

118TH CONGRESS  
2D SESSION

# S. 4172

To provide for water conservation, drought operations, and drought resilience at water resources development projects, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 18, 2024

Mr. KELLY (for himself, Mr. PADILLA, Ms. SINEMA, Mr. HEINRICH, and Ms. ROSEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To provide for water conservation, drought operations, and drought resilience at water resources development projects, 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 “Drought Resilient In-  
5 frastructure Act of 2024”.

6 **SEC. 2. DEFINITION OF SECRETARY.**

7 In this Act, the term “Secretary” means the Sec-  
8 retary of the Army.

1 **SEC. 3. WATER CONSERVATION MEASURES.**

2 (a) IN GENERAL.—The Secretary is authorized to  
3 carry out water conservation measures as part of water  
4 resources development projects for which water supply is  
5 an authorized project purpose.

6 (b) INCLUSIONS.—Water conservation measures au-  
7 thorized under subsection (a) may include—

8 (1) operational measures to enhance stormwater  
9 retention or aquifer recharge, including the use of  
10 nonstructural, natural features or nature-based fea-  
11 tures;

12 (2) releases to augment water supply at another  
13 facility;

14 (3) modifications to existing Corps of Engineers  
15 facilities (including the addition of new project fea-  
16 tures and the use of nonstructural, natural features  
17 or nature-based features) to enhance stormwater re-  
18 tention, water storage, or aquifer recharge; and

19 (4) other actions designed to conserve limited  
20 water resources.

21 (c) REQUIREMENT.—The Secretary shall ensure that  
22 water conservation measures authorized under subsection  
23 (a) are carried out consistent with other authorized project  
24 purposes.

25 (d) CONTRIBUTED FUNDS.—Notwithstanding any  
26 other provision of law, the Secretary may receive and ex-

1 pend funds contributed by a non-Federal interest or a  
2 Federal agency to carry out measures authorized under  
3 subsection (a).

4 (e) EFFECT.—

5 (1) IN GENERAL.—Nothing in this section—

6 (A) affects any other authority of the Sec-  
7 retary to use amounts derived from revenues  
8 from a Bureau of Reclamation project; or

9 (B) creates, impairs, alters, or supersedes  
10 a State water right.

11 (2) APPLICABLE LAW.—In carrying out this  
12 section, the Secretary shall comply with all applica-  
13 ble—

14 (A) State water laws;

15 (B) Federal laws and policies; and

16 (C) interstate water compacts.

17 **SEC. 4. EMERGENCY DROUGHT OPERATIONS.**

18 (a) DEFINITION OF COVERED PROJECT.—In this sec-  
19 tion, the term “covered project” means any of the fol-  
20 lowing:

21 (1) A project of the Corps of Engineers.

22 (2) A project for which the Secretary develops  
23 a water control manual under section 7 of the Act  
24 of December 22, 1944 (commonly known as the

1 “Flood Control Act of 1944”) (58 Stat. 890, chapter  
2 665; 33 U.S.C. 709).

3 (b) EMERGENCY OPERATION DURING DROUGHT.—

4 (1) IN GENERAL.—Consistent with other au-  
5 thorized project purposes, with respect to the oper-  
6 ation of a covered project during a drought or long-  
7 term drought conditions in the project area, the cov-  
8 ered project shall be operated with water supply and  
9 water conservation as the primary project purposes.

10 (2) COORDINATION.—The operation of a cov-  
11 ered project in accordance with paragraph (1) shall  
12 be carried out in coordination with the applicable  
13 non-Federal interest or Federal agency, to the ex-  
14 tent practicable.

15 (c) UPDATES.—In carrying out this section, the Sec-  
16 retary, in consultation with the applicable non-Federal in-  
17 terest or Federal agency, to the extent practicable, shall  
18 update the water control manual for a covered project to  
19 include drought operations and contingency plans.

20 (d) REQUIREMENTS.—In carrying out subsection (b),  
21 the Secretary shall ensure that—

22 (1) operations described in that subsection—

23 (A) are consistent with water management  
24 deviations and drought contingency plans in the  
25 water control manual for the covered project;

1 (B) impact only the flood pool managed by  
2 the Secretary; and

3 (C) are not being carried out in the event  
4 of a forecast or anticipated flood or weather  
5 event that would require the flood risk manage-  
6 ment mission to take precedence;

7 (2) to the extent practicable, the Secretary uses  
8 forecast-informed reservoir operations; and

9 (3) the covered project returns to operation  
10 with original authorized project purposes, at a time  
11 determined by the Secretary.

