

## Calendar No. 638

118TH CONGRESS  
2D SESSION**S. 4999**

To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes.

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 IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2024

Mr. RISCH introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

NOVEMBER 21, 2024

Reported by Mr. MANCHIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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**A BILL**

To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge 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. CONVEYANCE FOR AQUIFER RECHARGE PUR-**  
4 **POSES.**

5 Subsection ~~(e)(3)~~ of the Aquifer Recharge Flexibility  
6 Act ~~(43 U.S.C. 390g-9)~~ is amended by striking “may

1 transport water for aquifer recharge purposes without re-  
 2 quiring additional authorization from the Secretary where  
 3 the use does not expand or modify the operation” and in-  
 4 serting “may, acting for the holder or on behalf of a third  
 5 party, use the right-of-way, easement, permit, or other au-  
 6 thorization for the purpose of aquifer recharge without re-  
 7 quiring additional authorization from the Secretary, which  
 8 use shall not be considered an expansion or modification”.

9 **SECTION 1. CONVEYANCE FOR AQUIFER RECHARGE PUR-**  
 10 **POSES.**

11 (a) *IN GENERAL.*—*Subsection (c)(3) of the Aquifer Re-*  
 12 *charge Flexibility Act (43 U.S.C. 390g–9) is amended—*

13 (1) *by striking “The holder” and inserting the*  
 14 *following:*

15 “(A) *IN GENERAL.*—*The holder*”;

16 (2) *in subparagraph (A) (as so designated), by*  
 17 *striking “may transport water for aquifer recharge*  
 18 *purposes without requiring additional authorization*  
 19 *from the Secretary where the use does not expand or*  
 20 *modify the operation” and inserting “may, acting for*  
 21 *the holder or on behalf of a State, political subdivi-*  
 22 *sion of a State, Indian Tribe, or public entity and*  
 23 *subject to subparagraphs (B) and (C), use the existing*  
 24 *right-of-way, easement, permit, or other authorization*  
 25 *for the purpose of aquifer recharge and the transport*

1 *and use of water rights for aquifer recharge without*  
2 *requiring additional authorization from the Sec-*  
3 *retary, which use shall not be considered an expan-*  
4 *sion, modification, major Federal action, or substan-*  
5 *tial deviation”; and*

6 *(3) by adding at the end the following:*

7 *“(B) NOTICE REQUIRED.—*

8 *“(i) IN GENERAL.—Not less than 30*  
9 *days before using an existing right-of-way,*  
10 *easement, permit, or other authorization for*  
11 *the purpose of aquifer recharge under sub-*  
12 *paragraph (A), the holder of the right-of-*  
13 *way, easement, permit, or other authoriza-*  
14 *tion shall submit to the Bureau of Land*  
15 *Management notice of the intended use, in*  
16 *accordance with clause (ii).*

17 *“(ii) REQUIREMENTS.—A notice sub-*  
18 *mitted under clause (i) shall—*

19 *“(I) identify the State, political*  
20 *subdivision of the State, Indian Tribe,*  
21 *or public entity intending to use the*  
22 *existing right-of-way, easement, per-*  
23 *mit, or other authorization for the pur-*  
24 *pose of aquifer recharge;*

1           “(II) identify the existing right-of-  
2           way, easement, permit, other author-  
3           ization, or recognized authorized use  
4           for ditches and canals constructed on  
5           public land before or on October 21,  
6           1976, under the authority of sections  
7           2339 and 2340 of the Revised Statutes  
8           (43 U.S.C. 661) intended to be used;

9           “(III) provide details on the in-  
10          tended use and scope of use for the  
11          purpose of aquifer recharge of the exist-  
12          ing right-of-way, easement, permit, or  
13          other authorization; and

14          “(IV) provide a copy of the agree-  
15          ment between the State, political sub-  
16          division of the State, Indian Tribe, or  
17          public entity and the holder of the  
18          right-of-way, easement, permit, or  
19          other authorization to use the existing  
20          right-of-way, easement, permit, or  
21          other authorization for the purpose of  
22          aquifer recharge.

23                   “(C) EXEMPTION FROM PAYMENT OF ADDI-  
24                   TIONAL RENT.—

1                   “(i) *IN GENERAL.*—*Except as provided*  
 2                   *in clause (ii), any use of an existing right-*  
 3                   *of-way, easement, permit, or other author-*  
 4                   *ization for the purpose of aquifer recharge*  
 5                   *under subparagraph (A) shall be exempt*  
 6                   *from the payment of additional rent to the*  
 7                   *Bureau of Land Management.*

8                   “(ii) *FOR-PROFIT USES AND ENTI-*  
 9                   *TIES.*—*Clause (i) shall not apply to—*

10                                   “(I) *any for-profit uses of aquifer*  
 11                                   *recharge; or*

12                                   “(II) *any for-profit entities.*”.

13                   (b) *EFFECT.*—*Subsection (c)(4) of the Aquifer Re-*  
 14                   *charge Flexibility Act (43 U.S.C. 390g-9) is amended—*

15                                   (1) *by striking “Act creates” and inserting “sec-*  
 16                                   *tion—*

17   “(A) *creates*”;

18                                   (2) *in subparagraph (A) (as so designated), by*  
 19                                   *striking the period at the end and inserting a semi-*  
 20                                   *colon; and*

21                                   (3) *by adding at the end of the following:*

22   “(B) *waives the obligation of the holder of*  
 23                                   *a right-of-way, easement, permit, or other au-*  
 24                                   *thorization described in paragraph (3)(A) to*  
 25                                   *comply with—*

1                   “(i) *the Federal Water Pollution Con-*  
2                   *trol Act (33 U.S.C. 1251 et seq.);*

3                   “(ii) *the Endangered Species Act of*  
4                   *1973 (16 U.S.C. 1531 et seq.); or*

5                   “(iii) *the Wild and Scenic Rivers Act*  
6                   *(16 U.S.C. 1271 et seq.); or*

7                   “(C) *provides authority to construct, mod-*  
8                   *ify, or expand any existing infrastructure cov-*  
9                   *ered under subsection (c)(3).”.*

10           (c) *TECHNICAL AMENDMENTS.—The Aquifer Recharge*  
11 *Flexibility Act (43 U.S.C. 390g–9) is amended in each of*  
12 *subsections (a) and (c)(5) by striking “Act” each place it*  
13 *appears and inserting “section”.*



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