

DESALINATION DEVELOPMENT ACT

DECEMBER 18, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3723]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3723) to promote desalination project development and drought resilience, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Desalination Development Act”.

SEC. 2. DESALINATION PROJECTS AUTHORIZATION.

Section 4(a) of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104-298) is amended by striking the second paragraph (1) (relating to projects) and inserting the following:

“(2) PROJECTS.—

“(A) DEFINITIONS.—In this paragraph:

“(i) ELIGIBLE DESALINATION PROJECT.—The term ‘eligible desalination project’ means any project located in a Reclamation State that—

“(I) involves an ocean or brackish water desalination facility—

“(aa) constructed, operated, and maintained by a State, Indian Tribe, irrigation district, water district, or other organization with water or power delivery authority; or

“(bb) sponsored or funded by a State, department of a State, political subdivision of a State, or public agency organized pursuant to State law, including through—

“(AA) direct sponsorship or funding; or

- “(BB) indirect sponsorship or funding, such as by paying for the water provided by the facility; and
- “(II) provides a Federal benefit in accordance with the reclamation laws.
- “(ii) RURAL DESALINATION PROJECT.—The term ‘rural desalination project’ means an eligible desalination project that is designed to serve a community or group of communities, each of which has a population of not more than 40,000 inhabitants.
- “(B) COST-SHARING REQUIREMENT.—
- “(i) IN GENERAL.—Subject to the requirements of this subsection and notwithstanding section 7, the Federal share of an eligible desalination project carried out under this subsection shall be—
- “(I) not more than 25 percent of the total cost of the eligible desalination project; or
- “(II) in the case of a rural desalination project, the applicable percentage determined in accordance with clause (ii).
- “(ii) RURAL DESALINATION PROJECTS.—
- “(I) COST-SHARING REQUIREMENT FOR APPRAISAL STUDIES.—In the case of a rural desalination project carried out under this subsection, the Federal share of the cost of appraisal studies for the rural desalination project shall be—
- “(aa) 100 percent of the total costs of the appraisal studies, up to \$200,000; and
- “(bb) if the total costs of the appraisal studies are more than \$200,000, 50 percent of any amounts over \$200,000.
- “(II) COST-SHARING REQUIREMENT FOR FEASIBILITY STUDIES.—In the case of a rural desalination project carried out under this subsection, the Federal share of the cost of feasibility studies for the rural desalination project shall be not more than 50 percent.
- “(III) COST-SHARING REQUIREMENT FOR CONSTRUCTION COSTS.—In the case of a rural desalination project carried out under this subsection, the Federal share of the cost of construction of the rural desalination project shall not exceed the greater of —
- “(aa) 35 percent of the total cost of construction, up to a Federal cost of \$20,000,000; or
- “(bb) 25 percent of the total cost of construction.
- “(C) STATE ROLE.—Participation by the Secretary in an eligible desalination project under this paragraph shall not occur unless—
- “(i) (I) the eligible desalination project is included in a State-approved plan; or
- “(II) the participation has been requested by the Governor of the State in which the eligible desalination project is located; and
- “(ii) the State or local sponsor of the eligible desalination project determines, and the Secretary concurs, that—
- “(I) the eligible desalination project—
- “(aa) is technically and financially feasible;
- “(bb) provides a Federal benefit in accordance with the reclamation laws; and
- “(cc) is consistent with applicable State laws, State regulations, State coastal zone management plans and other State plans such as California’s Water Quality Control Plan for the Ocean Waters in California;
- “(II) sufficient non-Federal funding is available to complete the eligible desalination project; and
- “(III) the eligible desalination project sponsors are financially solvent; and
- “(iii) the Secretary submits to Congress a written notification of the determinations under clause (ii) by not later than 30 days after the date of the determinations.
- “(D) ENVIRONMENTAL LAWS.—In participating in an eligible desalination project under this paragraph, the Secretary shall comply with all applicable environmental laws, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and State laws implementing the Coastal Zone Management Act.
- “(E) INFORMATION.—In participating in an eligible desalination project under this subsection, the Secretary—
- “(i) may rely on reports prepared by the sponsor of the eligible desalination project, including feasibility or equivalent studies, environmental analyses, and other pertinent reports and analyses; but

“(ii) shall retain responsibility for making the independent determinations described in subparagraph (C).

