

117TH CONGRESS
2D SESSION

S. 5215

To amend the Omnibus Public Land Management Act of 2009 to authorize the modification of transferred works to increase public benefits and other project benefits as part of extraordinary operation and maintenance work, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2022

Mrs. FEINSTEIN (for herself and Mr. PADILLA) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Omnibus Public Land Management Act of 2009 to authorize the modification of transferred works to increase public benefits and other project benefits as part of extraordinary operation and maintenance work, 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 “Collaborative Modifica-
5 tions to Aging Infrastructure Projects Act”.

1 **SEC. 2. EXTRAORDINARY OPERATION AND MAINTENANCE**

2 **WORK; PROJECT MODIFICATION.**

3 (a) DEFINITIONS.—Section 9601 of the Omnibus
4 Public Land Management Act of 2009 (43 U.S.C. 510)
5 is amended—

6 (1) by redesignating paragraphs (1), (2), (3),
7 (4), (5), (6), and (7) as paragraphs (4), (7), (9),
8 (10), (11), (12), and (3), respectively, and moving
9 the paragraphs so as to appear in numerical order;
10 (2) by inserting before paragraph (3) (as so re-
11 designated) the following:

12 “(1) ADVERSE IMPACT.—The term ‘adverse im-
13 pact’ means, with respect to a project modification,
14 a reduction in water quantity or quality or a change
15 in the timing of water deliveries available to a
16 project beneficiary from the modified project as com-
17 pared to the water quantity or quality or timing of
18 water deliveries from—

19 “(A) the project with the original capacity
20 restored, if the extraordinary operation and
21 maintenance work under section 9603 is in-
22 tended to restore lost project capacity;

23 “(B) the project prior to undertaking the
24 planning and design, if the extraordinary oper-
25 ation and maintenance work under section 9603

1 is for any purpose other than to restore lost
 2 project capacity; or

3 “(C) project operations of the modified
 4 project without an increase in benefits for a
 5 new project beneficiary under section
 6 9603(e)(1)(E).

7 “(2) DISADVANTAGED COMMUNITY.—The term
 8 ‘disadvantaged community’ has the meaning given
 9 the term ‘low-income community’ in section 45D(e)
 10 of the Internal Revenue Code of 1986.”;

11 (3) by inserting after paragraph (4) (as so re-
 12 designated) the following:

13 “(5) NEW BENEFIT.—The term ‘new benefit’
 14 means the increase in benefits of the modified
 15 project compared to the benefits provided by—

16 “(A) the project with the original capacity
 17 restored, if the extraordinary operation and
 18 maintenance work under section 9603 is in-
 19 tended to restore lost project capacity; or

20 “(B) the project prior to undertaking the
 21 planning and design, if the extraordinary oper-
 22 ation and maintenance work under section 9603
 23 is for any purpose other than to restore lost
 24 project capacity.

1 “(6) PROJECT BENEFICIARY.—The term
 2 ‘project beneficiary’ means any entity that has a re-
 3 payment, long-term water service, or other form of
 4 long-term contract or agreement executed pursuant
 5 to the Act of June 17, 1902 (32 Stat. 388, chapter
 6 1093), and Acts supplemental to and amendatory of
 7 that Act (43 U.S.C. 371 et seq.), for water supply
 8 from the project.”; and

9 (4) by inserting after paragraph (7) (as so re-
 10 designated) the following:

11 “(8) PUBLIC BENEFIT.—The term ‘public ben-
 12 efit’, with respect to a modified project, means—

13 “(A) a public benefit identified under the
 14 reclamation laws; or

15 “(B) a drinking water benefit for 1 or
 16 more disadvantaged communities, including
 17 through groundwater recharge, if—

18 “(i) the drinking water meets applica-
 19 ble regulatory standards;

20 “(ii) the drinking water benefit ex-
 21 ceeds express mitigation or compliance re-
 22 quirements under Federal or State law;

23 “(iii) the modified project reduces the
 24 unit cost per volume, improves water qual-
 25 ity, or increases the reliability or quantity

1 of the drinking water supply of the dis-
2 advantaged community as compared to the
3 condition of the drinking water or other
4 sources of drinking water available before
5 the modification of the project;

6 “(iv) the drinking water benefit is
7 quantified in a public process to determine
8 the scope of funding; and

9 “(v) negative impacts on water quality
10 for other communities are not caused as
11 part of the modified project.”.

