

111TH CONGRESS  
2D SESSION

# S. 3550

To amend the Federal Water Pollution Control Act to establish within the Environmental Protection Agency a Columbia Basin Restoration Program.

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## IN THE SENATE OF THE UNITED STATES

JUNE 29, 2010

Mr. MERKLEY (for himself, Mr. CRAPO, Mr. BAUCUS, Mr. TESTER, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Water Pollution Control Act to establish within the Environmental Protection Agency a Columbia Basin Restoration Program.

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 “Columbia River Basin  
5       Restoration Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the Columbia River is the largest river in  
9       the Pacific Northwest by volume;

1           (2) the river is 1,253 miles long, with a drain-  
2           age basin that includes 259,000 square miles, ex-  
3           tending to 7 States and British Columbia, Canada,  
4           and including all or part of—

5                   (A) multiple national parks;

6                   (B) components of the National Wilderness  
7           Preservation System;

8                   (C) National Monuments;

9                   (D) National Scenic Areas;

10                  (E) National Recreation Areas; and

11                  (F) other areas managed for conservation.

12           (3) the Columbia River Basin and associated  
13           tributaries (referred to in this Act as the “Basin”)  
14           provide significant ecological and economic benefits  
15           to the Pacific Northwest and the entire United  
16           States;

17           (4) traditionally, the Basin includes more than  
18           6,000,000 acres of irrigated agricultural land and  
19           produces more hydroelectric power than any other  
20           North American river;

21           (5) the Basin—

22                   (A) historically constituted the largest  
23           salmon-producing river system in the world,  
24           with annual returns peaking at as many as  
25           30,000,000 fish; and

1 (B) as of the date of enactment of this  
2 Act—

3 (i) supports economically important  
4 commercial and recreational fisheries; and

5 (ii) is home to 13 species of salmonids  
6 and steelhead that are listed as threat-  
7 ened species or endangered species under  
8 the Endangered Species Act of 1973 (16  
9 U.S.C. 1531 et seq.);

10 (6) the Lower Columbia River Estuary  
11 stretches 146 miles from the Bonneville Dam to the  
12 mouth of the Pacific Ocean, and much of that area  
13 is contaminated with toxic chemicals;

14 (7) the Middle and Upper Columbia River  
15 Basin includes 1,050 miles of the mainstem Colum-  
16 bia River upstream of the Bonneville Dam, including  
17 the 1,040 miles of the largest tributary, the Snake  
18 River, and all of the tributaries to both rivers;

19 (8) toxic contamination in the Basin poses a  
20 significant threat to the environment and human  
21 health;

22 (9) the nuclear and toxic contamination at the  
23 Hanford Nuclear Reservation and the toxic contami-  
24 nation at Superfund sites throughout the Basin

1 present an ongoing risk of contamination throughout  
2 the Basin;

3 (10) polychlorinated biphenyls (commonly  
4 known as “PCBs”) and polycyclic aromatic hydro-  
5 carbons that have been found in the tissues of  
6 salmonids and their prey at concentrations exceeding  
7 levels of concern;

8 (11) legacy contaminants, including PCBs and  
9 dichlorodiphenyltrichloroethane, the pesticide com-  
10 monly known as “DDT”, were banned in 1972, but  
11 are still detected in river water, sediments, and juve-  
12 nile Chinook salmon;

13 (12) pesticides and emerging contaminants,  
14 such as pharmaceutical and personal care products,  
15 have been detected in river water and may have ef-  
16 fects including hormone disruption and impacts on  
17 behavior and reproduction;

18 (13) the Environmental Protection Agency’s  
19 Columbia River Basin Fish Contaminant Survey de-  
20 tected the presence of 92 priority pollutants, includ-  
21 ing PCBs and DDE (a breakdown of DDT), in fish  
22 that are consumed by members of Indian tribes in  
23 the Columbia River Basin, as well as by other indi-  
24 viduals consuming fish throughout the Columbia  
25 River Basin, and a fish consumption survey by the

1 Columbia River Intertribal Fish Commission showed  
2 that tribal members were eating 6 to 11 times more  
3 fish than the estimated national average of the Envi-  
4 ronmental Protection Agency;