12 (e) CONTRIBUTED FUNDS.—Notwithstanding any  
13 other provision of law, the Secretary may receive and ex-  
14 pend funds contributed by a non-Federal interest or a  
15 Federal agency to carry out activities under this section.

16 (f) COORDINATION.—The Secretary, to the maximum  
17 extent practicable, shall coordinate with State and local  
18 authorities and relevant Federal agencies in carrying out  
19 this section.

20 (g) SAVINGS PROVISIONS.—Nothing in this section  
21 preempts or affects—

22 (1) water rights and water supply agreements;

23 (2) any State water law;

24 (3) any interstate compact governing water; or

1 (4) any obligation to comply with the provisions  
2 of any Federal or State environmental law, includ-  
3 ing—

4 (A) the National Environmental Policy Act  
5 of 1969 (42 U.S.C. 4321 et seq.);

6 (B) the Federal Water Pollution Control  
7 Act (33 U.S.C. 1251 et seq.); and

8 (C) the Endangered Species Act of 1973  
9 (16 U.S.C. 1531 et seq.).

10 (h) AUTHORIZATION OF APPROPRIATIONS.—Section  
11 5(a) of the Act of August 18, 1941 (commonly known as  
12 the “Flood Control Act of 1941”) (55 Stat. 650, chapter  
13 377; 33 U.S.C. 701n(a)), is amended by adding at the  
14 end the following:

15 “(6) AUTHORIZATION OF APPROPRIATIONS FOR  
16 EMERGENCY DROUGHT OPERATIONS.—Of the  
17 amounts made available for each fiscal year to carry  
18 out this subsection, not less than \$5,000,000 for  
19 each of fiscal years 2024 through 2034 shall be used  
20 to carry out section 4 of the Drought Resilient In-  
21 frastructure Act of 2024.”.

22 **SEC. 5. DROUGHT RESILIENCE.**

23 (a) IN GENERAL.—The Secretary may carry out a  
24 drought resilience project if the Secretary determines that  
25 the project—

1 (1) will provide for drought resilience, includ-  
2 ing—

3 (A) water conservation measures to miti-  
4 gate and address drought conditions;

5 (B) the management of sediment for in-  
6 creased water in the system;

7 (C) the mitigation and monitoring associ-  
8 ated with aquatic or riparian non-native species  
9 that exacerbate drought conditions, such as salt  
10 cedar;

11 (D) the planting of native plant species  
12 that will reduce the risk of recurrence and  
13 threat associated with non-native plant species;  
14 or

15 (E) other actions that increase drought re-  
16 siliance, including the use of nonstructural, nat-  
17 ural features or nature-based features;

18 (2) is in the public interest; and

19 (3) is cost effective.

20 (b) COST SHARING.—

21 (1) IN GENERAL.—The non-Federal interest  
22 shall provide 35 percent of the cost of construction  
23 of a project under this section.

24 (2) ITEMS PROVIDED BY NON-FEDERAL INTER-  
25 ESTS.—

1           (A) IN GENERAL.—The non-Federal inter-  
2           est for a project under this section shall provide  
3           all land, easements, rights-of-way, and reloca-  
4           tions necessary for the project.

5           (B) CREDIT.—The value of the land, ease-  
6           ments, rights of-way, and relocations referred to  
7           in subparagraph (A) shall be credited toward  
8           the non-Federal share of the cost of the project  
9           under paragraph (1).

10          (c) AGREEMENTS.—Construction of a project under  
11          this section shall be initiated only after the Secretary and  
12          the non-Federal interest enter into an agreement under  
13          which the non-Federal interest agrees to pay—

14               (1) the non-Federal share of the cost of con-  
15               struction required under this section; and

16               (2) 100 percent of any operation, maintenance,  
17               and replacement and rehabilitation costs with re-  
18               spect to the project, in accordance with regulations  
19               prescribed by the Secretary.

20          (d) COST LIMITATION.—Not more than \$10,000,000  
21          in Federal funds may be allotted under this section for  
22          a project at any single locality.

23          (e) TECHNICAL ASSISTANCE.—As part of carrying  
24          out a project under this section, the Secretary may provide  
25          technical assistance to non-Federal interests necessary to



1 support comprehensive, system-wide approaches and oper-  
2 ations, maintenance, and replacement and rehabilitation  
3 that take into account changing conditions from extreme  
4 and prolonged weather events.

