

111TH CONGRESS  
1ST SESSION

# H. R. 3747

To promote water efficiency, conservation, and adaptation, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2009

Ms. BERKLEY (for herself and Ms. TITUS) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To promote water efficiency, conservation, and adaptation,  
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 Efficiency, Con-  
5 servation, and Adaptation Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1           (1)(A) human-induced climate change is affect-  
2           ing the natural water cycle, decreasing precipitation  
3           levels in the West, especially the Southwest, and  
4           making droughts and floods more frequent and more  
5           intense;

6           (B) declining precipitation levels will severely  
7           impact water supplies in Southwestern States; and

8           (C) a sharp increase in the number of days with  
9           very heavy precipitation throughout the Northeast  
10          and the Midwest will stress aging water infrastruc-  
11          ture;

12          (2) changes in the water cycle caused by cli-  
13          mate disruptions will adversely affect water infra-  
14          structure, energy production and use, human health,  
15          transportation, agriculture, and ecosystems, while  
16          also aggravating water disputes across the United  
17          States;

18          (3)(A) the Colorado River, which supplies water  
19          for over 30,000,000 people, is experiencing the worst  
20          drought in over 100 years of recordkeeping; and

21          (B) the primary reservoirs of the Colorado  
22          River Basin and Lakes Mead and Powell have lost  
23          nearly half of the storage waters of the reservoirs  
24          and lakes, and clean hydropower generated from

1 Hoover Dam risks reduction if the extended drought  
2 persists;

3 (4) States and local governments and water  
4 utilities can begin to address the challenges de-  
5 scribed in this section by providing incentives for  
6 water efficiency and conservation, while also plan-  
7 ning and investing in infrastructure to adapt to the  
8 impacts of climate change, particularly those im-  
9 pacts already affecting the United States;

10 (5) residential water demand can be reduced by  
11 25 to 40 percent using existing, cost-effective tech-  
12 nologies that also can reduce the water bills of con-  
13 sumers by hundreds of dollars per year; and

14 (6) water and energy use are inseparable activi-  
15 ties, and supplying and treating water consumes  
16 around 4 percent of the electricity of the United  
17 States, and electricity makes up 75 percent of the  
18 cost of processing and delivering municipal water.

19 **SEC. 3. DEFINITION OF ADMINISTRATOR.**

20 In this Act, the term “Administrator” means the Ad-  
21 ministrator of the Environmental Protection Agency.

22 **SEC. 4. WATERSENSE.**

23 (a) IN GENERAL.—There is established within the  
24 Environmental Protection Agency a WaterSense program

1 to identify and promote water efficient products, build-  
2 ings, landscapes, facilities, processes, and services so as—

3 (1) to reduce water use;

4 (2) to reduce the strain on water, wastewater,  
5 and stormwater infrastructure;

6 (3) to conserve energy used to pump, heat,  
7 transport, and treat water; and

8 (4) to preserve water resources for future gen-  
9 erations, through voluntary labeling of, or other  
10 forms of communications about, products, buildings,  
11 landscapes, facilities, processes, and services that  
12 meet the highest water efficiency and performance  
13 criteria.

14 (b) DUTIES.—The Administrator shall—

15 (1) establish—

16 (A) a WaterSense label to be used for cer-  
17 tain items; and

18 (B) the procedure by which an item may  
19 be certified to display the WaterSense label;

20 (2) promote WaterSense-labeled products,  
21 buildings, landscapes, facilities, processes, and serv-  
22 ices in the marketplace as the preferred technologies  
23 and services for—

24 (A) reducing water use; and

1 (B) ensuring product and service perform-  
2 ance;

3 (3) work to enhance public awareness of the  
4 WaterSense label through public outreach, edu-  
5 cation, and other means;

6 (4) preserve the integrity of the WaterSense  
7 label by—

8 (A) establishing and maintaining perform-  
9 ance criteria so that products, buildings, land-  
10 scapes, facilities, processes, and services labeled  
11 with the WaterSense label perform as well or  
12 better than less water-efficient counterparts;

13 (B) overseeing WaterSense certifications  
14 made by third parties;

15 (C) conducting reviews of the use of the  
16 WaterSense label in the marketplace and taking  
17 corrective action in any case in which misuse of  
18 the label is identified; and

19 (D) carrying out such other measures as  
20 the Administrator determines to be appropriate;

21 (5) regularly review and, if appropriate, update  
22 WaterSense criteria for categories of products, build-  
23 ings, landscapes, facilities, processes, and services,  
24 at least once every 4 years;

