

113TH CONGRESS
2D SESSION

S. 2226

To establish a WaterSense program within the Environmental Protection Agency.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2014

Mr. UDALL of New Mexico introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To establish a WaterSense program within the Environmental Protection Agency.

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 “WaterSense Efficiency,
5 Conservation, and Adaptation Act of 2014”.

6 **SEC. 2. WATER EFFICIENCY, CONSERVATION, AND ADAPTA-**
7 **TION.**

8 (a) FINDINGS.—Congress finds that—

9 (1)(A) human-induced climate change is affect-
10 ing the natural water cycle, decreasing precipitation

1 levels in the West, especially the Southwest, and
2 making droughts and floods more frequent and more
3 intense;

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

6 (C) a sharp increase in the number of days with
7 very heavy precipitation throughout the Northeast
8 and the Midwest will stress aging water infrastruc-
9 ture;

10 (2) changes in the water cycle caused by cli-
11 mate disruptions will adversely affect water infra-
12 structure, energy production and use, human health,
13 transportation, agriculture, and ecosystems, while
14 also aggravating water disputes across the United
15 States;

16 (3)(A) the Colorado River, which supplies water
17 for more than 30,000,000 people, is experiencing the
18 worst drought in more than 100 years of record-
19 keeping; and

20 (B) the primary reservoirs of the Colorado
21 River Basin and Lakes Mead and Powell have lost
22 nearly half of the storage waters of the reservoirs
23 and Lakes, and clean hydropower generated from
24 Hoover Dam risks reduction if the extended drought
25 persists;

1 (4) States and local governments and water
2 utilities can begin to address the challenges de-
3 scribed in this subsection by providing incentives for
4 water efficiency and conservation, while also plan-
5 ning and investing in infrastructure to adapt to the
6 impacts of climate change, particularly those im-
7 pacts already affecting the United States;

8 (5) residential water demand can be reduced by
9 25 to 40 percent using existing, cost-effective tech-
10 nologies that also can reduce the water bills of con-
11 sumers by hundreds of dollars per year; and

12 (6) water and energy use are inseparable activi-
13 ties, and supplying and treating water consumes
14 around 4 percent of the electricity of the United
15 States, and electricity makes up 75 percent of the
16 cost of processing and delivering municipal water.

17 (b) DEFINITION OF ADMINISTRATOR.—In this Act,
18 the term “Administrator” means the Administrator of the
19 Environmental Protection Agency.

20 (c) WATERSENSE.—

21 (1) IN GENERAL.—There is established within
22 the Environmental Protection Agency a WaterSense
23 program to identify and promote water efficient
24 products, buildings, landscapes, facilities, processes,
25 and services so as—

1 (A) to reduce water use;

2 (B) to reduce the strain on water, waste-
3 water, and stormwater infrastructure;

4 (C) to conserve energy used to pump, heat,
5 transport, and treat water; and

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

12 (2) DUTIES.—The Administrator shall—

13 (A) establish—

14 (i) a WaterSense label to be used for
15 certain items; and

16 (ii) the procedure by which an item
17 may be certified to display the WaterSense
18 label;

19 (B) promote WaterSense-labeled products,
20 buildings, landscapes, facilities, processes, and
21 services in the market place as the preferred
22 technologies and services for—

23 (i) reducing water use; and

24 (ii) ensuring product and service per-
25 formance;

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

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

6 (i) establishing and maintaining per-
7 formance criteria so that products, build-
8 ings, landscapes, facilities, processes, and
9 services labeled with the WaterSense label
10 perform as well or better than less water-
11 efficient counterparts;

12 (ii) overseeing WaterSense certifi-
13 cations made by third parties;

14 (iii) conducting reviews of the use of
15 the WaterSense label in the marketplace
16 and taking corrective action in any case in
17 which misuse of the label is identified; and

18 (iv) carrying out such other measures
19 as the Administrator determines to be ap-
20 propriate;

21 (E) regularly review and, if appropriate,
22 update WaterSense criteria for categories of
23 products, buildings, landscapes, facilities, proc-
24 esses, and services, at least once every 4 years;

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

10 (G) solicit comments from interested par-
11 ties and the public prior to establishing or re-
12 vising a WaterSense category, specification, in-
13 stallation criterion, or other criterion (or prior
14 to effective dates for any such category, speci-
15 fication, installation criterion, or other cri-
16 terion);