“(F) FUNDING.—

“(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph \$260,000,000 for the period of fiscal years 2021 through 2025, of which not less than \$15,000,000 shall be made available during that period for rural desalination projects.

“(ii) CONGRESSIONAL APPROVAL INITIALLY REQUIRED.—

“(I) IN GENERAL.—Each initial award under this paragraph for design and study or for construction of an eligible desalination project shall be approved by an Act of Congress.

“(II) RECLAMATION RECOMMENDATIONS.—The Commissioner of Reclamation shall submit recommendations regarding the initial award of preconstruction and construction funding for consideration under subclause (I) to—

“(aa) the Committee on Appropriations of the Senate;

“(bb) the Committee on Energy and Natural Resources of the Senate;

“(cc) the Committee on Appropriations of the House of Representatives; and

“(dd) the Committee on Natural Resources of the House of Representatives.

“(iii) SUBSEQUENT FUNDING AWARDS.—After approval by Congress of an initial award of preconstruction or construction funding for an eligible desalination project under clause (ii), the Commissioner of Reclamation may award additional preconstruction or construction funding, respectively, for the eligible desalination project without further congressional approval.

“(G) TOTAL DOLLAR CAP.—The Secretary shall not impose a total dollar cap on Federal contributions for individual desalination projects receiving funding under this paragraph.”.

SEC. 3. PRIORITIZATION FOR PROJECTS.

Section 4 of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended by striking subsection (c) and inserting the following:

“(c) PRIORITIZATION.—In carrying out demonstration and development activities under this section, the Secretary and the Commissioner of Reclamation shall each prioritize projects—

“(1) for the benefit of drought-stricken States and communities;

“(2) for the benefit of States that have authorized funding for research and development of desalination technologies and projects;

“(3) that demonstrably reduce a reliance on imported water supplies that have an impact on species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

“(4) that, in a measurable and verifiable manner, reduce a reliance on imported water supplies from imperiled ecosystems such as the Sacramento-San Joaquin River Delta;

“(5) that demonstrably leverage the experience of international partners with considerable expertise in desalination, such as the state of Israel;

“(6) that maximize use of renewable energy to power desalination facilities;

“(7) that maximize energy efficiency so that the lifecycle energy demands of desalination are minimized;

“(8) located in regions that have employed strategies to increase water conservation and the capture and recycling of wastewater and stormwater; and

“(9) that meet the following criteria if they are ocean desalination facilities—

“(A) utilize a subsurface intake or, if a subsurface intake is not technologically feasible, an intake that uses the best available site, design, technology, and mitigation measures to minimize the mortality of all forms of marine life and impacts to coastal dependent resources;

“(B) are sited and designed to ensure that the disposal of wastewaters including brine from the desalination process—

“(i) are not discharged to impaired bodies of water, or State or Federal Marine Protected Areas; and

“(ii) achieve ambient salinity levels within a reasonable distance from the discharge point;

“(C) are sited, designed, and operated in a manner that maintains indigenous marine life and a healthy and diverse marine community;

“(D) do not cause significant unmitigated harm to aquatic life; and

“(E) include a construction and operation plan designed to minimize loss of coastal habitat as well as aesthetic, noise, and air quality impacts.”.

SEC. 4. RECOMMENDATIONS TO CONGRESS.

In determining project recommendations to Congress under section 4(a)(2)(F)(ii)(II) of the Water Desalination Act of 1996, the Commissioner of Reclamation shall establish a priority scoring system that assigns priority scores to each project evaluated based on the prioritization criteria of section 4(c) of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298).

PURPOSE OF THE BILL

The purpose of H.R. 3723 is to promote desalination project development and drought resilience.