1           (6) to the maximum extent practicable, regu-  
2           larly estimate and make available to the public the  
3           production and relative market shares of, and the  
4           savings of water, energy, and capital costs of water,  
5           wastewater, and stormwater infrastructure attrib-  
6           utable to the use of WaterSense-labeled products,  
7           buildings, landscapes, facilities, processes, and serv-  
8           ices, at least annually;

9           (7) solicit comments from interested parties and  
10          the public prior to establishing or revising a  
11          WaterSense category, specification, installation cri-  
12          terion, or other criterion (or prior to effective dates  
13          for any such category, specification, installation cri-  
14          terion, or other criterion);

15          (8) provide reasonable notice to interested par-  
16          ties and the public of any changes (including effec-  
17          tive dates), on the adoption of a new or revised cat-  
18          egory, specification, installation criterion, or other  
19          criterion, along with—

20                 (A) an explanation of the changes; and

21                 (B) as appropriate, responses to comments  
22                 submitted by interested parties and the public;

23          (9) provide appropriate lead time (as deter-  
24          mined by the Administrator) prior to the applicable  
25          effective date for a new or significant revision to a

category, specification, installation criterion, or other criterion, taking into account the timing requirements of the manufacturing, marketing, training, and distribution process for the specific product, building and landscape, or service category addressed;

(10) identify and, if appropriate, implement other voluntary approaches in commercial, institutional, residential, industrial, and municipal sectors to encourage recycling and reuse technologies to improve water efficiency or lower water use; and

(11) if appropriate, apply the WaterSense label to water-using products that are labeled by the Energy Star program implemented by the Administrator and the Secretary of Energy.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) \$7,500,000 for fiscal year 2010;

(2) \$10,000,000 for fiscal year 2011;

(3) \$20,000,000 for fiscal year 2012;

(4) \$50,000,000 for fiscal year 2013; and

(5) for each subsequent fiscal year, the applicable amount during the preceding fiscal year, as adjusted to reflect changes for the 12-month period

1 ending the preceding November 30 in the Consumer  
2 Price Index for All Urban Consumers published by  
3 the Bureau of Labor Statistics of the Department of  
4 Labor.

5 **SEC. 5. STATE RESIDENTIAL WATER EFFICIENCY AND CON-**  
6 **SERVATION INCENTIVES PROGRAM.**

7 (a) DEFINITIONS.—In this section:

8 (1) ELIGIBLE ENTITY.—The term “eligible enti-  
9 ty” means a State government, local or county gov-  
10 ernment, tribal government, wastewater or sewerage  
11 utility, municipal water authority, energy utility,  
12 water utility, or nonprofit organization that meets  
13 the requirements of subsection (b).

14 (2) INCENTIVE PROGRAM.—The term “incentive  
15 program” means a program for administering finan-  
16 cial incentives for consumer purchase and installa-  
17 tion of water-efficient products, buildings (including  
18 new water-efficient homes), landscapes, processes, or  
19 services described in subsection (b)(1).

20 (3) RESIDENTIAL WATER-EFFICIENT PRODUCT,  
21 BUILDING, LANDSCAPE, PROCESS, OR SERVICE.—

22 (A) IN GENERAL.—The term “residential  
23 water-efficient product, building, landscape,  
24 process, or service” means a product, building,  
25 landscape, process, or service for a residence or



1 its landscape that is rated for water efficiency  
2 and performance—

3 (i) by the WaterSense program; or

4 (ii) if a WaterSense specification does  
5 not exist, by the Energy Star program or  
6 an incentive program approved by the Ad-  
7 ministrator.

8 (B) INCLUSIONS.—The term “residential  
9 water-efficient product, building, landscape,  
10 process, or service” includes—

11 (i) faucets;

12 (ii) irrigation technologies and serv-  
13 ices;

14 (iii) point-of-use water treatment de-  
15 vices;

16 (iv) reuse and recycling technologies;

17 (v) toilets;

18 (vi) clothes washers;

19 (vii) dishwashers;

20 (viii) showerheads;

21 (ix) xeriscaping and other landscape  
22 conversions that replace irrigated turf; and

23 (x) new water efficient homes certified  
24 under the WaterSense program.

1           (4) WATERSENSE PROGRAM.—The term  
2       “WaterSense program” means the program estab-  
3       lished by section 4.