17 (H) provide reasonable notice to interested
18 parties and the public of any changes (including
19 effective dates), on the adoption of a new or re-
20 vised category, specification, installation cri-
21 terion, or other criterion, along with—

22 (i) an explanation of the changes; and

23 (ii) as appropriate, responses to com-
24 ments submitted by interested parties and
25 the public;

1 (I) provide appropriate lead time (as deter-
2 mined by the Administrator) prior to the appli-
3 cable effective date for a new or significant revi-
4 sion to a category, specification, installation cri-
5 terion, or other criterion, taking into account
6 the timing requirements of the manufacturing,
7 marketing, training, and distribution process
8 for the specific product, building and landscape,
9 or service category addressed;

10 (J) identify and, if appropriate, implement
11 other voluntary approaches in commercial, insti-
12 tutional, residential, industrial, and municipal
13 sectors to encourage recycling and reuse tech-
14 nologies to improve water efficiency or lower
15 water use; and

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

20 (3) AUTHORIZATION OF APPROPRIATIONS.—

21 There are authorized to be appropriated to carry out
22 this subsection—

23 (A) \$7,500,000 for fiscal year 2015;

24 (B) \$10,000,000 for fiscal year 2016;

25 (C) \$20,000,000 for fiscal year 2017;

1 (D) \$50,000,000 for fiscal year 2018; and

2 (E) for each subsequent fiscal year, the ap-
3 plicable amount for the preceding fiscal year, as
4 adjusted to reflect changes for the 12-month
5 period ending the preceding November 30 in
6 the Consumer Price Index for All Urban Con-
7 sumers published by the Bureau of Labor Sta-
8 tistics of the Department of Labor.

9 (d) STATE RESIDENTIAL WATER EFFICIENCY AND
10 CONSERVATION INCENTIVES PROGRAM.—

11 (1) DEFINITIONS.—In this subsection:

12 (A) ELIGIBLE ENTITY.—The term “eligible
13 entity” means a State government, local or
14 county government, tribal government, waste-
15 water or sewerage utility, municipal water au-
16 thority, energy utility, water utility, or non-
17 profit organization that meets the requirements
18 of paragraph (2).

19 (B) INCENTIVE PROGRAM.—The term “in-
20 centive program” means a program for admin-
21 istering financial incentives for consumer pur-
22 chase and installation of water-efficient prod-
23 ucts, buildings (including new water-efficient
24 homes), landscapes, processes, or services de-
25 scribed in paragraph (2)(A).

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

4 (i) IN GENERAL.—The term “residen-
5 tial water-efficient product, building, land-
6 scape, process, or service” means a prod-
7 uct, building, landscape, process, or service
8 for a residence or its landscape that is
9 rated for water efficiency and perform-
10 ance—

11 (I) by the WaterSense program;

12 or

13 (II) if a WaterSense specification
14 does not exist, by the Energy Star
15 program or an incentive program ap-
16 proved by the Administrator.

17 (ii) INCLUSIONS.—The term “residen-
18 tial water-efficient product, building, land-
19 scape, process, or service” includes—

20 (I) faucets;

21 (II) irrigation technologies and
22 services;

23 (III) point-of-use water treat-
24 ment devices;

- 1 (IV) reuse and recycling tech-
2 nologies;
3 (V) toilets;
4 (VI) clothes washers;
5 (VII) dishwashers;
6 (VIII) showerheads;
7 (IX) xeriscaping and other land-
8 scape conversions that replace irri-
9 gated turf; and
10 (X) new water efficient homes
11 certified under the WaterSense pro-
12 gram.

13 (D) WATERSENSE PROGRAM.—The term
14 “WaterSense program” means the program es-
15 tablished by subsection (c).

16 (2) ELIGIBLE ENTITIES.—An entity shall be eli-
17 gible to receive an allocation under paragraph (3) if
18 the entity—

19 (A) establishes (or has established) an in-
20 centive program to provide financial incentives
21 to residential consumers for the purchase of
22 residential water-efficient products, buildings,
23 landscapes, processes, or services;

24 (B) submits an application for the alloca-
25 tion at such time, in such form, and containing

1 such information as the Administrator may re-
2 quire; and

3 (C) provides assurances satisfactory to the
4 Administrator that the entity will use the allo-
5 cation to supplement, but not supplant, funds
6 made available to carry out the incentive pro-
7 gram.

