Calendar No. 681

111TH CONGRESS 2D SESSION

S. 4016

[Report No. 111-358]

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2010

Mrs. Boxer, from the Committee on Environment and Public Works, reported the following original bill; which was read twice and placed on the calendar

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—

1	(1) the Columbia River is the largest river in
2	the Pacific Northwest by volume;
3	(2) the river is 1,253 miles long, with a drain-
4	age basin that includes 259,000 square miles, ex-
5	tending to 7 States and British Columbia, Canada,
6	and including all or part of—
7	(A) multiple national parks;
8	(B) components of the National Wilderness
9	Preservation System;
10	(C) National Monuments;
11	(D) National Scenic Areas;
12	(E) National Recreation Areas; and
13	(F) other areas managed for conservation.
14	(3) the Columbia River Basin and associated
15	tributaries (referred to in this Act as the "Basin")
16	provide significant ecological and economic benefits
17	to the Pacific Northwest and the entire United
18	States;
19	(4) traditionally, the Basin includes more than
20	6,000,000 acres of irrigated agricultural land and
21	produces more hydroelectric power than any other
22	North American river;
23	(5) the Basin—
24	(A) historically constituted the largest
25	salmon-producing river system in the world.

1	with annual returns peaking at as many as
2	30,000,000 fish; and
3	(B) as of the date of enactment of this
4	Act—
5	(i) supports economically important
6	commercial and recreational fisheries; and
7	(ii) is home to 13 species of salmonids
8	and steelhead that area listed as threat-
9	ened species or endangered species under
10	the Endangered Species Act of 1973 (16
11	U.S.C. 1531 et seq.);
12	(6) the Lower Columbia River Estuary
13	stretches 146 miles from the Bonneville Dam to the
14	mouth of the Pacific Ocean, and much of that area
15	is contaminated with toxic chemicals;
16	(7) the Middle and Upper Columbia River
17	Basin includes 1,050 miles of the mainstem Colum-
18	bia River upstream of the Bonneville Dam, including
19	the 1,040 miles of the largest tributary, the Snake
20	River, and all of the tributaries to both rivers;
21	(8) toxic contamination in the Basin poses a
22	significant threat to the environment and human
23	health;
24	(9) the nuclear and toxic contamination at the
25	Hanford Nuclear Reservation and the toxic contami-

- nation at Superfund sites throughout the Basin present an ongoing risk of contamination throughout the Basin;
 - (10) polychlorinated biphenyls (commonly known as "PCBs") and polycyclic aromatic hydrocarbons that have been found in the tissues of salmonids and their prey at concentrations exceeding levels of concern;
 - (11) legacy contaminants, including PCBs and dichlorodiphenyltrichloroethane, the pesticide commonly known as "DDT", were banned in 1972, but are still detected in river water, sediments, and juvenile Chinook salmon;
 - (12) pesticides and emerging contaminants, such as pharmaceutical and personal care products, have been detected in river water and may have effects including hormone disruption and impacts on behavior and reproduction;
 - (13) the Environmental Protection Agency's Columbia River Basin Fish Contaminant Survey detected the presence of 92 priority pollutants, including PCBs and DDE (a breakdown of DDT), in fish that are consumed by members of Indian tribes in the Columbia River Basin, as well as by other individuals consuming fish throughout the Columbia

1	River Basin, and a fish consumption survey by the
2	Columbia River Intertribal Fish Commission showed
3	that tribal members were eating 6 to 11 times more
4	fish than the estimated national average of the Envi-
5	ronmental Protection Agency;
6	(14) toxic contamination in the Middle and
7	Upper Columbia River Basins have a direct impact
8	on water quality in the Lower Columbia River Estu-
9	ary, and reducing toxic contamination in the Middle
10	and Upper Columbia River Basin can have signifi-
11	cant benefits for human health and for fish and
12	wildlife throughout the entire Basin; and
13	(15) with regard to the Flathead River Basin,
14	in the easternmost portion of the Columbia River
15	Basin—
16	(A) the Flathead River Basin—
17	(i) has high water quality and aquation
18	biodiversity;
19	(ii) supports endangered species and
20	species of special concern listed under
21	United States and Canadian law;
22	(iii) contains Flathead Lake, the larg-
23	est freshwater lake in the western United
24	States;