5 (14) toxic contamination in the Middle and  
6 Upper Columbia River Basins have a direct impact  
7 on water quality in the Lower Columbia River Estu-  
8 ary, and reducing toxic contamination in the Middle  
9 and Upper Columbia River Basin can have signifi-  
10 cant benefits for human health and for fish and  
11 wildlife throughout the entire Basin; and

12 (15) with regard to the Flathead River Basin,  
13 in the easternmost portion of the Columbia River  
14 Basin—

15 (A) the Flathead River Basin—

16 (i) has high water quality and aquatic  
17 biodiversity;

18 (ii) supports endangered species and  
19 species of special concern listed under  
20 United States and Canadian law;

21 (iii) contains Flathead Lake, the larg-  
22 est freshwater lake in the western United  
23 States;

24 (iv) is an important wildlife corridor  
25 that is home to the highest density of large

1 and mid-sized carnivores and the highest  
2 diversity of vascular plant species in the  
3 United States; and

4 (v) supports traditional uses such as  
5 hunting, fishing, recreation, guiding and  
6 outfitting, and logging;

7 (B) the Flathead River originates in Brit-  
8 ish Columbia and drains into the State of Mon-  
9 tana;

10 (C) such transboundary waters are pro-  
11 tected from pollution under the Treaty Relating  
12 to the Boundary Waters and Questions Arising  
13 Along the Boundary Between the United States  
14 and Canada, signed at Washington on January  
15 11, 1909 (36 Stat. 2448; TS 548) (commonly  
16 known as the “Boundary Waters Treaty of  
17 1909”);

18 (D) in 1988, the International Joint Com-  
19 mission determined that the impacts of mining  
20 proposals on the environmental values of the  
21 Flathead River Basin, including on water qual-  
22 ity, sport fish populations, and habitat, could  
23 not be fully mitigated;

24 (E) the Flathead River forms the western  
25 and southern boundaries of the world’s first

1 International Peace Park, Waterton–Glacier,  
 2 which was inscribed as a World Heritage Site  
 3 in 1995 under the auspices of the World Herit-  
 4 age Convention, adopted by the United Nations  
 5 Educational, Scientific, and Cultural Organiza-  
 6 tion General Conference on November 16,  
 7 1972;

8 (F) at the 33rd session of the World Her-  
 9 itage Committee in 2009, Decision 33 COM  
 10 7B.22 (Annex 3) 2009, the World Heritage  
 11 Committee urged Canada in 2009 not to permit  
 12 any mining or energy development in the Upper  
 13 Flathead River Basin until the relevant environ-  
 14 mental assessment processes have been com-  
 15 pleted and to provide timely opportunities for  
 16 the United States to participate in environ-  
 17 mental assessment processes; and

18 (G) on February 18, 2010, British Colum-  
 19 bia and Montana entered into a memorandum  
 20 of understanding—

21 (i) to remove mining and oil and gas  
 22 development as permissible land uses in  
 23 the Flathead River Basin;

24 (ii) to cooperate on fish and wildlife  
 25 management;

- 1 (iii) to collaborate on environmental  
 2 assessment of projects of cross border sig-  
 3 nificance with the potential to degrade  
 4 land or water resources; and  
 5 (iv) to share information proactively.

6 **SEC. 3. COLUMBIA RIVER BASIN RESTORATION.**

7 Title I of the Federal Water Pollution Control Act  
 8 (33 U.S.C. 1251 et seq.) is amended by adding at the end  
 9 the following:

10 **“SEC. 123. COLUMBIA RIVER BASIN RESTORATION.**

11 “(a) DEFINITIONS.—

12 “(1) ADMINISTRATOR.—The term ‘Adminis-  
 13 trator’ means the Administrator of the Environ-  
 14 mental Protection Agency.

15 “(2) COLUMBIA RIVER BASIN.—The term ‘Co-  
 16 lumbia River Basin’ means the entire United States  
 17 portion of the Columbia River watershed.

18 “(3) COLUMBIA RIVER BASIN PROVINCES.—The  
 19 term ‘Columbia River Basin Provinces’ means the  
 20 United States portion of each of the Columbia River  
 21 Basin Provinces identified in the Fish and Wildlife  
 22 Plan of the Northwest Power and Conservation  
 23 Council.

