I

111TH CONGRESS
1ST SESSION

H. R. 3747

To promote water efficiency, conservation, and adaptation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Ms. BERKLEY (for herself and Ms. TITUS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To promote water efficiency, conservation, and adaptation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Water Efficiency, Conservation, and Adaptation Act of 2009''.

SEC. 2. FINDINGS.

Congress finds that—

(1)(A) human-induced climate change is affecting the natural water cycle, decreasing precipitation levels in the West, especially the Southwest, and making droughts and floods more frequent and more intense;

(B) declining precipitation levels will severely impact water supplies in Southwestern States; and

(C) a sharp increase in the number of days with very heavy precipitation throughout the Northeast and the Midwest will stress aging water infrastructure;

(2) changes in the water cycle caused by climate disruptions will adversely affect water infrastructure, energy production and use, human health, transportation, agriculture, and ecosystems, while also aggravating water disputes across the United States;

(3)(A) the Colorado River, which supplies water for over 30,000,000 people, is experiencing the worst drought in over 100 years of recordkeeping; and

(B) the primary reservoirs of the Colorado River Basin and Lakes Mead and Powell have lost nearly half of the storage waters of the reservoirs and lakes, and clean hydropower generated from

Hoover Dam risks reduction if the extended drought persists;

(4) States and local governments and water utilities can begin to address the challenges described in this section by providing incentives for water efficiency and conservation, while also planning and investing in infrastructure to adapt to the impacts of climate change, particularly those impacts already affecting the United States;

(5) residential water demand can be reduced by 25 to 40 percent using existing, cost-effective technologies that also can reduce the water bills of consumers by hundreds of dollars per year; and

(6) water and energy use are inseparable activities, and supplying and treating water consumes around 4 percent of the electricity of the United States, and electricity makes up 75 percent of the cost of processing and delivering municipal water.

SEC. 3. DEFINITION OF ADMINISTRATOR.

In this Act, the term ''Administrator'' means the Administrator of the Environmental Protection Agency.

SEC. 4. WATERSENSE.

(a) IN GENERAL.—There is established within the Environmental Protection Agency a WaterSense program

to identify and promote water efficient products, buildings, landscapes, facilities, processes, and services so as—

(1) to reduce water use;

(2) to reduce the strain on water, wastewater, and stormwater infrastructure;

(3) to conserve energy used to pump, heat, transport, and treat water; and

(4) to preserve water resources for future generations, through voluntary labeling of, or other forms of communications about, products, buildings, landscapes, facilities, processes, and services that meet the highest water efficiency and performance criteria.

(b) DUTIES.—The Administrator shall—

(1) establish—

(A) a WaterSense label to be used for certain items; and

(B) the procedure by which an item may be certified to display the WaterSense label;

(2) promote WaterSense-labeled products, buildings, landscapes, facilities, processes, and services in the marketplace as the preferred technologies and services for—

(A) reducing water use; and

(B) ensuring product and service performance;

(3) work to enhance public awareness of the WaterSense label through public outreach, education, and other means;

(4) preserve the integrity of the WaterSense label by—

(A) establishing and maintaining performance criteria so that products, buildings, landscapes, facilities, processes, and services labeled with the WaterSense label perform as well or better than less water-efficient counterparts;

(B) overseeing WaterSense certifications made by third parties;

(C) conducting reviews of the use of the WaterSense label in the marketplace and taking corrective action in any case in which misuse of the label is identified; and

(D) carrying out such other measures as the Administrator determines to be appropriate;

(5) regularly review and, if appropriate, update WaterSense criteria for categories of products, buildings, landscapes, facilities, processes, and services, at least once every 4 years;

(6) to the maximum extent practicable, regularly estimate and make available to the public the production and relative market shares of, and the savings of water, energy, and capital costs of water, wastewater, and stormwater infrastructure attributable to the use of WaterSense-labeled products, buildings, landscapes, facilities, processes, and services, at least annually;

(7) solicit comments from interested parties and the public prior to establishing or revising a WaterSense category, specification, installation criterion, or other criterion (or prior to effective dates for any such category, specification, installation criterion, or other criterion);