BACKGROUND AND NEED FOR LEGISLATION

Desalination projects remove salts and other dissolved minerals from seawater and brackish groundwater to make water suitable for use. In regions frequently affected by drought, desalination can provide new, virtually drought-proof local water supplies for a variety of uses.¹ While costs for desalination are highly variable and dependent on several factors, the overall cost is going down significantly due to technological advances. Energy requirements are often the biggest cost associated with seawater desalination projects.² According to the California Energy Commission, in 1980 the energy required to produce one acre-foot of desalinated water was 36 megawatt hours. In 2013, it had dropped to 4–5 megawatt hours.³ Advancements in new technology like energy recovery devices can continue to reduce energy consumption and overall costs for desalination.⁴

The Water Desalination Act of 1996, as amended (P.L. 104–298; 42 U.S.C. § 10301 note), provides the U.S. Bureau of Reclamation (Reclamation) with the authority to support research and development for water desalination projects.⁵ In 2016, amendments in P.L. 114–322 to P.L. 104–298 authorized a desalination competitive grant program to fund planning and construction of brackish and seawater desalination facilities.⁶ The desalination construction program provides funding for up to 25 percent of the total cost of an eligible desalination project in the western United States and several United States territories. At least 75 percent of the remaining costs are paid for by non-federal cost-share sponsors, typically local water utilities.

Desalination projects support improved water supply reliability through the development of local water supplies. For example, desalination projects reduce the threat of water supply cuts to South-

¹Mike Mickley, *US Municipal Desalination Plants: Number, Types, Locations, Sizes, and Concentrate Management Practices*, IDA Journal of Desalination and Water Reuse, 44–51. (2012) <http://www.tandfonline.com/doi/abs/10.1179/ida.2012.4.1.44>.

²Nicole T. Carter, Cong. Research Serv., R40477, *Desalination and Membrane Technologies: Federal Research and Adoption Issues* (updated January 2, 2015), <https://crsreports.congress.gov/product/pdf/R/R40477>.

³See Presentation by Rob Oglesby, Executive Director, California Energy Commission (November 5, 2015), <https://www.energy.gov/sites/prod/files/2015/11/f27/Desalination%20Workshop%202015%20Oglesby.pdf>.

⁴Nicole T. Carter, Cong. Research Serv., R40477, *Desalination and Membrane Technologies: Federal Research and Adoption Issues* (updated January 2, 2015), <https://crsreports.congress.gov/product/pdf/R/R40477>.

⁵Nicole T. Carter, Cong. Research Serv., R40477, *Desalination and Membrane Technologies: Federal Research and Adoption Issues* (updated January 2, 2015), <https://crsreports.congress.gov/product/pdf/R/R40477>.

⁶Section 4009(a) of the WIIN Act, P.L. 114–322.

ern California from imported water sources in Northern California and from the Colorado River. The aqueducts transporting imported water from these sources are hundreds of miles long and cross the San Andreas Fault several times.⁷ Southern California water utilities have testified that more local water projects like desalination projects will diminish the threat posed by future seismic events, which could damage the Colorado River Aqueduct and the California Aqueduct and cut off imported water supplies for tens of millions of Southern Californians.⁸

Despite the desalination construction program's success, it remains greatly underfunded at the federal level. P.L. 114-322 authorized \$30 million for the program, which Congress has already fully appropriated. H.R. 3723 authorizes a desalination construction program and authorizes \$260 million through fiscal year 2025. H.R. 3723 requires projects receiving funding through this program to be consistent with all applicable state and federal resource protection laws, such as the protection of marine areas. The bill also directs Reclamation to submit project funding recommendations to Congress based on specific prioritization criteria, including prioritization of projects that will protect sensitive marine habitats and promote renewable energy. For ocean desalination projects, priority is given to projects that meet intake and brine disposal requirements that are largely aligned with the State of California's existing environmental requirements.⁹ The bill also clarifies that Reclamation shall not impose a total dollar cap on federal contributions for individual desalination projects receiving funding through this program.

H.R. 3723 also establishes separate cost-share requirements for rural desalination projects serving communities of 40,000 individuals or fewer. For some rural communities, brackish groundwater resources are the only promising option as river water sources decline due to climate change. Additional financial support for rural desalination projects will help many rural communities secure assistance that they may not otherwise receive under the existing desalination construction program.

Additionally, the Committee notes that desalination construction projects provide multiple public benefits in exchange for modest federal investments. These benefits include greater capacity to reduce water diversions from public rivers and imperiled ecosystems and improved fish and wildlife health.

While a few Republican members of the Committee have cited cost concerns, desalination projects are highly cost-competitive in many cases and prices continue to decline with technological advances. According to estimates from the State of California, the cost of groundwater desalters in Southern California range from \$600 to \$3,000 per acre-foot while large-scale seawater desalination

⁷ Rosanna Xia and Rong-Gong Lin II, *Earthquake could destroy L.A.'s water lifeline*, Los Angeles Times (Dec. 15, 2014), <https://www.latimes.com/local/california/la-me-quake-water-20141216-story.html>.