1	(iv) is an important wildlife corridor
2	that is home to the highest density of large
3	and mid-sized carnivores and the highest
4	diversity of vascular plant species in the
5	United States; and
6	(v) supports traditional uses such as
7	hunting, fishing, recreation, guiding and
8	outfitting, and logging;
9	(B) the Flathead River originates in Brit-
10	ish Columbia and drains into the State of Mon-
11	tana;
12	(C) such transboundary waters are pro-
13	tected from pollution under the Treaty Relating
14	to the Boundary Waters and Questions Arising
15	Along the Boundary Between the United States
16	and Canada, signed at Washington on January
17	11, 1909 (36 Stat. 2448; TS 548) (commonly
18	known as the "Boundary Waters Treaty of
19	1909'');
20	(D) in 1988, the International Joint Com-
21	mission determined that the impacts of mining
22	proposals on the environmental values of the
23	Flathead River Basin, including on water qual-
24	ity, sport fish populations, and habitat, could
25	not be fully mitigated;

1	(E) the Flathead River forms the western
2	and southern boundaries of the world's first
3	International Peace Park, Waterton-Glacier
4	which was inscribed as a World Heritage Site
5	in 1995 under the auspices of the World Herit
6	age Convention, adopted by the United Nations
7	Educational, Scientific, and Cultural Organiza-
8	tion General Conference on November 16
9	1972;
10	(F) at the 33rd session of the World Her-
11	itage Committee in 2009, Decision 33 COM
12	7B.22 (Annex 3) 2009, the World Heritage
13	Committee urged Canada in 2009 not to permit
14	any mining or energy development in the Upper
15	Flathead River Basin until the relevant environ-
16	mental assessment processes have been com-
17	pleted and to provide timely opportunities for
18	the United States to participate in environ-
19	mental assessment processes; and
20	(G) on February 18, 2010, British Colum-
21	bia and Montana entered into a memorandum
22	of understanding—
23	(i) to remove mining and oil and gas
24	development as permissible land uses in
25	the Flathead River Basin;

1	(ii) to cooperate on fish and wildlife
2	management;
3	(iii) to collaborate on environmental
4	assessment of projects of cross border sig-
5	nificance with the potential to degrade
6	land or water resources; and
7	(iv) to share information proactively;
8	SEC. 3. COLUMBIA RIVER BASIN RESTORATION.
9	Title I of the Federal Water Pollution Control Act
10	(33 U.S.C. 1251 et seq.) is amended by adding at the end
11	the following:
12	"SEC. 123. COLUMBIA RIVER BASIN RESTORATION.
13	"(a) Definitions.—
14	"(1) Administrator.—The term 'Adminis-
15	trator' means the Administrator of the Environ-
16	mental Protection Agency.
17	"(2) COLUMBIA RIVER BASIN.—The term 'Co-
18	lumbia River Basin' means the entire United States
19	portion of the Columbia River watershed.
20	"(3) Columbia river basin provinces.—The
21	term 'Columbia River Basin Provinces' means the
22	United States portion of each of the Columbia River
23	Basin Provinces identified in the Fish and Wildlife
24	Plan of the Northwest Power and Conservation
25	Council.

1	"(4) Columbia river basin toxics reduc-
2	TION ACTION PLAN.—
3	"(A) In General.—The term 'Columbia
4	River Basin Toxics Reduction Action Plan'
5	means the plan developed by the Environmental
6	Protection Agency and the Columbia River
7	Toxics Reduction Working Group in 2010.
8	"(B) Inclusions.—The term 'Columbia
9	River Basin Toxics Reduction Action Plan' in-
10	cludes any amendments to the plan.
11	"(5) ESTUARY PARTNERSHIP.—The term 'Es-
12	tuary Partnership' means the Lower Columbia River
13	Estuary Partnership, an entity created by the States
14	of Oregon and Washington and the Environmental
15	Protection Agency under section 320.
16	"(6) Estuary Plan.—
17	"(A) IN GENERAL.—The term 'Estuary
18	Plan' means the Estuary Partnership Com-
19	prehensive Conservation and Management Plan
20	adopted by the Environmental Protection Agen-
21	cy and the Governors of Oregon and Wash-
22	ington on October 20, 1999, under section 320.
23	"(B) Inclusions.—The term 'Estuary
24	Plan' includes any amendments to the plan.