5 (f) FUNDING.—There is authorized to be appro-  
6 priated to carry out this section \$35,000,000 for each fis-  
7 cal year.

8 (g) SAVINGS PROVISIONS.—Nothing in this section  
9 preempts or affects—

10 (1) water rights and water supply agreements;

11 (2) any State water law; or

12 (3) any interstate compact governing water.

13 (h) CONFORMING AMENDMENTS.—

14 (1) Section 1030(a)(1) of the Water Resources  
15 Reform and Development Act of 2014 (33 U.S.C.  
16 400(1)) is amended by adding at the end the fol-  
17 lowing:

18 “(L) Section 5 of the Drought Resilient  
19 Infrastructure Act of 2024.”.

20 (2) Section 7001(c)(1)(D)(iii) of the Water Re-  
21 sources Reform and Development Act of 2014 (33  
22 U.S.C. 2282d(c)(1)(D)(iii)) is amended—

23 (A) in subclause (VIII), by striking “and”  
24 at the end;

1 (B) in subclause (IX), by striking the pe-  
 2 riod at the end and inserting “; and”; and

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

4 “(X) section 5 of the Drought  
 5 Resilient Infrastructure Act of  
 6 2024.”.

7 **SEC. 6. LEVERAGING FEDERAL INFRASTRUCTURE FOR IN-**  
 8 **CREASED WATER SUPPLY.**

9 Section 1118(i)(2) of the Water Resources Develop-  
 10 ment Act of 2016 (43 U.S.C. 390b–2(i)(2)) is amended—

11 (1) by inserting “or a Federal agency” after  
 12 “non-Federal interest”; and

13 (2) by inserting “and to carry out any infra-  
 14 structure modifications required to implement the  
 15 revised operational documents” after “documents”.

16 **SEC. 7. WATER SUPPLY PURPOSE, COLORADO RIVER BASIN**  
 17 **STATES.**

18 (a) DEFINITION OF COLORADO RIVER BASIN  
 19 STATE.—In this section, the term “Colorado River Basin  
 20 State” means any of the following States:

21 (1) Arizona.

22 (2) California.

23 (3) Colorado.

24 (4) Nevada.

25 (5) New Mexico.

1 (6) Utah.

2 (7) Wyoming.

3 (b) MODIFICATIONS.—Each project of the Corps of  
4 Engineers in a Colorado River Basin State shall be modi-  
5 fied to include water supply as a project purpose if a re-  
6 quest for such a modification is made to the Secretary  
7 by—

8 (1) the non-Federal sponsor of the project; or

9 (2) in the case of a project for which there is  
10 no non-Federal sponsor, the Governor of the applica-  
11 ble Colorado River Basin State.

12 (c) COORDINATION.—The Secretary, to the maximum  
13 extent practicable, shall coordinate with State and local  
14 authorities in carrying out this section.

15 **SEC. 8. FORECAST-INFORMED RESERVOIR OPERATIONS**  
16 **PILOT PROGRAM.**

17 Section 1222 of the America’s Water Infrastructure  
18 Act of 2018 (132 Stat. 3811; 134 Stat. 2661) is amended  
19 by adding at the end the following:

20 “(d) FORECAST-INFORMED RESERVOIR OPERATIONS  
21 PILOT PROGRAM.—The Secretary shall carry out a pilot  
22 program for the use of forecast-informed reservoir oper-  
23 ations in the South Pacific Division of the Corps of Engi-  
24 neers—

1           “(1) with the goal of providing for drought re-  
2           silience; and

3           “(2) for further development and application of  
4           the forecast-informed reservoir operations screening  
5           process developed by the Corps of Engineers to as-  
6           sess the suitability of performing a full forecast-in-  
7           formed reservoir operations (commonly known as  
8           ‘FIRO’) viability assessment and prioritizing water  
9           conservation as a project purpose at projects located  
10          in a Colorado River Basin State (as defined in sec-  
11          tion 7(a) of the Drought Resilient Infrastructure Act  
12          of 2024).”.