24 “(4) COLUMBIA RIVER BASIN TOXICS REDUC-  
 25 TION ACTION PLAN.—



1           “(A) IN GENERAL.—The term ‘Columbia  
2           River Basin Toxics Reduction Action Plan’  
3           means the plan developed by the Environmental  
4           Protection Agency and the Columbia River  
5           Toxics Reduction Working Group in 2010.

6           “(B) INCLUSIONS.—The term ‘Columbia  
7           River Basin Toxics Reduction Action Plan’ in-  
8           cludes any amendments to the plan.

9           “(5) ESTUARY PARTNERSHIP.—The term ‘Es-  
10          tuary Partnership’ means the Lower Columbia River  
11          Estuary Partnership, an entity created by the States  
12          of Oregon and Washington and the Environmental  
13          Protection Agency under section 320.

14          “(6) ESTUARY PLAN.—

15               “(A) IN GENERAL.—The term ‘Estuary  
16               Plan’ means the Estuary Partnership Com-  
17               prehensive Conservation and Management Plan  
18               adopted by the Environmental Protection Agen-  
19               cy and the Governors of Oregon and Wash-  
20               ington on October 20, 1999, under section 320.

21               “(B) INCLUSIONS.—The term ‘Estuary  
22               Plan’ includes any amendments to the plan.

23          “(7) LOWER COLUMBIA RIVER ESTUARY.—The  
24          term ‘Lower Columbia River Basin and Estuary’  
25          means the mainstem Columbia River from the Bon-

1        neville Dam to the Pacific Ocean and tidally influ-  
 2        enced portions of tributaries to the Columbia River  
 3        in that region.

4            “(8) MIDDLE AND UPPER COLUMBIA RIVER  
 5        BASIN.—

6            “(A) IN GENERAL.—The term ‘Middle and  
 7        Upper Columbia River Basin’ means the region  
 8        consisting of the United States portion of the  
 9        Columbia River Basin above Bonneville Dam.

10          “(B) INCLUSIONS.—The term ‘Middle and  
 11        Upper Columbia River Basin’ includes—

12            “(i) the Snake River and associated  
 13            tributaries; and

14            “(ii) the Clark Fork and Pend Oreille  
 15            Rivers and associated tributaries.

16          “(9) NORTH FORK OF THE FLATHEAD RIVER.—  
 17        The term ‘North Fork of the Flathead River’ means  
 18        the region consisting of the North Fork of the Flat-  
 19        head River watershed, beginning in British Colum-  
 20        bia, Canada, ending at the confluence of the North  
 21        Fork and the Middle Fork of the Flathead River in  
 22        the State of Montana.

23          “(10) PROGRAM.—The term ‘Program’ means  
 24        the Columbia River Basin Restoration Program es-  
 25        tablished under subsection (b)(1).

1           “(11) TRANSBOUNDARY FLATHEAD RIVER  
2       BASIN.—The term ‘transboundary Flathead River  
3       Basin’ means the region consisting of the Flathead  
4       River watershed, beginning in British Columbia,  
5       Canada, and ending at Flathead Lake, Montana.

6           “(12) WORKING GROUP.—The term ‘Working  
7       Group’ means—

8               “(A) the Columbia River Basin Toxics Re-  
9               duction Working Group established under sub-  
10              section (c); and

11              “(B) with respect to the Lower Columbia  
12              River Estuary, the Estuary Partnership.

13       “(b) COLUMBIA RIVER BASIN RESTORATION PRO-  
14       GRAM.—

15           “(1) ESTABLISHMENT.—The Administrator  
16       shall establish within the Environmental Protection  
17       Agency a Columbia Basin Restoration Program.

18           “(2) DELEGATION OF AUTHORITY; STAFFING.—  
19       The Administrator shall delegate such authority and  
20       provide such additional staff as are necessary to  
21       carry out the Program.

22           “(3) SCOPE OF PROGRAM.—

23               “(A) IN GENERAL.—The Program shall  
24       consist of a collaborative stakeholder-based ap-

1           proach to reducing toxic contamination  
2           throughout the Columbia River Basin.