1	"(7) Lower Columbia River Estuary.—The
2	term 'Lower Columbia River Basin and Estuary'
3	means the mainstem Columbia River from the Bon-
4	neville Dam to the Pacific Ocean and tidally influ-
5	enced portions of tributaries to the Columbia River
6	in that region.
7	"(8) Middle and upper columbia river
8	BASIN.—
9	"(A) IN GENERAL.—The term 'Middle and
10	Upper Columbia River Basin' means the region
11	consisting of the United States portion of the
12	Columbia River Basin above Bonneville Dam.
13	"(B) Inclusions.—The term 'Middle and
14	Upper Columbia River Basin' includes—
15	"(i) the Snake River and associated
16	tributaries; and
17	"(ii) the Clark Fork and Pend Oreille
18	Rivers and associated tributaries.
19	"(9) North fork of the flathead river.—
20	The term 'North Fork of the Flathead River' means
21	the region consisting of the North Fork of the Flat-
22	head River watershed, beginning in British Colum-
23	bia, Canada, ending at the confluence of the North
24	Fork and the Middle Fork of the Flathead River in
25	the State of Montana.

1	"(10) Program.—The term 'Program' means
2	the Columbia River Basin Restoration Program es-
3	tablished under subsection $(b)(1)$.
4	"(11) Transboundary flathead river
5	BASIN.—The term 'transboundary Flathead River
6	Basin' means the region consisting of the Flathead
7	River watershed, beginning in British Columbia,
8	Canada, and ending at Flathead Lake, Montana.
9	"(12) Working Group.—The term 'Working
10	Group' means—
11	"(A) the Columbia River Basin Toxics Re-
12	duction Working Group established under sub-
13	section (e); and
14	"(B) with respect to the Lower Columbia
15	River Estuary, the Estuary Partnership.
16	"(b) Columbia River Basin Restoration Pro-
17	GRAM.—
18	"(1) Establishment.—The Administrator
19	shall establish within the Environmental Protection
20	Agency a Columbia Basin Restoration Program.
21	"(2) Delegation of Authority; staffing.—
22	The Administrator shall delegate such authority and
23	provide such additional staff as are necessary to
24	carry out the Program.
25	"(3) Scope of Program.—

1	"(A) In General.—The Program shall
2	consist of a collaborative stakeholder-based ap-
3	proach to reducing toxic contamination
4	throughout the Columbia River Basin.
5	"(B) Relationship to existing activi-
6	TIES.—The Program shall—
7	"(i) build on the work and collabo-
8	rative structure of the existing Columbia
9	River Toxics Reduction Working Group
10	representing the Federal Government,
11	State, tribal, and local governments, indus-
12	try, and nongovernmental organizations,
13	which was convened in 2005 to develop a
14	collaborative toxic contamination reduction
15	approach for the Columbia River Basin;
16	"(ii) in the Lower Columbia River
17	Basin and Estuary, build on the work and
18	collaborative structure of the Estuary
19	Partnership; and
20	"(iii) coordinate with other efforts, in-
21	cluding activities of other Federal agencies
22	in the Columbia River Basin, to avoid du-
23	plicating activities or functions.
24	"(C) No effect on existing author-
25	ITY.—The Program shall not modify any legal

1	or regulatory authority or program in effect as
2	of the date of enactment of this section, includ-
3	ing the roles of Federal agencies in the Colum-
4	bia River Basin.
5	"(4) Duties.—The Administrator shall—
6	"(A) provide the Working Group with
7	data, analysis, reports, or other information;
8	"(B) provide technical assistance to the
9	Working Group, and to States, local govern-
10	ment entities, and Indian tribes participating in
11	the Working Group, to assist those agencies
12	and entities in—
13	"(i) planning or evaluating potential
14	projects;
15	"(ii) implementing plans;
16	"(iii) implementing projects; and
17	"(iv) monitoring and evaluating the
18	effectiveness of projects and the implemen-
19	tation of plans and projects;
20	"(C) provide information to the Working
21	Group on plans already developed by the Ad-
22	ministrator or by other Federal agencies to en-
23	able the Working Group to avoid unnecessary
24	or duplicative projects or activities;

1	"(D) provide coordination with other Fed-
2	eral agencies to avoid duplication of activities or
3	functions;
4	"(E)(i) complete and periodically update
5	the Columbia River Basin Toxics Reduction Ac-
6	tion Plan and the Estuary Plan; and
7	"(ii) ensure that those plans, when consid-
8	ered together and in light of relevant plans de-
9	veloped by other Federal or State agencies,
10	form a coherent toxic contamination reduction
11	strategy for the entire Columbia River Basin;
12	and
13	"(F) implement, including by providing
14	grants pursuant to subsection (e), projects and
15	conduct activities, including monitoring, assess-
16	ment, and toxic contamination reduction activi-
17	ties, that are—
18	"(i) identified by the Working Group;
19	"(ii) included in the Columbia River
20	Basin Toxics Reduction Action Plan and
21	the Estuary Plan; or
22	"(iii) identified under subsection (d)
23	and located in the Transboundary Flat-
24	head River Basin.
25	"(c) Stakeholder Working Group.—