(8) provide reasonable notice to interested parties and the public of any changes (including effective dates), on the adoption of a new or revised category, specification, installation criterion, or other criterion, along with—

(A) an explanation of the changes; and

(B) as appropriate, responses to comments submitted by interested parties and the public;

(9) provide appropriate lead time (as determined by the Administrator) prior to the applicable effective date for a new or significant revision to a

category, specification, installation criterion, or other criterion, taking into account the timing requirements of the manufacturing, marketing, training, and distribution process for the specific product, building and landscape, or service category addressed;

(10) identify and, if appropriate, implement other voluntary approaches in commercial, institutional, residential, industrial, and municipal sectors to encourage recycling and reuse technologies to improve water efficiency or lower water use; and

(11) if appropriate, apply the WaterSense label to water-using products that are labeled by the Energy Star program implemented by the Administrator and the Secretary of Energy.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $7,500,000 for fiscal year 2010;

(2) $10,000,000 for fiscal year 2011;

(3) $20,000,000 for fiscal year 2012;

(4) $50,000,000 for fiscal year 2013; and

(5) for each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect changes for the 12-month period

ending the preceding November 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

SEC. 5. STATE RESIDENTIAL WATER EFFICIENCY AND CONSERVATION INCENTIVES PROGRAM.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means a State government, local or county government, tribal government, wastewater or sewerage utility, municipal water authority, energy utility, water utility, or nonprofit organization that meets the requirements of subsection (b).

(2) INCENTIVE PROGRAM.—The term ''incentive program'' means a program for administering financial incentives for consumer purchase and installation of water-efficient products, buildings (including new water-efficient homes), landscapes, processes, or services described in subsection (b)(1).

(3) RESIDENTIAL WATER-EFFICIENT PRODUCT, BUILDING, LANDSCAPE, PROCESS, OR SERVICE.—

(A) IN GENERAL.—The term ''residential water-efficient product, building, landscape, process, or service'' means a product, building, landscape, process, or service for a residence or

its landscape that is rated for water efficiency and performance—

(i) by the WaterSense program; or

(ii) if a WaterSense specification does not exist, by the Energy Star program or an incentive program approved by the Administrator.

(B) INCLUSIONS.—The term ''residential water-efficient product, building, landscape, process, or service'' includes—

(i) faucets;

(ii) irrigation technologies and services;

(iii) point-of-use water treatment devices;

(iv) reuse and recycling technologies;

(v) toilets;

(vi) clothes washers;

(vii) dishwashers;

(viii) showerheads;

(ix) xeriscaping and other landscape conversions that replace irrigated turf; and

(x) new water efficient homes certified under the WaterSense program.

(4) WATERSENSE PROGRAM.—The term ''WaterSense program'' means the program established by section 4.

(b) ELIGIBLE ENTITIES.—An entity shall be eligible to receive an allocation under subsection (c) if the entity—

(1) establishes (or has established) an incentive program to provide financial incentives to residential consumers for the purchase of residential water-efficient products, buildings, landscapes, processes, or services;

(2) submits an application for the allocation at such time, in such form, and containing such information as the Administrator may require; and

(3) provides assurances satisfactory to the Administrator that the entity will use the allocation to supplement, but not supplant, funds made available to carry out the incentive program.

(c) AMOUNT OF ALLOCATIONS.—For each fiscal year, the Administrator shall determine the amount to allocate to each eligible entity to carry out subsection (d), taking into consideration—

(1) the population served by the eligible entity during the most recent calendar year for which data are available;

(2) the targeted population of the incentive program of the eligible entity, such as general households, low-income households, or first-time homeowners, and the probable effectiveness of the incentive program for that population;

(3) for existing programs, the effectiveness of the program in encouraging the adoption of water-efficient products, buildings, landscapes, facilities, processes, and services;

(4) any allocation to the eligible entity for a preceding fiscal year that remains unused; and

(5) the per capita water demand of the population served by the eligible entity during the most recent calendar year for which data are available and the accessibility of water supplies to the eligible entity.