⁸ *Ibid.* See also, *Hearing on H.R. 335, H.R. 729, H.R. 2185, H.R. 3115, H.R. 3237, H.R. 3510, H.R. 3541, H.R. 3596, H.R. 3723*, Before the H. Comm. on Nat. Res., Subcommittee on Water, Oceans, and Wildlife, 116th Cong. (2019) (not printed), (statement of Rick Shintaku, General Manager, South Coast Water District), <https://naturalresources.house.gov/imo/media/doc/Shintaku%20Testimony%20-%20Sub%20on%20WOW%20Leg%20Hrg%2007.25.19.pdf>.

⁹ *Water Quality Control Plan for the Ocean Waters of California*, as amended, State Water Resources Control Board, California Environmental Protection Agency, (2015), https://www.waterboards.ca.gov/water_issues/programs/ocean/docs/cop2015.pdf.

projects in California range from about \$1,600 to \$3,000 per acre-foot.¹⁰ These costs can compare favorably to the price of water storage proposed by some members of the Committee's minority that would cost billions and would have a higher federal cost-share of 50 percent. Under H.R. 3723, every project must have a non-federal cost-share partner willing to pay at least 75 percent of all project costs, or 65 percent for projects in rural areas.

The Committee and numerous interested stakeholders support H.R. 3723 because it will help advance projects that can provide virtually drought-proof water supplies for millions of Americans and provide benefits for the public at large, including reduced diversions from public rivers and imperiled ecosystems and improved fish and wildlife health.

COMMITTEE ACTION

H.R. 3723 was introduced on July 11, 2019, by Representative Mike Levin (D-CA). The bill was referred to the Committee on Natural Resources, and in addition to the Committee on Science, Space, and Technology. Within the Natural Resources Committee, the bill was referred to the Subcommittee on Water, Oceans, and Wildlife. On July 25, 2019, the Subcommittee held a hearing on the bill. On March 11, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Representative Levin offered an amendment designated Levin #1. The amendment was agreed to by voice vote. No additional amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 13 yeas and 10 nays, as follows:¹¹

¹⁰*Desalination (Brackish and Sea Water): A Resource Management Strategy of the California Water Plan*, California Department of Water Resources, page 32 (July 29, 2016), https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/California-Water-Plan/Docs/RMS/2016/09_Desalination_July2016.pdf.

¹¹Rep. Nydia M. Velázquez (D-NY) was unable to vote due to a scheduling conflict with a markup at the House Committee on Small Business, of which she is the Chair. Rep. Velázquez requested, after the closing of the vote, that the record reflect that had she been present she would have voted in favor of adopting the bill as amended and ordering it favorably reported.

Date: March 11, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 3723

Amendment:

Disposition: Final Passage: H.R. 3723, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 13 yeas and 10 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD			
2	Mr. Cartwright, PA			
3	Mr. Case, HI	X		
4	Mr. Clay, MO			
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO			
9	Mrs. Dingell, MI			
10	Mr. Gallego, AZ			
11	Mr. Garcia, IL	X		
12	Mr. Grijalva, AZ (Chair)	X		
13	Ms. Haaland, NM	X		
14	Mr. Horsford, NV			
15	Mr. Huffman, CA	X		
16	Mr. Levin, CA	X		
17	Mr. Lowenthal, CA	X		
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA	X		
20	Mr. Neguse, CO			
21	Mr. Sablan, CNMI	X		
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL	X		
24	Mr. Tonko, NY			
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)		X	
2	Ms. Cheney, WY		X	
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT		X	
5	Mr. Fulcher, ID			
6	Mr. Gohmert, TX			
7	Ms. González-Colón, PR		X	
8	Mr. Gosar, AZ			
9	Mr. Graves, LA		X	
10	Mr. Hem, OK		X	
11	Mr. Hice, GA		X	
12	Mr. Johnson, LA			
13	Mr. Lamborn, CO			
14	Mr. McClintock, CA		X	
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL			
17	Mr. Westerman, AR			
18	Mr. Wittman, VA		X	
19	Mr. Young, AK			
	TOTALS	13	10	
	Total: 44 / Quorum: 15 / Report: 23	YEAS	NAYS	PRESENT

On July 1, 2020, the House of Representatives passed H.R. 2, the Moving Forward Act, which included a version of the text of H.R. 3723.¹²

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 3723: hearing by the Subcommittee on Water, Oceans, and Wildlife held on July 25, 2019.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 2. Desalination projects authorization

Authorizes \$260 million for eligible desalination projects at a 25 percent federal cost share. Establishes separate cost share responsibilities for certain eligible rural desalination projects.