4       (b) ELIGIBLE ENTITIES.—An entity shall be eligible  
5       to receive an allocation under subsection (c) if the entity—

6           (1) establishes (or has established) an incentive  
7       program to provide financial incentives to residential  
8       consumers for the purchase of residential water-effi-  
9       cient products, buildings, landscapes, processes, or  
10      services;

11          (2) submits an application for the allocation at  
12      such time, in such form, and containing such infor-  
13      mation as the Administrator may require; and

14          (3) provides assurances satisfactory to the Ad-  
15      ministrator that the entity will use the allocation to  
16      supplement, but not supplant, funds made available  
17      to carry out the incentive program.

18      (c) AMOUNT OF ALLOCATIONS.—For each fiscal year,  
19      the Administrator shall determine the amount to allocate  
20      to each eligible entity to carry out subsection (d), taking  
21      into consideration—

22          (1) the population served by the eligible entity  
23      during the most recent calendar year for which data  
24      are available;

1           (2) the targeted population of the incentive pro-  
2           gram of the eligible entity, such as general house-  
3           holds, low-income households, or first-time home-  
4           owners, and the probable effectiveness of the incen-  
5           tive program for that population;

6           (3) for existing programs, the effectiveness of  
7           the program in encouraging the adoption of water-  
8           efficient products, buildings, landscapes, facilities,  
9           processes, and services;

10          (4) any allocation to the eligible entity for a  
11          preceding fiscal year that remains unused; and

12          (5) the per capita water demand of the popu-  
13          lation served by the eligible entity during the most  
14          recent calendar year for which data are available  
15          and the accessibility of water supplies to the eligible  
16          entity.

17          (d) USE OF ALLOCATED FUNDS.—Funds allocated to  
18          an eligible entity under subsection (c) may be used to pay  
19          up to 50 percent of the cost of establishing and carrying  
20          out an incentive program.

21          (e) FIXTURE RECYCLING.—Eligible entities are en-  
22          couraged to promote or implement fixture recycling pro-  
23          grams to manage the disposal of older fixtures replaced  
24          due to the incentive program under this section.

25          (f) ISSUANCE OF INCENTIVES.—

1           (1) IN GENERAL.—Financial incentives may be  
2       provided to residential consumers that meet the re-  
3       quirements of the applicable incentive program.

4           (2) MANNER OF ISSUANCE.—An eligible entity  
5       may—

6           (A) issue all financial incentives directly to  
7       residential consumers; or

8           (B) with approval of the Administrator,  
9       delegate all or part of financial incentive admin-  
10      istration to other organizations, including local  
11      governments, municipal water authorities, water  
12      utilities, and nonprofit organizations.

13          (3) AMOUNT.—The amount of a financial in-  
14      centive shall be determined by the eligible entity,  
15      taking into consideration—

16           (A) the amount of any Federal or State  
17      tax incentive available for the purchase of the  
18      residential water-efficient product or service;

19           (B) the amount necessary to change con-  
20      sumer behavior to purchase water-efficient  
21      products and services; and

22           (C) the consumer expenditures for onsite  
23      preparation, assembly, and original installation  
24      of the product.

1 (g) AUTHORIZATION OF APPROPRIATIONS.—There  
 2 are authorized to be appropriated to the Administrator to  
 3 carry out this section—

4 (1) \$100,000,000 for fiscal year 2010;

5 (2) \$150,000,000 for fiscal year 2011;

6 (3) \$200,000,000 for fiscal year 2012;

7 (4) \$150,000,000 for fiscal year 2013;

8 (5) \$100,000,000 for fiscal year 2014; and

9 (6) for each subsequent fiscal year, the applica-  
 10 ble amount during the preceding fiscal year, as ad-  
 11 justed to reflect changes for the 12-month period  
 12 ending the preceding November 30 in the Consumer  
 13 Price Index for All Urban Consumers published by  
 14 the Bureau of Labor Statistics of the Department of  
 15 Labor.

16 **SEC. 6. BLUE BANK FOR WATER SYSTEM MITIGATION AND**  
 17 **ADAPTATION.**

18 (a) DEFINITIONS.—In this section:

19 (1) ABRUPT CLIMATE CHANGE.—The term “ab-  
 20 rupt climate change” means a large-scale change in  
 21 the climate system that—

22 (A) takes place over a few decades or less;

23 (B) persists (or is anticipated to persist)

24 for at least a few decades; and

1 (C) causes substantial disruptions in  
2 human and natural systems.

3 (2) OWNER OR OPERATOR.—

4 (A) IN GENERAL.—The term “owner or  
5 operator” means a person (including a regional,  
6 State, local, municipal, or private entity) that  
7 owns or operates a water system.