13 **SEC. 9. INVASIVE SPECIES THAT EXACERBATE DROUGHT.**

14          (a) **AQUATIC ECOSYSTEM RESTORATION.**—Section  
15          206(a) of the Water Resources Development Act of 1996  
16          (33 U.S.C. 2330(a)) is amended—

17                 (1) in paragraph (1)(A)—

18                         (A) in clause (i), by striking “or” at the  
19                         end;

20                         (B) in clause (ii), by striking “and” at the  
21                         end and inserting “or”; and

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

23                                 “(iii) will provide for drought resilience;  
24                                 and”; and

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

1           “(4) REMOVAL AND MITIGATION OF INVASIVE  
 2 SPECIES.—A project under this section may include  
 3 measures to remove and mitigate invasive aquatic or  
 4 riparian species that exacerbate drought conditions  
 5 and risk of fire, including the replacement of  
 6 invasive species with non-invasive native species that  
 7 reduce the risk of regrowth of invasive species.”.

8           (b) PROJECT MODIFICATIONS FOR IMPROVEMENT OF  
 9 ENVIRONMENT.—Section 1135 of the Water Resources  
 10 Development Act of 1986 (33 U.S.C. 2309a) is amend-  
 11 ed—

12           (1) in subsection (c), by adding at the end the  
 13 following:

14           “(3) CONTROL OF AQUATIC OR RIPARIAN  
 15 INVASIVE SPECIES THAT EXACERBATE DROUGHT  
 16 CONDITIONS AND THE RISK OF FIRE.—The Sec-  
 17 retary may use the authority under this section for  
 18 the mitigation of salt cedar and replacement with  
 19 native species plantings.”; and

20           (2) in subsection (e)—

21           (A) by striking “(e) The Secretary” and  
 22 inserting the following:

23           “(e) COORDINATION AND ASSISTANCE.—

24           “(1) COORDINATION.—The Secretary”; and

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

1           “(2) TECHNICAL ASSISTANCE.—The Secretary  
2           may provide technical assistance to a non-Federal  
3           interest managing land adjacent to the water re-  
4           sources project being modified under this section if  
5           the Secretary determines the assistance to be nec-  
6           essary in order to extend the benefit or enable suc-  
7           cess of the modification.”.

8   **SEC. 10. SILVER JACKETS PROGRAM.**

9           Section 206 of the Flood Control Act of 1960 (33  
10          U.S.C. 709a) is amended by adding at the end the fol-  
11          lowing:

12          “(f) SILVER JACKETS PROGRAM.—There is author-  
13          ized to be appropriated \$25,000,000 for each fiscal year  
14          to carry out the Silver Jackets program of the Secretary  
15          established pursuant to this section and section 204 of the  
16          Robert T. Stafford Disaster Relief and Emergency Assist-  
17          ance Act (42 U.S.C. 5134).”.

18   **SEC. 11. TRIBAL PARTNERSHIP PROGRAM.**

19          (a) REMOVAL OF RESTRICTION.—Section 203 of the  
20          Water Resources Development Act of 2000 (33 U.S.C.  
21          2269) is amended by striking subsection (e).

22          (b) COST-SHARE.—Section 203(d) of the Water Re-  
23          sources Development Act of 2000 (33 U.S.C. 2269(d)) is  
24          amended—

25                  (1) in paragraph (4)—

1 (A) in subparagraph (A), by striking “50  
2 percent” and inserting “10 percent”; and

3 (B) by striking subparagraph (B) and in-  
4 sserting the following:

5 “(B) OTHER COSTS.—The costs of design  
6 and construction of a project described in sub-  
7 paragraph (A) shall be assigned to the appro-  
8 priate project purposes and shared as described  
9 in sections 101 and 103 of the Water Resources  
10 Development Act of 1986 (33 U.S.C. 2211,  
11 2213) except that—

12 “(i) the non-Federal share shall be 10  
13 percent;

14 “(ii) in the case of a navigation  
15 project—

16 “(I) section 101(a)(2) of that Act  
17 (33 U.S.C. 2211(a)(2)) shall not  
18 apply; and

19 “(II) the value of land, ease-  
20 ments, rights-of-way, and relocations  
21 under subsection (a)(3) of section 101  
22 of that Act (33 U.S.C. 2211) and the  
23 costs of relocations under subsection  
24 (a)(4) of that section shall be included  
25 in the total project costs and credited

1                   toward the non-Federal share under  
2                   clause (i); and

3                   “(iii) in the case of a flood risk man-  
4                   agement project, section 103(a)(1)(A) of  
5                   that Act (33 U.S.C. 2213(a)(1)(A)) shall  
6                   not apply.”; and

7                   (2) in paragraph (5)(A), by striking “25 per-  
8                   cent” and inserting “10 percent”.

○