Section 3. Prioritization for projects

Establishes prioritization criteria for desalination projects with emphasis on environmentally protective desalination projects.

Section 4. Recommendations to Congress

Directs the Commissioner of Reclamation to establish a priority scoring system based on the prioritization criteria set forth in this bill for determining project recommendations to Congress.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 2020.

Hon. RAÚL M. GRIJALVA,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3723, the Desalination Development Act.

¹²H.R. 2, 116th Cong. (as passed by and engrossed in the House, July 1, 2020).

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 3723, Desalination Development Act			
As ordered reported by the House Committee on Natural Resources on March 11, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	231	260
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 3723 would authorize the appropriation of \$260 million for a grant program to construct desalination projects aimed at reducing reliance on imported water supplies in communities affected by drought. The bill would expand an existing program and require the Bureau of Reclamation (BOR) to establish a scoring system to prioritize feasible projects based on the energy efficiency features of a facility, whether water recycling and conservation are used in the community, and whether the facility is designed to mitigate harm to marine life. The BOR would report to the Congress on feasible projects and their scores. Projects subsequently authorized by the Congress would be eligible to compete for funding.

For this estimate, CBO assumes that the bill will be enacted in fiscal year 2020. The bill requires the authorized amounts to be appropriated over the 2021–2025 period but otherwise does not specify the year in which any appropriation should be provided. CBO has estimated the necessary amounts for each year using information from BOR. Assuming appropriation of those amounts, CBO estimates that implementing H.R. 3723 would cost \$231 million over the 2020–2025 period and \$29 million after 2025.

The costs of the legislation, detailed in Table 1, fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 3723

	By fiscal year, millions of dollars—						
	2020	2021	2022	2023	2024	2025	2020–2025
Authorization ^a	0	52	52	52	52	52	260
Estimated Outlays	0	31	44	52	52	52	231

^aThe bill would authorize the appropriation of \$260 million over the 2021–2025 period but does not specify how much should be appropriated in any fiscal year. Using information from the Bureau of Reclamation, CBO has estimated those amounts for each fiscal year through 2025.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to promote desalination project development and drought resilience.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139. The Water Desalination Research and Development (CFDA No. 15.506) reauthorized by this bill is not identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. § 6104 as related to any other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill’s purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

WATER DESALINATION ACT OF 1996

* * * * *

SEC. 4. DESALINATION DEMONSTRATION AND DEVELOPMENT.

(a) IN GENERAL.—In order to further demonstrate the feasibility of desalination processes investigated either independently or in re-

search conducted pursuant to section 3, the Secretary shall administer and conduct a demonstration and development program for water desalination and related activities, including the following:

(1) **DESALINATION PLANTS AND MODULES.**—Conduct or contract for technical work, including the design, construction, and testing of plants and modules to develop desalination processes and concepts.

[(1) **PROJECTS.**—

[(A) **IN GENERAL.**—Subject to the requirements of this subsection, the Secretary of the Interior may participate in an eligible desalination project in an amount equal to not more than 25 percent of the total cost of the eligible desalination project.

[(B) **ELIGIBLE DESALINATION PROJECT.**—The term “eligible desalination project” means any project in a Reclamation State, that—

[(i) involves an ocean or brackish water desalination facility either constructed, operated and maintained; or sponsored by any State, department of a State, subdivision of a State or public agency organized pursuant to a State law; and

[(ii) provides a Federal benefit in accordance with the reclamation laws (including regulations).

[(C) **STATE ROLE.**—Participation by the Secretary of the Interior in an eligible desalination project under this subsection shall not occur unless—

[(i) the project is included in a state-approved plan or federal participation has been requested by the Governor of the State in which the eligible desalination project is located; and

[(ii) the State or local sponsor determines, and the Secretary of the Interior concurs, that—

[(I) the eligible desalination project is technically and financially feasible and provides a Federal benefit in accordance with the reclamation laws;

[(II) sufficient non-Federal funding is available to complete the eligible desalination project; and

[(III) the eligible desalination project sponsors are financially solvent; and

[(iii) the Secretary of the Interior submits to Congress a written notification of these determinations within 30 days of making such determinations.

