

110TH CONGRESS
2D SESSION

S. 2873

To amend the Federal Water Pollution Control Act to establish a Corps of Engineers Board of Appeals for permits for certain water storage projects, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2008

Mr. BARRASSO (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to establish a Corps of Engineers Board of Appeals for permits for certain water storage 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 “Water Essential Stor-
5 age To Enhance Regions in Need Act” or the “WEST-
6 ERN Act”.

1 **SEC. 2. CORPS OF ENGINEERS BOARD OF APPEALS FOR**
 2 **PERMITS FOR CERTAIN WATER STORAGE**
 3 **PROJECTS.**

4 Section 404(a) of the Federal Water Pollution Con-
 5 trol Act (33 U.S.C. 1344(a)) is amended—

6 (1) by striking “The Secretary may issue” and
 7 inserting the following:

8 “(1) IN GENERAL.—The Secretary may issue”;
 9 and

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

11 “(2) REQUIREMENTS.—

12 “(A) PURPOSE AND NEED STATEMENTS.—

13 “(i) IN GENERAL.—Not later than 90
 14 days after the date of receipt of a complete
 15 application for a permit for a water stor-
 16 age project under this subsection, the Sec-
 17 retary shall develop and provide to each
 18 applicant a purpose and need statement
 19 that describes—

20 “(I) whether the Secretary con-
 21 curs with the assessment of, and al-
 22 ternatives for, the purposes and needs
 23 of the water storage project, as pro-
 24 posed by the applicant; and

25 “(II) in any case in which the
 26 Secretary does not concur with the as-

1 sessment, an assessment developed by
2 the Secretary of the purposes and
3 needs of the project.

4 “(ii) EFFECT ON ENVIRONMENTAL IM-
5 PACT STATEMENTS.—No environmental
6 impact statement or similar analysis re-
7 quired under the National Environmental
8 Policy Act of 1969 (42 U.S.C. 4321 et
9 seq.) shall commence with respect to a
10 water storage project for which a permit is
11 sought under this subsection until the date
12 on which the Secretary provides to each
13 applicant for the permit the purpose and
14 need statement under clause (i).

15 “(B) RECORDS OF DECISION.—Before the
16 date on which the Secretary issues a permit
17 under this subsection, the Secretary shall pro-
18 vide to each applicant for the permit a record
19 of decision describing all applicable conditions
20 that will apply to the permit.

21 “(3) CORPS OF ENGINEERS BOARD OF AP-
22 PEALS.—

23 “(A) ESTABLISHMENT.—The Secretary
24 shall establish a board of appeals, to be known

1 as the ‘Corps of Engineers Board of Appeals’
2 (referred to in this paragraph as the ‘Board’).

3 “(B) MEMBERSHIP.—The Board shall be
4 composed of 5 members, to be appointed by the
5 Secretary, of whom—

6 “(i) 3 shall be representatives of State
7 water development agencies; and

8 “(ii) 2 shall be representatives of the
9 Corps of Engineers.

10 “(C) DUTIES.—

11 “(i) IN GENERAL.—The Board shall
12 make determinations on all appeals relat-
13 ing to permits issued pursuant to this sub-
14 section for water storage projects, includ-
15 ing any appeal regarding—

16 “(I) a purpose and need state-
17 ment issued under paragraph
18 (2)(A)(i);

19 “(II) a record of decision issued
20 under paragraph (2)(B), including
21 any condition on a permit described in
22 the record of decision; or

23 “(III) any final decision of the
24 Secretary to approve or disapprove a
25 permit under this subsection.

1 “(ii) DEADLINE.—The Board shall
2 make a determination regarding an appeal
3 under clause (i) by not later than 90 days
4 after the date on which the appeal is filed
5 with the Board.

6 “(D) FACTORS FOR CONSIDERATION.—In
7 making a determination under subparagraph
8 (C), the Board shall evaluate, as applicable—

9 “(i) any field decision of the Corps of
10 Engineers regarding the purposes or needs
11 of the applicable water storage project;

12 “(ii) any condition placed on a permit
13 for the applicable project under this sub-
14 section, based on the record of decision for
15 the project under paragraph (2)(B); and

16 “(iii) any determination by the Sec-
17 retary to deny a permit under this sub-
18 section for the applicable project.

19 “(E) TREATMENT OF DETERMINATIONS.—
20 Notwithstanding any other provision of law (in-
21 cluding regulations), effective on the date of en-
22 actment of this paragraph, a determination by
23 the Board under this paragraph shall supercede
24 any other appellate determination of the Corps

1 of Engineers regarding permits under this sub-
2 section.”.