1	"(1) ESTABLISHMENT.—The Administrator
2	shall establish a Columbia River Basin Toxics Re-
3	duction Working Group.
4	"(2) Membership.—The members of the
5	Working Group shall include, at a minimum, rep-
6	resentatives of—
7	"(A) each State located in whole or in part
8	within the Columbia River Basin;
9	"(B) each Indian tribe with legally defined
10	rights and authorities in the Columbia River
11	Basin that elects to participate on the Working
12	Group;
13	"(C) local governments located in the Co-
14	lumbia River Basin;
15	"(D) industries operating in the Columbia
16	River Basin that affect or could affect water
17	quality;
18	"(E) electric, water, and wastewater utili-
19	ties operating in the Columba River Basin;
20	"(F) private landowners in the Columbia
21	River Basin;
22	"(G) soil and water conservation districts
23	in the Columbia River Rasin.

1	"(H) environmental organizations that
2	have a presence in the Columbia River Basin;
3	and
4	"(I) the general public in the Columbia
5	River Basin.
6	"(3) Geographic Representation.—The
7	Working Group shall include representation from
8	each of the Columbia River Basin Provinces located
9	in the Columbia River Basin.
10	"(4) Appointment.—
11	"(A) Nontribal members.—The Admin-
12	istrator, with the consent of the Governor of
13	each State located in whole or in part within
14	the Columbia River Basin, shall appoint non-
15	tribal members of the Working Group not later
16	than 180 days after the date of enactment of
17	this section.
18	"(B) Tribal members.—The governing
19	body of each Indian tribe described in para-
20	graph (2)(B) shall appoint tribal members of
21	the Working Group not later than 180 days
22	after the date of enactment of this section.
23	"(5) Duties.—The Working Group shall—
24	"(A) assess trends in water quality and
25	toxic contamination or toxics reduction, includ-

1	ing trends that affect uses of the water of the
2	Columbia River Basin;
3	"(B) collect, characterize, and assess data
4	on toxics and water quality to identify possible
5	causes of environmental problems;
6	"(C) develop periodic updates to the Co-
7	lumbia River Basin Toxics Reduction Action
8	Plan and, in the Estuary, the Estuary Plan;
9	"(D) submit to the Administrator annually
10	a prioritized list of projects, including moni-
11	toring, assessment, and toxic contamination re-
12	duction projects, that would implement the Co-
13	lumbia River Basin Toxics Reduction Action
14	Plan or, in the Lower Columbia River Estuary,
15	the Estuary Plan, for consideration for funding
16	pursuant to subsection (e); and
17	"(E) monitor the effectiveness of actions
18	taken pursuant to this section.
19	"(6) Lower Columbia River Estuary.—In
20	the Lower Columbia River Estuary, the Estuary
21	Partnership shall function as the Working Group
22	and execute the duties of the Working Group de-
23	scribed in this subsection for such time as the Estu-
24	ary Partnership is the management conference for

1	the Lower Columbia River National Estuary Pro-
2	gram.
3	"(7) Participation by States.—At the dis-
4	cretion of the Governor of a State, the State—
5	"(A) may elect not to participate in the
6	Working Group established under this para-
7	graph; and
8	"(B) may provide comments to the Admin-
9	istrator on the prioritized list of projects sub-
10	mitted pursuant to paragraph (5)(D).
11	"(d) Transboundary Flathead River Basin.—
12	"(1) Short title.—This subsection may be
13	cited as the 'Transboundary Flathead River Basin
14	Protection Act of 2010'.
15	"(2) ACTION BY PRESIDENT.—The President
16	shall take steps to preserve and protect the unique,
17	pristine area of the transboundary Flathead River,
18	with a particular focus on the North Fork of the
19	Flathead River.
20	"(3) Transboundary cooperation.—In tak-
21	ing such steps, the President may engage in negotia-
22	tions with the Government of Canada to establish an
23	executive agreement, or other appropriate tool, to
24	ensure permanent protection for the North Fork of

1	the Flathead River watershed and the adjacent area
2	of Glacier-Waterton National Park.
3	"(4) Participation in cooperative ef-
4	FORTS.—
5	"(A) In General.—The President may
6	participate in cross-border collaborations with
7	Canada on environmental assessments of any
8	project of cross-border significance that has the
9	potential to degrade land or water resources by
10	providing for on-going involvement of appro-
11	priate Federal agencies of the United States in
12	such assessments.
13	"(B) Collaboration.—In carrying out
14	subparagraph (A), the President shall include
15	in collaborations under that subparagraph ap-
16	propriate Federal agencies, such as—
17	"(i) the Environmental Protection
18	Agency;
19	"(ii) the Department of Interior;
20	"(iii) the United States Fish and
21	Wildlife Service;
22	"(iv) the National Park Service;
23	"(v) the Forest Service; and
24	"(vi) such other agencies as the Presi-
25	dent determines to be appropriate.