(d) USE OF ALLOCATED FUNDS.—Funds allocated to an eligible entity under subsection (c) may be used to pay up to 50 percent of the cost of establishing and carrying out an incentive program.

(e) FIXTURE RECYCLING.—Eligible entities are encouraged to promote or implement fixture recycling programs to manage the disposal of older fixtures replaced due to the incentive program under this section.

(f) ISSUANCE OF INCENTIVES.—

(1) IN GENERAL.—Financial incentives may be provided to residential consumers that meet the requirements of the applicable incentive program.

(2) MANNER OF ISSUANCE.—An eligible entity may—

(A) issue all financial incentives directly to residential consumers; or

(B) with approval of the Administrator, delegate all or part of financial incentive administration to other organizations, including local governments, municipal water authorities, water utilities, and nonprofit organizations.

(3) AMOUNT.—The amount of a financial incentive shall be determined by the eligible entity, taking into consideration—

(A) the amount of any Federal or State tax incentive available for the purchase of the residential water-efficient product or service;

(B) the amount necessary to change consumer behavior to purchase water-efficient products and services; and

(C) the consumer expenditures for onsite preparation, assembly, and original installation of the product.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator to carry out this section—

(1) $100,000,000 for fiscal year 2010;

(2) $150,000,000 for fiscal year 2011;

(3) $200,000,000 for fiscal year 2012;

(4) $150,000,000 for fiscal year 2013;

(5) $100,000,000 for fiscal year 2014; and

(6) for each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect changes for the 12-month period ending the preceding November 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

SEC. 6. BLUE BANK FOR WATER SYSTEM MITIGATION AND ADAPTATION.

(a) DEFINITIONS.—In this section:

(1) ABRUPT CLIMATE CHANGE.—The term ''abrupt climate change'' means a large-scale change in the climate system that—

(A) takes place over a few decades or less;

(B) persists (or is anticipated to persist) for at least a few decades; and

(C) causes substantial disruptions in human and natural systems.

(2) OWNER OR OPERATOR.—

(A) IN GENERAL.—The term ''owner or operator'' means a person (including a regional, State, local, municipal, or private entity) that owns or operates a water system.

(B) INCLUSION.—The term ''owner or operator'' includes a non-Federal entity that has operational responsibilities for a federally owned water system.

(3) WATER SYSTEM.—The term ''water system'' means—

(A) a community water system (as defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f));

(B) a publicly owned treatment works (as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292)), including a municipal separate storm sewer system;

(C) a decentralized wastewater treatment system for domestic sewage;

(D) a groundwater storage and replenishment system; or

(E) a system for transport and delivery of water for irrigation or conservation.

(b) GRANTS.—Beginning in fiscal year 2010, the Administrator shall make grants to owners or operators of water systems to address any ongoing or forecasted (based on the best available research and data) climate-related impact on the water quality or quantity of a region of the United States, for the purposes of mitigating or adapting to the impacts of climate change.

(c) ELIGIBLE USES.—In carrying out this section, the Administrator shall make grants to assist in the planning, design, construction, implementation, or maintenance of any program or project to increase the resilience of a water system to climate change by—

(1) conserving water or enhancing water use efficiency, including through the use of water metering to measure the effectiveness of a water efficiency program;

(2) modifying or relocating existing water system infrastructure made or projected to be made inoperable by climate change impacts;

(3) preserving or improving water quality, including through measures to manage, reduce, treat, or reuse municipal stormwater, wastewater, or drinking water;

(4) investigating, designing, or constructing groundwater remediation, recycled water, or desalination facilities or systems;

(5) enhancing water management by increasing watershed preservation and protection, such as through the use of natural or engineered green infrastructure in the management, conveyance, or treatment of water, wastewater, or stormwater;

(6) enhancing energy efficiency or the use and generation of renewable energy in the management, conveyance, or treatment of water, wastewater, or stormwater;

(7) supporting the adoption and use of advanced water treatment, water supply management (such as reservoir reoperation), or water demand management technologies, projects, or processes (such as water reuse and recycling or adaptive conservation pricing) that maintain or increase water supply or improve water quality;

