

108TH CONGRESS
1ST SESSION

H. R. 2982

To amend the Flood Control Act of 1948 with respect to the Middle Rio Grande Project to authorize programs for water conservation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2003

Mr. UDALL of New Mexico introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Flood Control Act of 1948 with respect to the Middle Rio Grande Project to authorize programs for water conservation, 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 “Middle Rio Grande
5 Emergency Water Supply Stabilization Act of 2003”.

6 **SEC. 2. AMENDMENTS TO FLOOD CONTROL ACT OF 1948.**

7 The Flood Control Act of 1948 (title II of the Act
8 of June 30, 1948 (chapter 771; 62 Stat. 1175 et seq.))
9 is amended—

1 (1) by inserting after the title heading the fol-
2 lowing:

3 **“Subtitle A—”;**

4 (2) in section 203, under the heading “RIO
5 GRANDE BASIN” by striking paragraph (c) and
6 inserting the following:

7 “(c) The Secretary of the Interior, acting through the
8 Commissioner of the Bureau of Reclamation, and in con-
9 junction with other interested Federal agencies and the
10 State of New Mexico, is directed to make studies to deter-
11 mine feasible and cost-effective ways and means of reduc-
12 ing nonbeneficial consumption of water by phreatic vegeta-
13 tion in the flood plain of the Rio Grande and its principal
14 tributaries above Caballo Reservoir.”; and

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

16 **“Subtitle B—**

17 **“SEC. 221. SHORT TITLE.**

18 “This subtitle may be cited as the ‘Middle Rio
19 Grande Emergency Water Supply Stabilization Act of
20 2003’.

21 **“SEC. 222. PURPOSES.**

22 “The purposes of this subtitle are to—

23 “(1) authorize the Secretary of the Interior to
24 contribute to a long-term solution for the Middle Rio
25 Grande River in the State of New Mexico by pre-

1 venting, reducing, or eliminating wasteful depletion
2 of waters;

3 “(2) encourage the implementation of water
4 conservation measures that will improve water quan-
5 tity and water quality conditions needed to support
6 a living river environment for the Middle Rio Grande
7 River, with resultant conservation, recreation, and
8 other public benefits; and

9 “(3) achieve quantifiable improvements in irri-
10 gation efficiencies of not less than 10 percent above
11 the year 2002–2003 baseline conditions within three
12 years of the date of enactment of this subtitle, and
13 not less than 20 percent improvement in irrigation
14 efficiencies within six years of the date of enactment
15 of this subtitle.

16 “(4) confirm the original intentions of Congress
17 as set forth in the Colorado River Storage Project
18 Act (Act of April 11, 1956, 43 U.S.C. 620g), direct-
19 ing the Secretary ‘to investigate, plan, construct, op-
20 erate, and maintain (1) public recreational facilities
21 on lands withdrawn or acquired for the development
22 of said project or of said participating projects, to
23 conserve the scenery, the natural, historic, and
24 archeologic objects, and the wildlife on said lands,
25 and to provide for public use and enjoyment of the

1 same and of the water areas created by these
2 projects by such means as are consistent with the
3 primary purposes of said projects; and (2) facilities
4 to mitigate losses of, and improve conditions for, the
5 propagation of fish and wildlife’, and the authoriza-
6 tion for the initial stage of the San Juan-Chama
7 Project (Act of June 13, 1962, Public Law 87–483
8 (76 Stat. 96)), directing the Secretary ‘to construct,
9 operate, and maintain the initial stage of the San
10 Juan-Chama Project, Colorado-New Mexico, for the
11 principal purposes of furnishing water supplies . . .
12 in the Rio Grande Basin and . . . in the existing
13 Middle Rio Grande Conservancy District and for
14 municipal, domestic, and industrial uses, and pro-
15 viding recreation and fish and wildlife benefits.’.

16 **“SEC. 223. DEFINITIONS.**

17 “In this subtitle:

18 “(1) ELIGIBLE ENTITIES.—The term ‘eligible
19 entities’ means organizations, municipalities, Indian
20 Tribes or Pueblos, individuals, or other entities who
21 use agricultural or municipal and industrial water
22 from the Rio Grande River and its tributaries in
23 New Mexico, including water supplied directly or in-
24 directly from the Middle Rio Grande Project or the
25 San Juan-Chama Project.