3           “(B) RELATIONSHIP TO EXISTING ACTIVITIES.—The Program shall—

4                   “(i) build on the work and collaborative  
5                   structure of the existing Columbia  
6                   River Toxics Reduction Working Group  
7                   representing the Federal Government,  
8                   State, tribal, and local governments, industry,  
9                   and nongovernmental organizations,  
10                  which was convened in 2005 to develop a  
11                  collaborative toxic contamination reduction  
12                  approach for the Columbia River Basin;

13                  “(ii) in the Lower Columbia River  
14                  Basin and Estuary, build on the work and  
15                  collaborative structure of the Estuary  
16                  Partnership; and

17                  “(iii) coordinate with other efforts, including  
18                  activities of other Federal agencies  
19                  in the Columbia River Basin, to avoid duplicating  
20                  activities or functions.

21           “(C) NO EFFECT ON EXISTING AUTHORITY.—The Program shall not modify any legal  
22           or regulatory authority or program in effect as  
23           of the date of enactment of this section, includ-  
24  
25

1 ing the roles of Federal agencies in the Colum-  
2 bia River Basin.

3 “(4) DUTIES.—The Administrator shall—

4 “(A) provide the Working Group with  
5 data, analysis, reports, or other information;

6 “(B) provide technical assistance to the  
7 Working Group, and to States, local govern-  
8 ment entities, and Indian tribes participating in  
9 the Working Group, to assist those agencies  
10 and entities in—

11 “(i) planning or evaluating potential  
12 projects;

13 “(ii) implementing plans;

14 “(iii) implementing projects; and

15 “(iv) monitoring and evaluating the  
16 effectiveness of projects and the implemen-  
17 tation of plans and projects;

18 “(C) provide information to the Working  
19 Group on plans already developed by the Ad-  
20 ministrator or by other Federal agencies to en-  
21 able the Working Group to avoid unnecessary  
22 or duplicative projects or activities;

23 “(D) provide coordination with other Fed-  
24 eral agencies to avoid duplication of activities or  
25 functions;

1           “(E)(i) complete and periodically update  
 2           the Columbia River Basin Toxics Reduction Ac-  
 3           tion Plan and the Estuary Plan; and

4           “(ii) ensure that those plans, when consid-  
 5           ered together and in light of relevant plans de-  
 6           veloped by other Federal or State agencies,  
 7           form a coherent toxic contamination reduction  
 8           strategy for the entire Columbia River Basin;  
 9           and

10           “(F) implement, including by providing  
 11           grants pursuant to subsection (e), projects and  
 12           conduct activities, including monitoring, assess-  
 13           ment, and toxic contamination reduction activi-  
 14           ties, that are—

15                   “(i) identified by the Working Group;

16                   “(ii) included in the Columbia River  
 17           Basin Toxics Reduction Action Plan and  
 18           the Estuary Plan; or

19                   “(iii) identified under subsection (d)  
 20           and located in the Transboundary Flat-  
 21           head River Basin.

22           “(c) STAKEHOLDER WORKING GROUP.—

23           “(1) ESTABLISHMENT.—The Administrator  
 24           shall establish a Columbia River Basin Toxics Re-  
 25           duction Working Group.

1           “(2) MEMBERSHIP.—The members of the  
2       Working Group shall include, at a minimum, rep-  
3       resentatives of—

4           “(A) each State located in whole or in part  
5       within the Columbia River Basin;

6           “(B) each Indian tribe with legally defined  
7       rights and authorities in the Columbia River  
8       Basin that elects to participate on the Working  
9       Group;

10          “(C) local governments located in the Co-  
11       lumbia River Basin;

12          “(D) industries operating in the Columbia  
13       River Basin that affect or could affect water  
14       quality;

15          “(E) electric, water, and wastewater utili-  
16       ties operating in the Columba River Basin;

17          “(F) private landowners in the Columbia  
18       River Basin;

19          “(G) soil and water conservation districts  
20       in the Columbia River Basin;

21          “(H) environmental organizations that  
22       have a presence in the Columbia River Basin;  
23       and

24          “(I) the general public in the Columbia  
25       River Basin.

1           “(3) GEOGRAPHIC REPRESENTATION.—The  
2       Working Group shall include representation from  
3       each of the Columbia River Basin Provinces located  
4       in the Columbia River Basin.