12 (b) REIMBURSEMENT OF COSTS.—Section 9603(b) of
13 the Omnibus Public Land Management Act of 2009 (43
14 U.S.C. 510b(b)) is amended—

15 (1) in paragraph (2), by striking “the costs”
16 and inserting “from the Aging Infrastructure Ac-
17 count established by subsection (d)(1) the costs, in-
18 cluding reimbursable costs and nonreimbursable
19 costs,”; and

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

21 “(4) DETERMINATION OF NONREIMBURSABLE
22 COSTS.—Any costs advanced under paragraph (2)
23 that are allocated to nonreimbursable purposes of
24 the project, including costs to restore or add a public

1 benefit, shall be considered to be nonreimbursable
 2 costs.”.

3 (c) AGING INFRASTRUCTURE ACCOUNT CONFORMING
 4 AMENDMENTS.—Section 9603(d) of the Omnibus Public
 5 Land Management Act of 2009 (43 U.S.C. 510b(d)) is
 6 amended—

7 (1) in paragraph (1), in the matter preceding
 8 subparagraph (A), by striking “the funds” and in-
 9 serting “reimbursable funds”;

10 (2) in paragraph (2)—

11 (A) by striking “to fund” and inserting “to
 12 fund,”; and

13 (B) by striking “the funds for” and insert-
 14 ing “reimbursable funds for,”;

15 (3) in paragraph (3)(A), by striking “the
 16 amounts” and inserting “the reimbursable
 17 amounts”; and

18 (4) in paragraph (4)(B)(i), by inserting “, in-
 19 cluding projects under subsection (e)” after “this
 20 section”.

21 (d) AUTHORIZATION TO MODIFY TRANSFERRED
 22 WORKS TO INCREASE PUBLIC BENEFITS AND OTHER
 23 PROJECT BENEFITS AS PART OF EXTRAORDINARY OPER-
 24 ATION AND MAINTENANCE WORK.—Section 9603 of the
 25 Omnibus Public Land Management Act of 2009 (43

1 U.S.C. 510b) is amended by adding at the end the fol-
 2 lowing:

3 “(e) AUTHORIZATION TO MODIFY TRANSFERRED
 4 WORKS TO INCREASE PUBLIC BENEFITS AND OTHER
 5 PROJECT BENEFITS AS PART OF EXTRAORDINARY OPER-
 6 ATION AND MAINTENANCE WORK.—

7 “(1) AUTHORIZATION; REQUIREMENTS.—

8 “(A) IN GENERAL.—The Secretary, in con-
 9 sultation with any transferred works operating
 10 entity and any project beneficiaries and as part
 11 of extraordinary operation and maintenance
 12 work under this section, may develop and carry
 13 out a proposal to modify project features for
 14 transferred works to increase public benefits
 15 and other project benefits, including carrying
 16 out a feasibility study and conducting any ap-
 17 plicable environmental analysis required for the
 18 proposal, subject to subparagraphs (B) through
 19 (G).

20 “(B) MAXIMUM COST.—The maximum
 21 amount that may be added to the original
 22 project cost as a result of a project modification
 23 under subparagraph (A) shall not exceed—

24 “(i) an amount equal to 25 percent of
 25 the original cost of the project, in the case

1 of a project for which the original cost of
2 the project exceeds \$100,000,000; or

3 “(ii) \$25,000,000, in the case of a
4 project for which the original cost of the
5 project is not more than \$100,000,000.

6 “(C) PUBLIC BENEFITS.—In the case of a
7 project modification under subparagraph (A),
8 not less than 50 percent of the new benefits
9 provided by the modification of the project shall
10 be public benefits.

11 “(D) WRITTEN CONSENT REQUIRED.—A
12 project modification under subparagraph (A)
13 shall not be constructed until the date on which
14 the Secretary has obtained the written consent
15 of—

16 “(i) the transferred works operating
17 entity, if applicable; and

18 “(ii) consistent with paragraph (2),
19 any project beneficiary that would experi-
20 ence an adverse impact as a result of the
21 modification of the project.

22 “(E) ADVERSE IMPACT.—Any benefits that
23 accrue to a new project beneficiary resulting
24 from operations of the modified project shall
25 not be increased without the consent of existing

1 project beneficiaries that would experience an
 2 adverse impact as a result of the modification
 3 of the project.

4 “(F) REIMBURSEMENT OF COSTS.—The
 5 costs of planning, design, and environmental
 6 compliance for a project modification under
 7 subparagraph (A) shall be reimbursed in ac-
 8 cordance with subsection (b), except that any of
 9 the costs that would otherwise be allocated to a
 10 project beneficiary shall be considered nonreim-
 11 bursable if the project beneficiary does not re-
 12 ceive any increase in long-term average annual
 13 water deliveries as a result of the modification.