8 (3) AMOUNT OF ALLOCATIONS.—For each fiscal
9 year, the Administrator shall determine the amount
10 to allocate to each eligible entity to carry out para-
11 graph (4), taking into consideration—

12 (A) the population served by the eligible
13 entity during the most recent calendar year for
14 which data are available;

15 (B) the targeted population of the incen-
16 tive program of the eligible entity, such as gen-
17 eral households, low-income households, or first-
18 time homeowners, and the probable effective-
19 ness of the incentive program for that popu-
20 lation;

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

1 (D) any allocation to the eligible entity for
2 a preceding fiscal year that remains unused;
3 and

4 (E) the per capita water demand of the
5 population served by the eligible entity during
6 the most recent calendar year for which data
7 are available and the accessibility of water sup-
8 plies to the eligible entity.

9 (4) USE OF ALLOCATED FUNDS.—Funds allo-
10 cated to an eligible entity under paragraph (3) may
11 be used to pay up to 50 percent of the cost of estab-
12 lishing and carrying out an incentive program.

13 (5) FIXTURE RECYCLING.—Eligible entities are
14 encouraged to promote or implement fixture recy-
15 cling programs to manage the disposal of older fix-
16 tures replaced due to the incentive program under
17 this subsection.

18 (6) ISSUANCE OF INCENTIVES.—

19 (A) IN GENERAL.—Financial incentives
20 may be provided to residential consumers that
21 meet the requirements of the applicable incen-
22 tive program.

23 (B) MANNER OF ISSUANCE.—An eligible
24 entity may—

1 (i) issue all financial incentives di-
2 rectly to residential consumers; or

3 (ii) with approval of the Adminis-
4 trator, delegate all or part of financial in-
5 centive administration to other organiza-
6 tions, including local governments, munic-
7 ipal water authorities, water utilities, and
8 nonprofit organizations.

9 (C) AMOUNT.—The amount of a financial
10 incentive shall be determined by the eligible en-
11 tity, taking into consideration—

12 (i) the amount of any Federal or
13 State tax incentive available for the pur-
14 chase of the residential water-efficient
15 product or service;

16 (ii) the amount necessary to change
17 consumer behavior to purchase water-effi-
18 cient products and services; and

19 (iii) the consumer expenditures for on-
20 site preparation, assembly, and original in-
21 stallation of the product.

22 (7) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated to the Ad-
24 ministrator to carry out this section—

25 (A) \$100,000,000 for fiscal year 2015;

1 (B) \$150,000,000 for fiscal year 2016;
 2 (C) \$200,000,000 for fiscal year 2017;
 3 (D) \$150,000,000 for fiscal year 2018;
 4 (E) \$100,000,000 for fiscal year 2019; and
 5 (F) for each subsequent fiscal year, the ap-
 6 plicable amount for the preceding fiscal year, as
 7 adjusted to reflect changes for the 12-month
 8 period ending the preceding November 30 in
 9 the Consumer Price Index for All Urban Con-
 10 sumers published by the Bureau of Labor Sta-
 11 tistics of the Department of Labor.

12 (e) BLUE BANK FOR WATER SYSTEM MITIGATION
 13 AND ADAPTATION.—

14 (1) DEFINITIONS.—In this subsection:

15 (A) ABRUPT CLIMATE CHANGE.—The term
 16 “abrupt climate change” means a large-scale
 17 change in the climate system that—

18 (i) takes place over a few decades or
 19 less;

20 (ii) persists (or is anticipated to per-
 21 sist) for at least a few decades; and

22 (iii) causes substantial disruptions in
 23 human and natural systems.

24 (B) OWNER OR OPERATOR.—

1 (i) IN GENERAL.—The term “owner
2 or operator” means a person (including a
3 regional, State, local, municipal, or private
4 entity) that owns or operates a water sys-
5 tem.

6 (ii) INCLUSION.—The term “owner or
7 operator” includes a non-Federal entity
8 that has operational responsibilities for a
9 federally owned water system.