1 “(2) PROGRAM.—The term ‘program’ means
2 the Middle Rio Grande Water Supply Stabilization
3 Program established under section 224.

4 “(3) SECRETARY.—The term ‘Secretary’ means
5 the Secretary of the Interior, acting through the
6 Commissioner of the Bureau of Reclamation.

7 “(4) STATE.—The term ‘State’ means the State
8 of New Mexico.

9 **“SEC. 224. WATER CONSERVATION.**

10 “(a) ESTABLISHMENT OF WATER SUPPLY STA-
11 BILIZATION PROGRAM.—

12 “(1) The Secretary, in cooperation with the
13 State and the Middle Rio Grande Endangered Spe-
14 cies Act Collaborative Program, shall establish a
15 program to provide financial and technical assistance
16 to promote and encourage the adoption and imple-
17 mentation of water conservation measures within the
18 Rio Grande Basin in New Mexico, to be known as
19 the Middle Rio Grande Water Supply Stabilization
20 Program.

21 “(2) The Secretary shall—

22 “(A) enter into cost sharing and other
23 agreements with the State and other entities as
24 may be necessary under the Program;

1 “(B) contribute a share not to exceed 75
2 percent of the costs of administering and imple-
3 menting the Program, subject to the provisions
4 and limitations of subsection (b) of this section;
5 and

6 “(C) provide water conservation technical
7 assistance to the State and the Middle Rio
8 Grande Conservancy District as may be appro-
9 priate in furtherance of the purposes of this
10 subtitle.

11 “(3) The Program shall include, at a minimum,
12 to accomplish the purposes of this subtitle—

13 “(A) in accordance with subsection (b), ir-
14 rigation efficiency infrastructure improvements
15 or other agricultural water conservation meas-
16 ures;

17 “(B) incentives or other measures to en-
18 courage conversions from production of water-
19 intensive crops to crops that require less water;

20 “(C) measures to improve and encourage
21 municipal and industrial water conservation
22 programs including programs specifically de-
23 signed to reduce consumptive water use from
24 manufacturing processes;

1 “(D) incentives or other measures to en-
2 courage the lease, purchase, dry-year optioning,
3 or dedication of water or water rights to meet
4 the purposes of this subtitle;

5 “(E) establishment of a State program
6 under which the State holds and enforces water
7 rights leased, purchased, dry-year optioned, or
8 otherwise dedicated to provide water supplies to
9 meet the purposes of this subtitle;

10 “(F) designation of a State agency to—

11 “(i) administer the Program, and to
12 receive Federal financial contributions
13 which may be appropriated pursuant to
14 this subtitle;

15 “(ii) establish guidelines and proce-
16 dures for approving and funding eligible
17 water conservation projects or measures in
18 a timely and cost-effective manner; and

19 “(iii) ensure that each lease, purchase,
20 dry-year optioning, and dedication of water
21 and water rights is consistent with State
22 water law and the purposes of this subtitle;
23 and

24 “(G) procedures to consider and incor-
25 porate the views and recommendations of the

1 Middle Rio Grande Endangered Species Act
2 Collaborative Program, to the extent those
3 views and recommendations are consistent with
4 the purposes of this subtitle.

5 “(b) IRRIGATION EFFICIENCY INFRASTRUCTURE AND
6 MEASURES.—

7 “(1) IN GENERAL.—The following agricultural
8 water conservation projects or measures are eligible
9 to receive cost-shared Federal financial assistance
10 under the Program:

11 “(A) The cost of converting from produc-
12 tion of a water-intensive crop to a crop that re-
13 quires less water.

14 “(B) The cost of eligible on-farm and off-
15 farm irrigation efficiency infrastructure and
16 measures described in paragraph (2) if not less
17 than 70 percent of the water conserved as a re-
18 sult of the irrigation efficiency infrastructure
19 and measures is permanently allocated, directly
20 or indirectly, to storage in the conservation pool
21 referred to in section 226 or otherwise made
22 available for release into the Rio Grande River
23 to support a living river environment for the
24 Middle Rio Grande River and to provide con-
25 servation, recreation, and other public benefits.