[(D) **ENVIRONMENTAL LAWS.**—When participating in an eligible desalination project under this subsection, the Secretary shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(E) **INFORMATION.**—When participating in an eligible desalination project under this subsection, the Secretary of the Interior—

[(i) may rely on reports prepared by the sponsor of the eligible desalination project, including feasibility (or equivalent) studies, environmental analyses, and other pertinent reports and analyses; but

[(ii) shall retain responsibility for making the independent determinations described in subparagraph (C).

[(F) AUTHORIZATION OF APPROPRIATIONS.—

[(i) \$30,000,000 of funding is authorized to remain available until expended; and

[(ii) Projects can only receive funding if enacted appropriations legislation designates funding to them by name, after the Secretary recommends specific projects for funding pursuant to this subsection and transmits such recommendations to the appropriate committees of Congress.]

(2) PROJECTS.—

(A) DEFINITIONS.—*In this paragraph:*

(i) *ELIGIBLE DESALINATION PROJECT.*—*The term “eligible desalination project” means any project located in a Reclamation State that—*

(I) involves an ocean or brackish water desalination facility—

(aa) constructed, operated, and maintained by a State, Indian Tribe, irrigation district, water district, or other organization with water or power delivery authority; or

(bb) sponsored or funded by a State, department of a State, political subdivision of a State, or public agency organized pursuant to State law, including through—

(AA) direct sponsorship or funding; or

(BB) indirect sponsorship or funding, such as by paying for the water provided by the facility; and

(II) provides a Federal benefit in accordance with the reclamation laws.

(ii) *RURAL DESALINATION PROJECT.*—*The term “rural desalination project” means an eligible desalination project that is designed to serve a community or group of communities, each of which has a population of not more than 40,000 inhabitants.*

(B) *COST-SHARING REQUIREMENT.*—

(i) *IN GENERAL.*—*Subject to the requirements of this subsection and notwithstanding section 7, the Federal share of an eligible desalination project carried out under this subsection shall be—*

(I) not more than 25 percent of the total cost of the eligible desalination project; or

(II) in the case of a rural desalination project, the applicable percentage determined in accordance with clause (ii).

(ii) *RURAL DESALINATION PROJECTS.*—

(I) COST-SHARING REQUIREMENT FOR APPRAISAL STUDIES.—*In the case of a rural desalination project carried out under this subsection, the Federal share of the cost of appraisal studies for the rural desalination project shall be—*

(aa) 100 percent of the total costs of the appraisal studies, up to \$200,000; and

(bb) if the total costs of the appraisal studies are more than \$200,000, 50 percent of any amounts over \$200,000.

(II) *COST-SHARING REQUIREMENT FOR FEASIBILITY STUDIES.*—In the case of a rural desalination project carried out under this subsection, the Federal share of the cost of feasibility studies for the rural desalination project shall be not more than 50 percent.

(III) *COST-SHARING REQUIREMENT FOR CONSTRUCTION COSTS.*—In the case of a rural desalination project carried out under this subsection, the Federal share of the cost of construction of the rural desalination project shall not exceed the greater of—

(aa) 35 percent of the total cost of construction, up to a Federal cost of \$20,000,000; or

(bb) 25 percent of the total cost of construction.

(C) *STATE ROLE.*—Participation by the Secretary in an eligible desalination project under this paragraph shall not occur unless—

(i)(I) the eligible desalination project is included in a State-approved plan; or

(II) the participation has been requested by the Governor of the State in which the eligible desalination project is located; and

(ii) the State or local sponsor of the eligible desalination project determines, and the Secretary concurs, that—

(I) the eligible desalination project—

(aa) is technically and financially feasible;

(bb) provides a Federal benefit in accordance with the reclamation laws; and

(cc) is consistent with applicable State laws, State regulations, State coastal zone management plans and other State plans such as California's Water Quality Control Plan for the Ocean Waters in California;

(II) sufficient non-Federal funding is available to complete the eligible desalination project; and

(III) the eligible desalination project sponsors are financially solvent; and

(iii) the Secretary submits to Congress a written notification of the determinations under clause (ii) by not later than 30 days after the date of the determinations.