10 (C) WATER SYSTEM.—The term “water
11 system” means—

12 (i) a community water system (as de-
13 fined in section 1401 of the Safe Drinking
14 Water Act (42 U.S.C. 300f));

15 (ii) a publicly owned treatment works
16 (as defined in section 212 of the Federal
17 Water Pollution Control Act (33 U.S.C.
18 1292)), including a municipal separate
19 storm sewer system;

20 (iii) a decentralized wastewater treat-
21 ment system for domestic sewage;

22 (iv) a groundwater storage and re-
23 plenishment system; or

24 (v) a system for transport and deliv-
25 ery of water for irrigation or conservation.

1 (2) GRANTS.—Beginning in fiscal year 2015,
2 the Administrator shall make grants to owners or
3 operators of water systems to address any ongoing
4 or forecasted (based on the best available research
5 and data) climate-related impact on the water qual-
6 ity or quantity of a region of the United States, for
7 the purposes of mitigating or adapting to the im-
8 pacts of climate change.

9 (3) ELIGIBLE USES.—In carrying out this sub-
10 section, the Administrator shall make grants to as-
11 sist in the planning, design, construction, implemen-
12 tation, or maintenance of any program or project to
13 increase the resilience of a water system to climate
14 change by—

15 (A) conserving water or enhancing water
16 use efficiency, including through the use of
17 water metering to measure the effectiveness of
18 a water efficiency program;

19 (B) modifying or relocating existing water
20 system infrastructure made or projected to be
21 made inoperable by climate change impacts;

22 (C) preserving or improving water quality,
23 including through measures to manage, reduce,
24 treat, or reuse municipal stormwater, waste-
25 water, or drinking water;

1 (D) investigating, designing, or con-
2 structing groundwater remediation, recycled
3 water, or desalination facilities or systems;

4 (E) enhancing water management by in-
5 creasing watershed preservation and protection,
6 such as through the use of natural or engi-
7 neered green infrastructure in the management,
8 conveyance, or treatment of water, wastewater,
9 or stormwater;

10 (F) enhancing energy efficiency or the use
11 and generation of renewable energy in the man-
12 agement, conveyance, or treatment of water,
13 wastewater, or stormwater;

14 (G) supporting the adoption and use of ad-
15 vanced water treatment, water supply manage-
16 ment (such as reservoir reoperation), or water
17 demand management technologies, projects, or
18 processes (such as water reuse and recycling or
19 adaptive conservation pricing) that maintain or
20 increase water supply or improve water quality;

21 (H) modifying or replacing existing sys-
22 tems or constructing new systems for existing
23 communities or land currently in agricultural
24 production to improve water availability, stor-
25 age, or conveyance in a manner that—

1 (i) promotes more efficient use of
2 available water supplies; and

3 (ii) does not further exacerbate
4 stresses on ecosystems;

5 (I) supporting practices and projects, such
6 as improved irrigation systems, water banking
7 and other forms of water transactions, ground-
8 water recharge, stormwater capture, and reuse
9 or recycling of drainage water, to improve water
10 quality or promote more efficient water use, in-
11 cluding on land currently in agricultural pro-
12 duction;

13 (J) conducting and completing studies or
14 assessments to project how climate change may
15 impact the future operations and sustainability
16 of water systems; or

17 (K) developing and implementing mitiga-
18 tion measures to rapidly address impacts on
19 water systems most susceptible to abrupt cli-
20 mate change, including those in the Colorado
21 River Basin and coastal regions at risk from
22 rising sea levels.

23 (4) APPLICATION.—To be eligible to receive a
24 grant from the Administrator under paragraph (2),

1 the owner or operator of a water system shall submit
2 to the Administrator an application that—

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

7 (B) cites the best available research or
8 data that demonstrates—

9 (i) the risk to the water resources or
10 infrastructure of the water system as a re-
11 sult of ongoing or forecasted changes to
12 the hydrological system brought about by
13 factors arising from climate change, in-
14 cluding rising sea levels and changes in
15 precipitation levels; and

16 (ii) how the proposed program, strat-
17 egy, or infrastructure improvement would
18 perform under the anticipated climate con-
19 ditions;

20 (C) explains how the proposed program,
21 strategy, or infrastructure improvement is ex-
22 pected to enhance the resiliency of the water
23 system, including source water protection for
24 community water systems, to these risks or re-

1 duce the direct or indirect greenhouse gas emis-
2 sions of the water system; and

3 (D) demonstrates that the program, strat-
4 egy, or infrastructure improvement is—

5 (i) consistent with any approved State
6 and tribal climate adaptation plan; and

7 (ii) not inconsistent with any ap-
8 proved natural resources plan.