1 “(2) ELIGIBLE IRRIGATION EFFICIENCY INFRA-
2 STRUCTURE AND MEASURES.—Eligible irrigation ef-
3 ficiency infrastructure and measures referred to in
4 paragraph (1) are—

5 “(A) lining of canals and ditches, insula-
6 tion of piping, and installation of ditch portals
7 or gates;

8 “(B) tail water return systems;

9 “(C) low-energy precision applications;

10 “(D) low-flow irrigation systems, including
11 drip and trickle systems and micro-sprinkler
12 systems;

13 “(E) spray jets or nozzles that improve
14 water distribution efficiency;

15 “(F) surge valves;

16 “(G) conversion from gravity or flood irri-
17 gation to low-flow sprinkler or drip irrigation
18 systems;

19 “(H) intake screens, fish passages, and
20 conversion of diversions to pumps;

21 “(I) alternate furrow wetting, irrigation
22 scheduling, and similar measures;

23 “(J) water measuring devices; and

24 “(K) such other irrigation efficiency infra-
25 structure and measures as the Secretary deter-

1 mines to be appropriate to carry out the pro-
2 gram.

3 “(c) CONTROL OF PHREATIC VEGETATION.—

4 “(1) The Secretary shall, immediately upon en-
5 actment of this Act, cooperate with the State of New
6 Mexico, water user organizations, and affected land-
7 owners to develop and implement a comprehensive
8 and cost-effective program to identify, remove, and
9 control phreatic vegetation in the floodplain of the
10 Rio Grande River and its principal tributaries above
11 Caballo Reservoir within the State of New Mexico,
12 and to replant and reestablish native vegetation as
13 appropriate.

14 “(2) In carrying out the requirements of para-
15 graph 1, the Secretary shall—

16 “(A) ensure that state-of-the-art and sci-
17 entifically defensible methods to remove, con-
18 trol, and dispose of phreatic vegetation are
19 used;

20 “(B) ensure that labor forces from local
21 communities and Pueblos are, to the extent pos-
22 sible, employed to implement this section; and

23 “(C) enter into cost-sharing agreement
24 with the State of New Mexico as may be re-
25 quired to carry out the purposes of this section.

1 “(3) The Secretary is prohibited from removing
2 vegetation unless the Secretary has entered into
3 agreements with private landowners providing for
4 permission to enter private lands to remove and con-
5 trol phreatic vegetation and to reestablish native
6 vegetation.

7 “(4) The Secretary shall, in cooperation with
8 the Secretary of Agriculture, the State of New Mex-
9 ico, and water users within the floodplain of the Rio
10 Grande River and its tributaries within the State of
11 New Mexico, quantify water salvaged by removal
12 and control of phreatic vegetation under this section.

13 “(5) The Secretary is authorized to enter into
14 agreements for the long-term lease or purchase of
15 water salvaged by the control and elimination of
16 phreatic vegetation, such water to remain available
17 to meet the purposes of this Act.

18 **“SEC. 225. COST SHARING.**

19 “(a) NON-FEDERAL SHARE.—The non-Federal share
20 of the cost of implementing municipal and industrial water
21 conservation programs and projects for converting from
22 production of a water-intensive crop to a crop that re-
23 quires less water, or of an irrigation efficiency infrastruc-
24 ture measure assisted under section 224(b)—

25 “(1) shall be not less than 25 percent; and

1 “(2) shall be paid by—

2 “(A) the State;

3 “(B) an owner or operator of a farm or
4 ranch (including an Indian tribe);

5 “(C) a nonprofit organization; or

6 “(D) and other appropriate entity, as de-
7 termined by the State.

8 “(b) INCREASED NON-FEDERAL SHARE.—If an
9 owner or operator of a farm or ranch pays 50 percent or
10 more of the cost of converting from production of a water-
11 intensive crop to a crop that requires less water, or of an
12 irrigation efficiency infrastructure or measure, the owner
13 or operator shall retain the right to use 50 percent of the
14 water conserved by the conversion, infrastructure, or
15 measure, as determined by the State.

16 **“SEC. 226. PERMANENT CONSERVATION POOL.**

17 “At the request of the State and to carry out the
18 purposes of this subtitle, the Secretary is authorized to—

19 “(1) establish a permanent conservation pool
20 for storage of Rio Grande or San Juan-Chama
21 water, to be established in one or more reservoirs
22 operated by the Bureau of Reclamation or the U.S.
23 Army Corps of Engineers, or to otherwise cooperate
24 with the State in the establishment of such conserva-
25 tion pool; and

1 “(2) store water salvaged from implementation
2 of water conservation measures authorized by this
3 subtitle in the pool referred to in subsection (a) for
4 release to the Rio Grande River to meet the pur-
5 poses of this subtitle.