(D) *ENVIRONMENTAL LAWS.*—In participating in an eligible desalination project under this paragraph, the Secretary shall comply with all applicable environmental laws, including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and State laws implementing the Coastal Zone Management Act.

(E) INFORMATION.—In participating in an eligible desalination project under this subsection, the Secretary—

(i) may rely on reports prepared by the sponsor of the eligible desalination project, including feasibility or equivalent studies, environmental analyses, and other pertinent reports and analyses; but

(ii) shall retain responsibility for making the independent determinations described in subparagraph (C).

(F) FUNDING.—

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this paragraph \$260,000,000 for the period of fiscal years 2021 through 2025, of which not less than \$15,000,000 shall be made available during that period for rural desalination projects.

(ii) CONGRESSIONAL APPROVAL INITIALLY REQUIRED.—

(I) IN GENERAL.—Each initial award under this paragraph for design and study or for construction of an eligible desalination project shall be approved by an Act of Congress.

(II) RECLAMATION RECOMMENDATIONS.—The Commissioner of Reclamation shall submit recommendations regarding the initial award of preconstruction and construction funding for consideration under subclause (I) to—

(aa) the Committee on Appropriations of the Senate;

(bb) the Committee on Energy and Natural Resources of the Senate;

(cc) the Committee on Appropriations of the House of Representatives; and

(dd) the Committee on Natural Resources of the House of Representatives.

(iii) SUBSEQUENT FUNDING AWARDS.—After approval by Congress of an initial award of preconstruction or construction funding for an eligible desalination project under clause (ii), the Commissioner of Reclamation may award additional preconstruction or construction funding, respectively, for the eligible desalination project without further congressional approval.

(G) TOTAL DOLLAR CAP.—The Secretary shall not impose a total dollar cap on Federal contributions for individual desalination projects receiving funding under this paragraph.

(3) BYPRODUCTS.—Study methods for the marketing of byproducts resulting from the desalting of water to offset the costs of treatment and to reduce environmental impacts of those byproducts.

(4) ECONOMIC SURVEYS.—Conduct economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various locations by desalination processes compared to other methods.

(b) COOPERATIVE AGREEMENTS.—Federal participation in desalination activities may be conducted through cooperative agree-

ments, including cost-sharing agreements, with non-Federal public utilities and State and local governmental agencies and other entities, in order to develop recommendations for Federal participation in processes and plants utilizing desalting technologies for the production of water.

[(c) PRIORITIZATION.—In carrying out demonstration and development activities under this section, the Secretary shall prioritize projects—

[(1) for the benefit of drought-stricken States and communities;

[(2) for the benefit of States that have authorized funding for research and development of desalination technologies and projects;

[(3) that can reduce reliance on imported water supplies that have an impact on species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

[(4) that demonstrably leverage the experience of international partners with considerable expertise in desalination, such as the State of Israel.】

(c) PRIORITIZATION.—*In carrying out demonstration and development activities under this section, the Secretary and the Commissioner of Reclamation shall each prioritize projects—*

(1) for the benefit of drought-stricken States and communities;

(2) for the benefit of States that have authorized funding for research and development of desalination technologies and projects;

(3) that demonstrably reduce a reliance on imported water supplies that have an impact on species listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(4) that, in a measurable and verifiable manner, reduce a reliance on imported water supplies from imperiled ecosystems such as the Sacramento-San Joaquin River Delta;

(5) that demonstrably leverage the experience of international partners with considerable expertise in desalination, such as the state of Israel;

(6) that maximize use of renewable energy to power desalination facilities;

(7) that maximize energy efficiency so that the lifecycle energy demands of desalination are minimized;

(8) located in regions that have employed strategies to increase water conservation and the capture and recycling of wastewater and stormwater; and

(9) that meet the following criteria if they are ocean desalination facilities—

(A) utilize a subsurface intake or, if a subsurface intake is not technologically feasible, an intake that uses the best available site, design, technology, and mitigation measures to minimize the mortality of all forms of marine life and impacts to coastal dependent resources;

(B) are sited and designed to ensure that the disposal of wastewaters including brine from the desalination process—

(i) are not discharged to impaired bodies of water, or State or Federal Marine Protected Areas; and

(ii) achieve ambient salinity levels within a reasonable distance from the discharge point;

(C) are sited, designed, and operated in a manner that maintains indigenous marine life and a healthy and diverse marine community;

(D) do not cause significant unmitigated harm to aquatic life; and

(E) include a construction and operation plan designed to minimize loss of coastal habitat as well as aesthetic, noise, and air quality impacts.