8 (B) INCLUSION.—The term “owner or op-  
9 erator” includes a non-Federal entity that has  
10 operational responsibilities for a federally owned  
11 water system.

12 (3) WATER SYSTEM.—The term “water sys-  
13 tem” means—

14 (A) a community water system (as defined  
15 in section 1401 of the Safe Drinking Water Act  
16 (42 U.S.C. 300f));

17 (B) a publicly owned treatment works (as  
18 defined in section 212 of the Federal Water  
19 Pollution Control Act (33 U.S.C. 1292)), in-  
20 cluding a municipal separate storm sewer sys-  
21 tem;

22 (C) a decentralized wastewater treatment  
23 system for domestic sewage;

24 (D) a groundwater storage and replenish-  
25 ment system; or

1 (E) a system for transport and delivery of  
2 water for irrigation or conservation.

3 (b) GRANTS.—Beginning in fiscal year 2010, the Ad-  
4 ministrator shall make grants to owners or operators of  
5 water systems to address any ongoing or forecasted (based  
6 on the best available research and data) climate-related  
7 impact on the water quality or quantity of a region of the  
8 United States, for the purposes of mitigating or adapting  
9 to the impacts of climate change.

10 (c) ELIGIBLE USES.—In carrying out this section,  
11 the Administrator shall make grants to assist in the plan-  
12 ning, design, construction, implementation, or mainte-  
13 nance of any program or project to increase the resilience  
14 of a water system to climate change by—

15 (1) conserving water or enhancing water use ef-  
16 ficiency, including through the use of water metering  
17 to measure the effectiveness of a water efficiency  
18 program;

19 (2) modifying or relocating existing water sys-  
20 tem infrastructure made or projected to be made in-  
21 operable by climate change impacts;

22 (3) preserving or improving water quality, in-  
23 cluding through measures to manage, reduce, treat,  
24 or reuse municipal stormwater, wastewater, or  
25 drinking water;

1           (4) investigating, designing, or constructing  
2           groundwater remediation, recycled water, or desali-  
3           nation facilities or systems;

4           (5) enhancing water management by increasing  
5           watershed preservation and protection, such as  
6           through the use of natural or engineered green in-  
7           frastructure in the management, conveyance, or  
8           treatment of water, wastewater, or stormwater;

9           (6) enhancing energy efficiency or the use and  
10          generation of renewable energy in the management,  
11          conveyance, or treatment of water, wastewater, or  
12          stormwater;

13          (7) supporting the adoption and use of ad-  
14          vanced water treatment, water supply management  
15          (such as reservoir reoperation), or water demand  
16          management technologies, projects, or processes  
17          (such as water reuse and recycling or adaptive con-  
18          servation pricing) that maintain or increase water  
19          supply or improve water quality;

20          (8) modifying or replacing existing systems or  
21          constructing new systems for existing communities  
22          or land currently in agricultural production to im-  
23          prove water availability, storage, or conveyance in a  
24          manner that—



1 (A) promotes more efficient use of avail-  
2 able water supplies; and

3 (B) does not further exacerbate stresses on  
4 ecosystems;

5 (9) supporting practices and projects, such as  
6 improved irrigation systems, water banking and  
7 other forms of water transactions, groundwater re-  
8 charge, stormwater capture, and reuse or recycling  
9 of drainage water, to improve water quality or pro-  
10 mote more efficient water use, including on land cur-  
11 rently in agricultural production;

12 (10) conducting and completing studies or as-  
13 sessments to project how climate change may impact  
14 the future operations and sustainability of water sys-  
15 tems; or

16 (11) developing and implementing mitigation  
17 measures to rapidly address impacts on water sys-  
18 tems most susceptible to abrupt climate change, in-  
19 cluding those in the Colorado River Basin and coast-  
20 al regions at risk from rising sea levels.

21 (d) APPLICATION.—To be eligible to receive a grant  
22 from the Administrator under subsection (b), the owner  
23 or operator of a water system shall submit to the Adminis-  
24 trator an application that—

1           (1) includes a proposal of the program, strat-  
2       egy, or infrastructure improvement to be planned,  
3       designed, constructed, implemented, or maintained  
4       by the water system;

5           (2) cites the best available research or data that  
6       demonstrates—

7           (A) the risk to the water resources or in-  
8       frastructure of the water system as a result of  
9       ongoing or forecasted changes to the  
10      hydrological system brought about by factors  
11      arising from climate change, including rising  
12      sea levels and changes in precipitation levels;  
13      and

14          (B) how the proposed program, strategy,  
15      or infrastructure improvement would perform  
16      under the anticipated climate conditions;

17          (3) explains how the proposed program, strat-  
18      egy, or infrastructure improvement is expected to  
19      enhance the resiliency of the water system, including  
20      source water protection for community water sys-  
21      tems, to these risks or reduce the direct or indirect  
22      greenhouse gas emissions of the water system; and

23          (4) demonstrates that the program, strategy, or  
24      infrastructure improvement is—

1 (A) consistent with any approved State  
2 and tribal climate adaptation plan; and

3 (B) not inconsistent with any approved  
4 natural resources plan.