6 **“SEC. 227. MIDDLE RIO GRANDE ENDANGERED SPECIES**
7 **ACT COLLABORATIVE PROGRAM.**

8 “The Secretary and the Secretary of the Army shall
9 participate in the Middle Rio Grande Endangered Species
10 Act Collaborative Program under the terms and conditions
11 outlined in the Memorandum of Understanding signed by
12 representatives of the Secretary and the Secretary of the
13 Army on April 23, 2002, or as that agreement may be
14 modified by future agreements of the signatory parties.

15 **“SEC. 228. WATER RIGHTS OF INDIAN TRIBES AND PUEB-**
16 **LOS.**

17 “(a) The Secretary shall, for the benefit of Indian
18 Tribes and Pueblos with unquantified and unadjudicated
19 water rights within the Middle Rio Grande Basin in New
20 Mexico, provide direct financial assistance to such Tribes
21 and Pueblos, for the purposes of determining and quanti-
22 fying Indian water rights and water requirements, and for
23 conducting other water resource studies as may be nec-
24 essary for the benefit of Tribes and Pueblos.

1 “(b) The financial assistance provided pursuant to
2 subsection (a) of this section shall not be subject to the
3 cost-sharing requirements of this subtitle, and shall not
4 be reimbursable or returnable under the Federal reclama-
5 tion laws (Act of June 17, 1902, 32 Stat. 388, and the
6 Acts amendatory thereof and supplementary thereto).

7 **“SEC. 229. REAUTHORIZATION OF WATER DESALINATION**
8 **ACT OF 1996.**

9 “(a) Section 8 of Public Law 104–298 (the Water
10 Desalination Act of 1996, as amended) is amended further
11 by—

12 “(1) in paragraph (a) by striking ‘2004’ and in-
13 serting in lieu thereof ‘2008’; and

14 “(2) in paragraph (b) by striking ‘2004’ and in-
15 serting in lieu thereof ‘2008’.

16 “(b) In carrying out the provisions of the Water De-
17 salination Act of 1996, as amended, the Secretary shall
18 consult with the Middle Rio Grande Endangered Species
19 Act Collaborative Program, and shall solicit proposals for
20 research and project development, including demonstra-
21 tion projects and permanent projects, applicable to resolu-
22 tion of water supply concerns in the Middle Rio Grande
23 Basin.

24 **“SEC. 230. STATE WATER LAW AND OTHER REQUIREMENTS.**

25 “Nothing in this subtitle—

1 “(1) preempts any State water law or any inter-
2 state compact;

3 “(2) affects any litigation concerning the enti-
4 tlement to, or lack of entitlement to, water that is
5 pending as of the date of enactment of this section;

6 “(3) expands, alters, or otherwise affects the
7 existence or scope of any water right of any indi-
8 vidual (except to the extent that the individual
9 agrees otherwise under the Program); or

10 “(4) authorizes or entitles the Federal Govern-
11 ment to hold or purchase any water right.

12 **“SEC. 231. PROTECTION OF PRIVATE PROPERTY RIGHTS.**

13 “(a) WILLING SELLERS AND LESSORS.—The Sec-
14 retary may enter into an agreement for the sale or lease
15 of water pursuant to this subtitle only if each eligible enti-
16 ty that is a party to the agreement is a willing seller or
17 willing lessor.

18 “(b) PROPERTY RIGHTS.—Nothing in this subtitle
19 authorizes the condemnation of private property.

20 **“SEC. 232. AUTHORIZATION OF APPROPRIATIONS.**

21 “(a) There is hereby authorized to be appropriated
22 such sums as may be necessary to carry out the provisions
23 of this subtitle.

24 “(b) The Federal share of costs associated with the
25 studies authorized by paragraph (c) under the heading

1 ‘RIO GRANDE BASIN’ in section 203 shall not be reim-
2 bursable or returnable under the Federal reclamation laws
3 (Act of June 17, 1902, 32 Stat. 388, and the Acts amend-
4 atory thereof and supplementary thereto). The Federal
5 share of costs associated with the administration and im-
6 plementation of the water supply stabilization program au-
7 thorized in section 224 shall not be reimbursable or re-
8 turnable under the Federal reclamation laws (Act of June
9 17, 1902, 32 Stat. 388, and the Acts amendatory thereof
10 and supplementary thereto).”.

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