

118TH CONGRESS
1ST SESSION

S. 1853

To amend the Healthy Forests Restoration Act of 2003 to reauthorize and improve the Water Source Protection Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2023

Mr. BENNET (for himself, Mr. CRAPO, Mrs. FEINSTEIN, Mr. RISCH, Mr. LUJÁN, Mr. KELLY, Mr. HICKENLOOPER, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Healthy Forests Restoration Act of 2003 to reauthorize and improve the Water Source Protection Program, 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 “Headwaters Protection
5 Act of 2023”.

6 **SEC. 2. WATER SOURCE PROTECTION PROGRAM REAU-**
7 **THORIZATION AND IMPROVEMENTS.**

8 Section 303 of the Healthy Forests Restoration Act
9 of 2003 (16 U.S.C. 6542) is amended—

1 (1) in subsection (a)—

2 (A) in paragraph (1)—

3 (i) by redesignating subparagraphs
4 (G) and (H) as subparagraphs (K) and
5 (L), respectively; and

6 (ii) by inserting after subparagraph
7 (F) the following:

8 “(G) an acequia association;

9 “(H) a local, regional, or other public enti-
10 ty that manages stormwater or wastewater re-
11 sources or other related water infrastructure;

12 “(I) a land-grant mercedes;

13 “(J) a local, regional, or other private enti-
14 ty that has water delivery authority;”;

15 (B) by redesignating paragraphs (1)
16 through (7) as paragraphs (2) through (8), re-
17 spectively; and

18 (C) by inserting before paragraph (2) (as
19 so redesignated) the following:

20 “(1) ADJACENT LAND.—The term ‘adjacent
21 land’ means non-Federal land, including State, local,
22 and private land, that is adjacent to, and within the
23 same watershed as, National Forest System land on
24 which a watershed protection and restoration project
25 is carried out under this section.”;

1 (2) in subsection (b)—

2 (A) by inserting “and adjacent land” be-
3 fore the period at the end;

4 (B) by striking “The Secretary shall” and
5 inserting the following:

6 “(1) IN GENERAL.—The Secretary shall”; and

7 (C) by adding at the end the following:

8 “(2) REQUIREMENTS.—A watershed protection
9 and restoration project under the Program shall—

10 “(A) protect and restore watershed health,
11 water supply and quality, a municipal or agri-
12 cultural water supply system, and water-related
13 infrastructure;

14 “(B) protect and restore forest health from
15 insect infestation and disease or wildfire; or

16 “(C) advance any combination of the pur-
17 poses described in subparagraphs (A) and (B).

18 “(3) PRIORITIES.—In selecting watershed pro-
19 tection and restoration projects under the Program,
20 the Secretary shall give priority to projects that
21 would—

22 “(A) provide risk management benefits as-
23 sociated with drought, wildfire, post-wildfire
24 conditions, extreme weather, or flooding, includ-
25 ing minimizing risks to watershed health, water

1 supply and quality, and water-related infra-
2 structure, including municipal and agricultural
3 water supply systems;

4 “(B) be designed to support aquatic res-
5 toration and conservation efforts that com-
6 plement existing or planned forest restoration
7 or wildfire risk reduction efforts;

8 “(C) include—

9 “(i) partners with demonstrated ca-
10 pacity and success in designing and imple-
11 menting ecological restoration projects,
12 wildfire risk reduction efforts, or post-wild-
13 fire restoration projects; or

14 “(ii) in the case of disadvantaged
15 communities that have historically lacked
16 access to adequate resources, partners with
17 a strong likelihood of success in designing
18 and implementing a watershed protection
19 and restoration project; and

20 “(D)(i) include a contribution of funds or
21 in-kind support from non-Federal partners in
22 an amount greater than the amount required
23 under subsection (g)(2);

24 “(ii) provide quantifiable benefits to water
25 supply or quality and include the use of nature-

1 based solutions, such as restoring wetland and
2 riparian ecosystems;

3 “(iii) be designed to improve—

4 “(I) resilience to climate change; or

5 “(II) watershed and fire resilience; or

6 “(iv) include such other characteristics as
7 the Secretary determines to be appropriate.

8 “(4) CONDITIONS FOR PROJECTS ON ADJACENT
9 LAND.—

10 “(A) IN GENERAL.—No project or activity
11 may be carried out under this section on adja-
12 cent land unless the owner of the adjacent land
13 provides express support for, and is a willing
14 and engaged partner in, carrying out that
15 project or activity.