5 (e) COMPETITIVE PROCESS.—

6 (1) IN GENERAL.—Each calendar year, the Ad-  
7 ministrator shall conduct a competitive process to  
8 select and fund applications under this section.

9 (2) PRIORITY REQUIREMENTS AND  
10 WEIGHTING.—In carrying out the process, the Ad-  
11 ministrator shall—

12 (A) prioritize funding of applications that  
13 are submitted by the owners or operators of  
14 water systems that are, based on the best avail-  
15 able research and data, at the greatest and  
16 most immediate risk of facing significant cli-  
17 mate-related negative impacts on water quality  
18 or quantity;

19 (B) in selecting among the priority applica-  
20 tions determined under subparagraph (A), en-  
21 sure that the final list of applications funded  
22 for each year includes a substantial number  
23 that, to the maximum extent practicable, in-  
24 cludes each eligible use described in subsection  
25 (c);

1 (C) solicit applications from water systems  
2 that are—

3 (i) located in all regions of the United  
4 States; and

5 (ii) facing varying risks as a result of  
6 climate change; and

7 (D) provide for solicitation and consider-  
8 ation of public input in the development of cri-  
9 teria used in evaluating applications.

10 (f) COST SHARING.—

11 (1) FEDERAL SHARE.—The Federal share of  
12 the cost of any program, strategy, or infrastructure  
13 improvement that is the subject of a grant awarded  
14 by the Administrator to a water system under sub-  
15 section (b) shall not exceed 50 percent of the cost  
16 of the program, strategy, and infrastructure im-  
17 provement.

18 (2) CALCULATION OF NON-FEDERAL SHARE.—

19 In calculating the non-Federal share of the cost of  
20 a program, strategy, or infrastructure improvement  
21 proposed by a water system through an application  
22 submitted by the water system under subsection (d),  
23 the Administrator shall—

24 (A) include the value of any in-kind serv-  
25 ices that are integral to the completion of the

1 program, strategy, or infrastructure improve-  
2 ment, as determined by the Administrator; and

3 (B) not include any other amount that the  
4 water system receives from a Federal agency.

5 (g) LABOR STANDARDS.—

6 (1) IN GENERAL.—All laborers and mechanics  
7 employed on infrastructure improvements funded di-  
8 rectly by or assisted in whole or in part by this sec-  
9 tion shall be paid wages at rates not less than those  
10 prevailing for the same type of work on similar con-  
11 struction in the immediate locality, as determined by  
12 the Secretary of Labor in accordance with sub-  
13 chapter IV of chapter 31 of part A of subtitle II of  
14 title 40, United States Code.

15 (2) AUTHORITY AND FUNCTIONS.—With re-  
16 spect to the labor standards in this subsection, the  
17 Secretary of Labor shall have the authority and  
18 functions set forth in Reorganization Plan Num-  
19 bered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.)  
20 and section 3145 of title 40, United States Code.

21 (h) REGULATIONS.—

22 (1) IN GENERAL.—Not later than 1 year after  
23 the date of enactment of this Act, the Administrator  
24 shall promulgate final regulations to carry out this  
25 section.

1           (2) SPECIAL RULE FOR THE CONSTRUCTION OF  
2       TREATMENT WORKS.—In carrying out this sub-  
3       section, the Administrator shall incorporate all rel-  
4       evant and appropriate requirements of title VI of the  
5       Federal Water Pollution Control Act (33 U.S.C.  
6       1381 et seq.) applicable to the construction of treat-  
7       ment works that are carried out under this section.

8       (i) REPORT TO CONGRESS.—Not later than 3 years  
9       after the date of enactment of this Act, and every 3 years  
10      thereafter, the Administrator shall submit to the Congress  
11      a report on progress in implementing this section, includ-  
12      ing information on project applications received and fund-  
13      ed annually.

14      (j) AUTHORIZATION OF APPROPRIATIONS.—There  
15      are authorized to be appropriated to carry out this section  
16      such sums as are necessary.

○