(8) modifying or replacing existing systems or constructing new systems for existing communities or land currently in agricultural production to improve water availability, storage, or conveyance in a manner that—

(A) promotes more efficient use of available water supplies; and

(B) does not further exacerbate stresses on ecosystems;

(9) supporting practices and projects, such as improved irrigation systems, water banking and other forms of water transactions, groundwater recharge, stormwater capture, and reuse or recycling of drainage water, to improve water quality or promote more efficient water use, including on land currently in agricultural production;

(10) conducting and completing studies or assessments to project how climate change may impact the future operations and sustainability of water systems; or

(11) developing and implementing mitigation measures to rapidly address impacts on water systems most susceptible to abrupt climate change, including those in the Colorado River Basin and coastal regions at risk from rising sea levels.

(d) APPLICATION.—To be eligible to receive a grant from the Administrator under subsection (b), the owner or operator of a water system shall submit to the Administrator an application that—

(1) includes a proposal of the program, strategy, or infrastructure improvement to be planned, designed, constructed, implemented, or maintained by the water system;

(2) cites the best available research or data that demonstrates—

(A) the risk to the water resources or infrastructure of the water system as a result of ongoing or forecasted changes to the hydrological system brought about by factors arising from climate change, including rising sea levels and changes in precipitation levels; and

(B) how the proposed program, strategy, or infrastructure improvement would perform under the anticipated climate conditions;

(3) explains how the proposed program, strategy, or infrastructure improvement is expected to enhance the resiliency of the water system, including source water protection for community water systems, to these risks or reduce the direct or indirect greenhouse gas emissions of the water system; and

(4) demonstrates that the program, strategy, or infrastructure improvement is—

(A) consistent with any approved State and tribal climate adaptation plan; and

(B) not inconsistent with any approved natural resources plan.

(e) COMPETITIVE PROCESS.—

(1) IN GENERAL.—Each calendar year, the Administrator shall conduct a competitive process to select and fund applications under this section.

(2) PRIORITY REQUIREMENTS AND WEIGHTING.—In carrying out the process, the Administrator shall—

(A) prioritize funding of applications that are submitted by the owners or operators of water systems that are, based on the best available research and data, at the greatest and most immediate risk of facing significant climate-related negative impacts on water quality or quantity;

(B) in selecting among the priority applications determined under subparagraph (A), ensure that the final list of applications funded for each year includes a substantial number that, to the maximum extent practicable, includes each eligible use described in subsection (c);

(C) solicit applications from water systems that are—

(i) located in all regions of the United States; and

(ii) facing varying risks as a result of climate change; and

(D) provide for solicitation and consideration of public input in the development of criteria used in evaluating applications.

(f) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of any program, strategy, or infrastructure improvement that is the subject of a grant awarded by the Administrator to a water system under subsection (b) shall not exceed 50 percent of the cost of the program, strategy, and infrastructure improvement.

(2) CALCULATION OF NON-FEDERAL SHARE.—In calculating the non-Federal share of the cost of a program, strategy, or infrastructure improvement proposed by a water system through an application submitted by the water system under subsection (d), the Administrator shall—

(A) include the value of any in-kind services that are integral to the completion of the

program, strategy, or infrastructure improvement, as determined by the Administrator; and

(B) not include any other amount that the water system receives from a Federal agency.

(g) LABOR STANDARDS.—

(1) IN GENERAL.—All laborers and mechanics employed on infrastructure improvements funded directly by or assisted in whole or in part by this section shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of part A of subtitle II of title 40, United States Code.

(2) AUTHORITY AND FUNCTIONS.—With respect to the labor standards in this subsection, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

(h) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall promulgate final regulations to carry out this section.

(2) SPECIAL RULE FOR THE CONSTRUCTION OF TREATMENT WORKS.—In carrying out this subsection, the Administrator shall incorporate all relevant and appropriate requirements of title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) applicable to the construction of treatment works that are carried out under this section.

(i) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Administrator shall submit to the Congress a report on progress in implementing this section, including information on project applications received and funded annually.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary.

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