(d) WATER PRODUCTION.—The Secretary shall provide, as part of the annual budget submission to Congress, an estimate of how much water has been produced and delivered in the past fiscal year using processes and facilities developed or demonstrated using assistance provided under sections 3 and 4. This submission shall include, to the extent practicable, available information on a detailed water accounting by process and facility and the cost per acre foot of water produced and delivered.

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RAÚL M. GRIJALVA OF ARIZONA
CHAIRMAN

DAVID WATKINS
STAFF DIRECTOR

COMMITTEE CORRESPONDENCE

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

April 8, 2020

ROB BISHOP OF UTAH
RANKING REPUBLICAN

PAISH BRADEN
REPUBLICAN STAFF DIRECTOR

The Honorable Eddie Bernice Johnson
Chair
Committee on Science, Space, and Technology
U.S. House of Representatives
2321 Rayburn House Office Building
Washington D.C. 20515

Dear Chair Johnson,

I write to you concerning H.R. 3723 the "*Desalination Development Act*."

I appreciate your willingness to work cooperatively on this legislation. I recognize that the bill contains provisions that fall within the jurisdiction of the Committee on Science, Space, and Technology. I acknowledge that your Committee will not formally consider H.R. 3723 and agree that the inaction of your Committee with respect to the bill does not waive any future jurisdictional claim over the matters contained in the bill that fall within your Committee's Rule X jurisdiction.

I will ensure that our exchange of letters is included in the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work with you as this measure moves through the legislative process.

Sincerely,



Raúl M. Grijalva
Chair
House Natural Resources Committee

Cc: The Honorable Rob Bishop, Ranking Member
The Honorable Thomas J. Wickham Jr., Parliamentarian

EDDIE BERNICE JOHNSON, Texas
CHAIRWOMAN

FRANK D. LUCAS, Oklahoma
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515-6301

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April 9, 2020

Chairman Raúl M. Grijalva
Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Grijalva,

I am writing to you concerning H.R. 3723, the "Desalination Develop," which was referred to the Committee on Natural Resources, and subsequently to the Committee on Science, Space, and Technology ("Science Committee") on July 11, 2019.

In the interest of expedience in the consideration of H.R. 3723 the Committee on Science, Space, and Technology will waive formal consideration of the bill. This is, however, not a waiver of future jurisdictional claims by the Science Committee over the subject matter contained in H.R. 3723 or similar legislation.

Thank you for agreeing to include our exchange of letters in the legislative report for H.R. 3723 and in the *Congressional Record*. Additionally, I ask that you support the appointment of Science Committee conferees during any House-Senate conference convened on this legislation.

Sincerely,



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space, and Technology

cc: Ranking Member Frank D. Lucas, Committee on Science, Space, and Technology
Ranking Member Rob Bishop, Committee on Natural Resources
Jason Smith, Parliamentarian

DISSENTING VIEWS

Funding for desalination was included in the Water Infrastructure Investments for the Nation Act (WIIN Act) as part of a bipartisan package of Bureau of Reclamation provisions. Those provisions, which also included surface storage funding, water operational flexibility in California, and water recycling and reuse funding, were the result of hard work and compromise. It was truly a bipartisan effort.

H.R. 3723 falls short.

Instead, this bill extends only one of the WIIN Act provisions, one which continues to be the most expensive way of producing water, desalination.

Last year, California allowed over 22 million-acre feet of fresh water to flow out to the Pacific Ocean because we have nowhere to store it for the next drought. Yet, many Democrats seem perfectly content to pay four times as much to take that water back from the ocean.

This is a simple calculus; do you believe in policies of water abundance or shortage? We should instead reauthorize the entire WIIN Act and ensure water abundance in future droughts sure to come. For these reasons, many Republicans oppose H.R. 3723 as reported by the Committee on Natural Resources.

ROB BISHOP.
LOUIE GOHMERT.
TOM MCCLINTOCK.
PAUL GOSAR.

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