14 “(G) ELIGIBILITY OF CERTAIN PROJECT
 15 MODIFICATIONS.—If a project modification that
 16 is otherwise eligible under subparagraph (A) is
 17 in the planning, design, or construction phase
 18 as of December 31, 2022, the project modifica-
 19 tion shall remain eligible to be developed under
 20 that subparagraph.

21 “(2) PROCEDURE FOR OBTAINING CONSENT
 22 AND TIME LIMITATION.—

23 “(A) INITIAL DETERMINATION.—The Sec-
 24 retary shall initially determine whether the con-
 25 sent of a project beneficiary is required prior to

1 construction under paragraph (1)(D) based on
2 whether the modification or subsequent oper-
3 ations of the modified project would have any
4 adverse impacts on a project beneficiary.

5 “(B) WRITTEN REQUEST FOR CONSENT.—

6 The Secretary shall provide to the transferred
7 works operating entity, if any, and any project
8 beneficiaries, in writing—

9 “(i) a description of the proposed
10 modification and subsequent operations of
11 the project; and

12 “(ii)(I) a request for consent under
13 paragraph (1)(D); or

14 “(II)(aa) an explanation that the Sec-
15 retary has determined that no consent is
16 required under paragraph (1)(D); and

17 “(bb) a statement that if the project
18 beneficiary believes that the consent of the
19 project beneficiary is required, the project
20 beneficiary shall send to the Secretary a
21 reply not later than 30 days after the date
22 of receipt of the notice that includes an ex-
23 planation of the reasons that the project
24 beneficiary would experience adverse im-

1 pacts as a result of the project modifica-
2 tion.

3 “(C) FINAL DETERMINATION.—

4 “(i) WRITTEN RESPONSE.—The Sec-
5 retary shall respond in writing to any reply
6 from a project beneficiary under subpara-
7 graph (B)(ii)(II)(bb) stating whether or
8 not the Secretary determines that the
9 project beneficiary would experience ad-
10 verse impacts as a result of the project
11 modification.

12 “(ii) FINAL AGENCY ACTION.—A writ-
13 ten determination by the Secretary under
14 clause (i) shall be considered to be a final
15 agency action for purposes of section 704
16 of title 5, United States Code.

17 “(iii) WRITTEN REQUEST.—If the
18 Secretary determines under clause (i) that
19 the project beneficiary would experience
20 adverse impacts as a result of the project
21 modification, the Secretary shall send to
22 the project beneficiary a written request
23 for consent in accordance with subpara-
24 graph (B)(ii).

25 “(D) TIME PERIOD FOR CONSENT.—

1 “(i) IN GENERAL.—If written consent
 2 required under paragraph (1)(D) is not ob-
 3 tained by the date that is 1 year after the
 4 date on which written consent is requested
 5 under subparagraph (B)(ii), the Secretary
 6 or the transferred works operating entity,
 7 as applicable, shall proceed with extraor-
 8 dinary operation and maintenance work of
 9 the project without the modification, unless
 10 the Secretary extends the time for consent
 11 under clause (ii).

12 “(ii) EXTENSION.—At the discretion
 13 of the Secretary, the Secretary may elect
 14 to extend the time for obtaining consent
 15 under paragraph (1)(D) by 1 year.

16 “(3) REALLOCATION OF COSTS BASED ON
 17 PROJECT CHANGES AND INCREASED PUBLIC BENE-
 18 FITS.—The Secretary shall allocate costs, including
 19 capital repayment costs and operation and mainte-
 20 nance costs, for a project modification under para-
 21 graph (1), to provide that—

22 “(A) the public benefits provided by the
 23 modified project, including associated annual
 24 operation and maintenance costs, shall be non-
 25 reimbursable; and

1 “(B) the cost allocation of reimbursable
2 costs to each project beneficiary reflects any
3 changes in the benefits that the modified
4 project is providing to the project beneficiary.

5 “(4) INCENTIVE FOR BENEFITTING ENTITIES
6 TO PARTICIPATE IN PROJECTS WITH INCREASED
7 PUBLIC BENEFITS.—The total amount of reimburs-
8 able capital costs, as determined under paragraph
9 (3), for a project modification that would increase
10 public benefits without increasing municipal, indus-
11 trial, or irrigation benefits of a project, shall be re-
12 duced by 15 percent, with each project beneficiary to
13 be responsible for 85 percent of the reimbursable
14 costs that would otherwise be allocated to the project
15 beneficiary.

16 “(5) REIMBURSABLE FUNDS.—All reimbursable
17 costs under this subsection shall be repaid in accord-
18 ance with subsection (b).”.

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