5           “(4) APPOINTMENT.—

6           “(A) NONTRIBAL MEMBERS.—The Admin-  
7       istrator, with the consent of the Governor of  
8       each State located in whole or in part within  
9       the Columbia River Basin, shall appoint non-  
10      tribal members of the Working Group not later  
11      than 180 days after the date of enactment of  
12      this section.

13          “(B) TRIBAL MEMBERS.—The governing  
14      body of each Indian tribe described in para-  
15      graph (2)(B) shall appoint tribal members of  
16      the Working Group not later than 180 days  
17      after the date of enactment of this section.

18          “(5) DUTIES.—The Working Group shall—

19           “(A) assess trends in water quality and  
20      toxic contamination or toxics reduction, includ-  
21      ing trends that affect uses of the water of the  
22      Columbia River Basin;

23           “(B) collect, characterize, and assess data  
24      on toxics and water quality to identify possible  
25      causes of environmental problems;



1           “(C) develop periodic updates to the Co-  
2           lumbia River Basin Toxics Reduction Action  
3           Plan and, in the Estuary, the Estuary Plan;

4           “(D) submit to the Administrator annually  
5           a prioritized list of projects, including moni-  
6           toring, assessment, and toxic contamination re-  
7           duction projects, that would implement the Co-  
8           lumbia River Basin Toxics Reduction Action  
9           Plan or, in the Lower Columbia River Estuary,  
10          the Estuary Plan, for consideration for funding  
11          pursuant to subsection (e); and

12          “(E) monitor the effectiveness of actions  
13          taken pursuant to this section.

14          “(6) LOWER COLUMBIA RIVER ESTUARY.—In  
15          the Lower Columbia River Estuary, the Estuary  
16          Partnership shall function as the Working Group  
17          and execute the duties of the Working Group de-  
18          scribed in this subsection for such time as the Estu-  
19          ary Partnership is the management conference for  
20          the Lower Columbia River National Estuary Pro-  
21          gram.

22          “(7) PARTICIPATION BY STATES.—At the dis-  
23          cretion of the Governor of a State, the State—

1           “(A) may elect not to participate in the  
2           Working Group established under this para-  
3           graph; and

4           “(B) may provide comments to the Admin-  
5           istrator on the prioritized list of projects sub-  
6           mitted pursuant to paragraph (5)(D).

7           “(d) TRANSBOUNDARY FLATHEAD RIVER BASIN.—

8           “(1) SHORT TITLE.—This subsection may be  
9           cited as the ‘Transboundary Flathead River Basin  
10          Protection Act of 2010’.

11          “(2) ACTION BY PRESIDENT.—The President  
12          shall take steps to preserve and protect the unique,  
13          pristine area of the transboundary Flathead River,  
14          with a particular focus on the North Fork of the  
15          Flathead River.

16          “(3) TRANSBOUNDARY COOPERATION.—In tak-  
17          ing such steps, the President may engage in negotia-  
18          tions with the Government of Canada to establish an  
19          executive agreement, or other appropriate tool, to  
20          ensure permanent protection for the North Fork of  
21          the Flathead River watershed and the adjacent area  
22          of Glacier-Waterton National Park.

23          “(4) PARTICIPATION IN COOPERATIVE EF-  
24          FORTS.—

1           “(A) IN GENERAL.—The President may  
 2 participate in cross-border collaborations with  
 3 Canada on environmental assessments of any  
 4 project of cross-border significance that has the  
 5 potential to degrade land or water resources by  
 6 providing for on-going involvement of appro-  
 7 priate Federal agencies of the United States in  
 8 such assessments.

9           “(B) COLLABORATION.—In carrying out  
 10 subparagraph (A), the President shall include  
 11 in collaborations under that subparagraph ap-  
 12 propriate Federal agencies, such as—

13                   “(i) the Environmental Protection  
 14 Agency;

15                   “(ii) the Department of Interior;

16                   “(iii) the United States Fish and  
 17 Wildlife Service;

18                   “(iv) the National Park Service;

19                   “(v) the Forest Service; and

20                   “(vi) such other agencies as the Presi-  
 21 dent determines to be appropriate.