1	"(5) Assessments and projects.—The
2	President, acting through the Administrator, may
3	provide grants under subsection (e) for the following
4	purposes:
5	"(A) Developing baseline environmental
6	conditions in the transboundary Flathead River
7	Basin.
8	"(B) Assessing the impact of any proposed
9	projects on the natural resources, water quality,
10	wildlife, or environmental conditions in the
11	transboundary Flathead River Basin.
12	"(C) Implementation of transboundary co-
13	operative efforts identified by the governments
14	of the United States and Canada under sub-
15	section $(b)(2)$.
16	"(D) Projects to protect and preserve the
17	natural resources, water quality, wildlife, and
18	environmental conditions in the transboundary
19	Flathead River Basin.
20	"(e) Grants.—
21	"(1) In General.—The Administrator may
22	provide grants to State and regional water pollution
23	control agencies and entities, other State and local
24	government entities, Indian tribes, nonprofit private
25	agencies, institutions, organizations, and individuals

1	for use in paying costs incurred in carrying out ac-
2	tivities that would develop or implement plans or
3	projects updated, developed, or authorized under this
4	section (including for purposes described in sub-
5	section $(d)(4)$.
6	"(2) Federal share.—
7	"(A) In general.—Except as provided in
8	subparagraph (B), the Federal share of the cost
9	of any project or activity carried out using
10	funds from a grant provided to any person (in-
11	cluding a State, interstate, or regional agency,
12	an Indian tribe, or a local government entity)
13	under this subsection for a fiscal year—
14	"(i) shall not exceed 75 percent of the
15	total cost of the project or activity; and
16	"(ii) shall be made on condition that
17	the non-Federal share of that total cost
18	shall be provided from non-Federal
19	sources.
20	"(B) Exceptions.—With respect to cost-
21	sharing for a grant provided under this sub-
22	section—
23	"(i) an Indian tribe may use Federal
24	funds for the non-Federal share; and

1	"(ii) the Administrator may increase
2	the Federal share under such cir-
3	cumstances as the Administrator deter-
4	mines to be appropriate.
5	"(3) Allocation.—In making grants using
6	funds appropriated to carry out this section for fis-
7	cal years 2012 and 2013, the Administrator shall
8	use—
9	"(A) not less than 1/3 of the funds to make
10	grants for projects, programs, and studies in
11	the Lower Columbia River Estuary; and
12	"(B) not less than $\frac{1}{3}$ of the funds to make
13	grants for projects, programs, and studies in
14	the Middle and Upper Columbia River Basin.
15	"(4) Reporting.—Not later than 18 months
16	after the date of receipt of a grant under this sub-
17	section, and biennially thereafter for the duration of
18	the grant, a person (including a State, interstate, or
19	regional agency, an Indian tribe, or a local govern-
20	ment entity) that receives a grant under this sub-
21	section shall submit to the Administrator a report
22	that describes the progress being made in achieving
23	the purposes of this section using funds from the
24	grant.

- 1 "(f) Annual Budget Plan.—The President, as
- 2 part of the annual budget submission of the President to
- 3 Congress under section 1105(a) of title 31, United States
- 4 Code, shall submit information regarding each Federal
- 5 agency involved in protection and restoration of the Co-
- 6 lumbia River Basin, including an interagency crosscut
- 7 budget that displays for each Federal agency—
- 8 "(1) the amounts obligated for the preceding
- 9 fiscal year for protection and restoration projects,
- programs, and studies relating to the Columbia
- 11 River Basin;
- 12 "(2) the estimated budget for the current fiscal
- year for protection and restoration projects, pro-
- 14 grams, and studies relating to the Columbia River
- 15 Basin; and
- 16 "(3) the proposed budget for protection and
- 17 restoration projects, programs, and studies relating
- to the Columbia River Basin.
- 19 "(g) AUTHORIZATION OF APPROPRIATIONS.—There
- 20 is authorized to be appropriated to the Administrator to
- 21 carry out this section \$33,000,000 for each of fiscal years
- 22 2012 through 2017, to remain available until expended.".

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[Report No. 111-358]

A BILL

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

December 8, 2010

Read twice and placed on the calendar