16 “(B) EFFECT.—Nothing in this section
17 authorizes any change in—

18 “(i) the ownership of adjacent land on
19 which a project or activity is carried out
20 under this section; or

21 “(ii) the management of adjacent land
22 on which a project or activity is carried out
23 under this section, except during the car-
24 rying out of that project or activity.”;

25 (3) in subsection (c)—

1 (A) in paragraph (1)—

2 (i) by inserting “and adjacent land”
3 after “watersheds”;

4 (ii) by striking the period at the end
5 and inserting “; or”;

6 (iii) by striking “with end water
7 users” and inserting the following: “with—
8 “(A) end water users”; and

9 (iv) by adding at the end the fol-
10 lowing:

11 “(B) end waters users to protect and re-
12 store the condition of National Forest water-
13 sheds and adjacent land that provide water for
14 the benefit of another end water user.”;

15 (B) in paragraph (2)—

16 (i) in subparagraph (C), by striking
17 “or” after the semicolon;

18 (ii) by redesignating subparagraph
19 (D) as subparagraph (E); and

20 (iii) by inserting after subparagraph
21 (C) the following:

22 “(D) a good neighbor agreement entered
23 into under section 8206 of the Agricultural Act
24 of 2014 (16 U.S.C. 2113a); or”;

25 (C) by adding at the end the following:

1 “(3) LEADERSHIP BY NON-FEDERAL PART-
2 NERS.—The Secretary shall facilitate a leadership
3 role for non-Federal partners in carrying out assess-
4 ments, planning, project design, and project imple-
5 mentation under this section.”;

6 (4) in subsection (d)—

7 (A) in paragraph (2), by striking “shall be
8 conducted” and inserting the following: “shall
9 be—

10 “(A) designed to protect and restore eco-
11 logical integrity (as defined in section 219.19 of
12 title 36, Code of Federal Regulations (as in ef-
13 fect on the date of enactment of this subpara-
14 graph));

15 “(B) based on the best available scientific
16 information; and

17 “(C) conducted”; and

18 (B) by adding at the end the following:

19 “(4) REDUCING REDUNDANCY.—An existing
20 watershed plan, such as a watershed protection and
21 restoration action plan developed under section
22 304(a)(3), or other applicable watershed planning
23 documents may be used as the basis for a water
24 source management plan under this subsection.”;

1 (5) in subsection (e)(1), by striking “purpose
2 of—” in the matter preceding subparagraph (A) and
3 all that follows through the period at the end of sub-
4 paragraph (C) and inserting “purpose of advancing
5 any of the purposes described in subsection (b)(2).”;
6 and

7 (6) in subsection (g)—

8 (A) in paragraph (2)—

9 (i) by striking “at least equal to” and
10 inserting “not less than 20 percent of”;

11 (ii) by striking “The Secretary” and
12 inserting the following:

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the Secretary”; and

15 (iii) by adding at the end the fol-
16 lowing:

17 “(B) WAIVER.—The Secretary may waive
18 the requirement under subparagraph (A) in the
19 discretion of the Secretary.”; and

20 (B) in paragraph (4)—

21 (i) in subparagraph (B), by striking
22 “\$10,000,000 for each of fiscal years 2019
23 through 2023” and inserting “\$30,000,000
24 for each of fiscal years 2024 through
25 2033”; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(D) SET-ASIDE FOR PARTNER PARTICIPA-
4 TION IN PLANNING AND CAPACITY.—Of the
5 amounts made available under subparagraph
6 (B) to carry out this section for each fiscal
7 year, the Secretary shall use not less than 10
8 percent for non-Federal partner technical as-
9 sistance participation and capacity-building ef-
10 forts in developing or implementing a water
11 source management plan under subsection
12 (d).”.

13 **SEC. 3. WATERSHED CONDITION FRAMEWORK IMPROVE-**
14 **MENTS.**

15 Section 304 of the Healthy Forests Restoration Act
16 of 2003 (16 U.S.C. 6543) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (5), by striking “and” at
19 the end;

20 (B) in paragraph (6), by striking the pe-
21 riod at the end and inserting “; and”; and

22 (C) by adding at the end the following:

23 “(7) that ensures that management activities
24 and authorizations do not result in long-term deg-
25 radation of watershed health or lower the classifica-

1 tion under paragraph (1) of any watershed in a Na-
2 tional Forest.”; and

3 (2) by adding at the end the following:

4 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
5 is authorized to be appropriated to carry out this section
6 \$30,000,000 for each of fiscal years 2024 through 2028.”.

7 **SEC. 4. EFFECT.**

8 Nothing in this Act or an amendment made by this
9 Act shall be construed—

10 (1) to supersede or in any manner affect or
11 conflict with State water law, Federal water law,
12 interstate compacts, or treaty obligations; or

13 (2) to authorize any acquisition of land by the
14 Federal Government or any exertion of Federal con-
15 trol over non-Federal land.

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