9 (5) COMPETITIVE PROCESS.—

10 (A) IN GENERAL.—Each calendar year, the
11 Administrator shall conduct a competitive proc-
12 ess to select and fund applications under this
13 subsection.

14 (B) PRIORITY REQUIREMENTS AND
15 WEIGHTING.—In carrying out the process, the
16 Administrator shall—

17 (i) prioritize funding of applications
18 that are submitted by the owners or opera-
19 tors of water systems that are, based on
20 the best available research and data, at the
21 greatest and most immediate risk of facing
22 significant climate-related negative impacts
23 on water quality or quantity;

24 (ii) in selecting among the priority ap-
25 plications determined under clause (i), en-

1 sure that the final list of applications fund-
2 ed for each year includes a substantial
3 number that, to the maximum extent prac-
4 ticable, includes each eligible use described
5 in paragraph (3);

6 (iii) solicit applications from water
7 systems that are—

8 (I) located in all regions of the
9 United States; and

10 (II) facing varying risks as a re-
11 sult of climate change; and

12 (iv) provide for solicitation and con-
13 sideration of public input in the develop-
14 ment of criteria used in evaluating applica-
15 tions.

16 (6) COST SHARING.—

17 (A) FEDERAL SHARE.—The Federal share
18 of the cost of any program, strategy, or infra-
19 structure improvement that is the subject of a
20 grant awarded by the Administrator to a water
21 system under paragraph (2) shall not exceed 50
22 percent of the cost of the program, strategy,
23 and infrastructure improvement.

24 (B) CALCULATION OF NON-FEDERAL
25 SHARE.—In calculating the non-Federal share

1 of the cost of a program, strategy, or infra-
2 structure improvement proposed by a water sys-
3 tem through an application submitted by the
4 water system under paragraph (4), the Admin-
5 istrator shall—

6 (i) include the value of any in-kind
7 services that are integral to the completion
8 of the program, strategy, or infrastructure
9 improvement, as determined by the Admin-
10 istrator; and

11 (ii) not include any other amount that
12 the water system receives from a Federal
13 agency.

14 (7) LABOR STANDARDS.—

15 (A) IN GENERAL.—All laborers and me-
16 chanics employed on infrastructure improve-
17 ments funded directly by or assisted in whole or
18 in part by this subsection shall be paid wages
19 at rates not less than those prevailing for the
20 same type of work on similar construction in
21 the immediate locality, as determined by the
22 Secretary of Labor in accordance with sub-
23 chapter IV of chapter 31 of part A of subtitle
24 II of title 40, United States Code.

1 (B) AUTHORITY AND FUNCTIONS.—With
2 respect to the labor standards in this para-
3 graph, the Secretary of Labor shall have the
4 authority and functions set forth in Reorganiza-
5 tion Plan Numbered 14 of 1950 (64 Stat.
6 1267; 5 U.S.C. App.) and section 3145 of title
7 40, United States Code.

8 (8) REGULATIONS.—

9 (A) IN GENERAL.—Not later than 1 year
10 after the date of enactment of this Act, the Ad-
11 ministrator shall promulgate final regulations to
12 carry out this subsection.

13 (B) SPECIAL RULE FOR THE CONSTRUC-
14 TION OF TREATMENT WORKS.—In carrying out
15 this paragraph, the Administrator shall incor-
16 porate all relevant and appropriate require-
17 ments of title VI of the Federal Water Pollution
18 Control Act (33 U.S.C. 1381 et seq.) applicable
19 to the construction of treatment works that are
20 carried out under this subsection.

21 (9) REPORT TO CONGRESS.—Not later than 3
22 years after the date of enactment of this Act, and
23 every 3 years thereafter, the Administrator shall
24 submit to the Congress a report on progress in im-

1 plementing this subsection, including information on
2 project applications received and funded annually.

3 (10) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to carry out
5 this subsection such sums as are necessary.

○