22           “(5) ASSESSMENTS AND PROJECTS.—The  
 23 President, acting through the Administrator, may  
 24 provide grants under subsection (e) for the following  
 25 purposes:

1           “(A) Developing baseline environmental  
2           conditions in the transboundary Flathead River  
3           Basin.

4           “(B) Assessing the impact of any proposed  
5           projects on the natural resources, water quality,  
6           wildlife, or environmental conditions in the  
7           transboundary Flathead River Basin.

8           “(C) Implementation of transboundary co-  
9           operative efforts identified by the governments  
10          of the United States and Canada under sub-  
11          section (b)(2).

12          “(D) Projects to protect and preserve the  
13          natural resources, water quality, wildlife, and  
14          environmental conditions in the transboundary  
15          Flathead River Basin.

16          “(e) GRANTS.—

17               “(1) IN GENERAL.—The Administrator may  
18               provide grants to State and regional water pollution  
19               control agencies and entities, other State and local  
20               government entities, Indian tribes, nonprofit private  
21               agencies, institutions, organizations, and individuals  
22               for use in paying costs incurred in carrying out ac-  
23               tivities that would develop or implement plans or  
24               projects updated, developed, or authorized under this

1 section (including for purposes described in sub-  
2 section (d)(4)).

3 “(2) FEDERAL SHARE.—

4 “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), the Federal share of the cost  
6 of any project or activity carried out using  
7 funds from a grant provided to any person (in-  
8 cluding a State, interstate, or regional agency,  
9 an Indian tribe, or a local government entity)  
10 under this subsection for a fiscal year—

11 “(i) shall not exceed 75 percent of the  
12 total cost of the project or activity; and

13 “(ii) shall be made on condition that  
14 the non-Federal share of that total cost  
15 shall be provided from non-Federal  
16 sources.

17 “(B) EXCEPTIONS.—With respect to cost-  
18 sharing for a grant provided under this sub-  
19 section—

20 “(i) an Indian tribe may use Federal  
21 funds for the non-Federal share; and

22 “(ii) the Administrator may increase  
23 the Federal share under such cir-  
24 cumstances as the Administrator deter-  
25 mines to be appropriate.

1           “(3) ALLOCATION.—In making grants using  
2 funds appropriated to carry out this section for fis-  
3 cal years 2012 and 2013, the Administrator shall  
4 use—

5                   “(A) not less than  $\frac{1}{3}$  of the funds to make  
6 grants for projects, programs, and studies in  
7 the Lower Columbia River Estuary; and

8                   “(B) not less than  $\frac{1}{3}$  of the funds to make  
9 grants for projects, programs, and studies in  
10 the Middle and Upper Columbia River Basin.

11           “(4) REPORTING.—Not later than 18 months  
12 after the date of receipt of a grant under this sub-  
13 section, and biennially thereafter for the duration of  
14 the grant, a person (including a State, interstate, or  
15 regional agency, an Indian tribe, or a local govern-  
16 ment entity) that receives a grant under this sub-  
17 section shall submit to the Administrator a report  
18 that describes the progress being made in achieving  
19 the purposes of this section using funds from the  
20 grant.

21           “(f) ANNUAL BUDGET PLAN.—The President, as  
22 part of the annual budget submission of the President to  
23 Congress under section 1105(a) of title 31, United States  
24 Code, shall submit information regarding each Federal  
25 agency involved in protection and restoration of the Co-

1 lumbia River Basin, including an interagency crosscut  
2 budget that displays for each Federal agency—

3           “(1) the amounts obligated for the preceding  
4       fiscal year for protection and restoration projects,  
5       programs, and studies relating to the Columbia  
6       River Basin;

7           “(2) the estimated budget for the current fiscal  
8       year for protection and restoration projects, pro-  
9       grams, and studies relating to the Columbia River  
10      Basin; and

11          “(3) the proposed budget for protection and  
12      restoration projects, programs, and studies relating  
13      to the Columbia River Basin.

14          “(g) AUTHORIZATION OF APPROPRIATIONS.—There  
15      is authorized to be appropriated to the Administrator to  
16      carry out this section \$33,000,000 for each of fiscal years  
17      2012 through 2017, to remain available until expended.”.

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