS.**—

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

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

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

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

21 (i) any project authorized by the
22 Boulder Canyon Project Act (43 U.S.C.
23 617 et seq.);

24 (ii) any project authorized by the Act
25 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 including a joint powers authority or board

10

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, in consultation with the Secretary of the Army,
12 shall establish within the Bureau a pilot project to adjust
13 flood control 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 seeking a flood
20 control rule curve adjustment.

21 (B) NOTICE.—Not later than 30 days
22 after the date on which the Secretary receives
23 a request under subparagraph (A), the Sec-
24 retary shall notify—

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

4 (ii) if applicable, the appropriate Fed-
5 eral power marketing administration.

6 (2) SELECTION.—Each year, the Secretary
7 shall—

8 (A) select 1 or more eligible works for in-
9 clusion in the pilot project; and

10 (B) submit a list of those eligible works
11 to—

12 (i) the Secretary of the Army;

13 (ii) the Committee on Natural Re-
14 sources of the House of Representatives;
15 and

16 (iii) the Committee on Energy and
17 Natural Resources of the Senate.

18 (3) EXCLUSION.—The Secretary shall not select
19 an eligible works for inclusion in the pilot project
20 under paragraph (2)(A) if, not later than 60 days
21 after the date on which the notice is provided to
22 each responsible party under paragraph (1)(B)(i), a
23 majority of the responsible parties submit to the
24 Secretary an objection to the inclusion of the eligible
25 works in the pilot project.

1 (d) ADJUSTMENT OF A FLOOD CONTROL RULE.—

2 (1) IN GENERAL.—The flood control rule curve
3 of an eligible works shall be adjusted pursuant to
4 section 7 of the Act of December 22, 1944 (33
5 U.S.C. 709), if the Secretary of the Army deter-
6 mines that the adjustment would enhance the au-
7 thorized purposes of the eligible works.

8 (2) CONSIDERATIONS.—In the adjustment of a
9 flood control rule curve under paragraph (1), the fol-
10 lowing factors shall be considered:

11 (A) Forecast-informed reservoir operations.

12 (B) Improved hydrologic forecasting for—

13 (i) precipitation;

14 (ii) snowpack;

15 (iii) runoff; and

16 (iv) soil moisture conditions.

17 (C) Any new watershed data, including
18 data provided by a responsible party for the eli-
19 gible works.

20 (3) CONSULTATION.—In the adjustment of a
21 flood control rule curve under paragraph (1), the fol-
22 lowing entities shall be consulted:

23 (A) Each responsible party for the eligible
24 works.

1 (B) In the case of an eligible works that
 2 produces power marketed by the Federal Gov-
 3 ernment, the Federal power marketing adminis-
 4 tration that markets the power.

5 (C) The Secretary.

6 (e) CONSULTATION.—The Secretary shall consult
 7 with the Secretary of the Army with respect to any action
 8 taken by the Secretary of the Army—

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

11 (2) that relates to the pilot project.

12 (f) FUNDING.—The Secretary or the Secretary of the
 13 Army, as appropriate, may accept amounts from respon-
 14 sible parties for eligible works to fund all or a portion of
 15 the cost of carrying out an adjustment of a flood control
 16 rule under subsection (d), including a review or revision
 17 of operational documents (including water control plans,
 18 water control manuals, water control diagrams, release
 19 schedules, rule curves, operational agreements with non-
 20 Federal entities, and any associated environmental docu-
 21 mentation).

(g) EFFECT - Nothing in this section -
 (i) affects or modifies any existing authority
 to review or modify -
 (A) reservoir operations, including any
 existing forecast-informed reservoir operations at
 a facility of the Corps of Engineers, such as
 Coyote Dam; and
 (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.