To provide for drought preparedness and improved water supply reliability.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

To provide for drought preparedness and improved water supply reliability.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Water for Conservation and Farming Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—INFRASTRUCTURE DEVELOPMENT

Sec. 101. Technical amendment to the Water Desalination Act of 1996.
Sec. 102. Bureau of Reclamation Infrastructure Fund.
Sec. 103. Watersmart extension and expansion.
TITLE II—ECOSYSTEM PROTECTION AND RESTORATION

Sec. 201. Waterbird and shorebird habitat creation program.
Sec. 203. Reauthorization and expansion of Cooperative Watershed Management Program.
Sec. 204. Multibenefit projects to improve watershed health.
Sec. 205. Drought planning and preparedness for critically important fisheries.
Sec. 206. Aquatic connectivity restoration.
Sec. 207. Reauthorization of the Fisheries Restoration and Irrigation Mitigation Act of 2000.

SEC. 2. DEFINITIONS.

In this Act:

(1) **FUND.**—The term “Fund” means the Bureau of Reclamation Infrastructure Fund established by section 102(a).

(2) **RECLAMATION STATE.**—The term “Reclamation State” has the meaning given the term in section 4014 of the Water Infrastructure Improvements for the Nation Act (43 U.S.C. 390b note; Public Law 114–322).

(3) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

TITLE I—INFRASTRUCTURE DEVELOPMENT

SEC. 101. TECHNICAL AMENDMENT TO THE WATER DESALINATION ACT OF 1996.

Section 4(a) of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298) is amended by redesignating the second paragraph (1) (relating to eligible desalination projects) as paragraph (2).
SEC. 102. BUREAU OF RECLAMATION INFRASTRUCTURE FUND.

(a) Establishment.—There is established in the Treasury of the United States a fund, to be known as the “Bureau of Reclamation Infrastructure Fund”, consisting of—

(1) such amounts as are deposited in the Fund under subsection (b)(1); and

(2) any interest earned on investment of amounts in the Fund under subsection (e)(1)(B).

(b) Deposits to Fund.—

(1) In general.—For each of fiscal years 2031 through 2061, the Secretary of the Treasury shall deposit in the Fund $300,000,000 of the revenues that would otherwise be deposited for the fiscal year in the reclamation fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093), of which—

(A) $100,000,000 shall be expended by the Secretary for water reclamation and reuse projects authorized under—

(i) the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h et seq.); or
(ii) section 4(a)(2) of the Water Desalination Act of 1996 (42 U.S.C. 10301 note; Public Law 104–298);

(B) $100,000,000 shall be expended by the Secretary for grants authorized under section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364); and

(C) $100,000,000 shall be expended by the Secretary to perform modifications to preserve the structural safety of Bureau of Reclamation dams and related facilities to ensure that Bureau of Reclamation facilities do not present unreasonable risks to public safety, property, or the environment, if the expenditures—

(i) account for not more than 85 percent of the total costs for any dam safety project; and

(ii) are made in accordance with section 3 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 507).

(2) Availability of amounts.—Amounts deposited in the Fund under paragraph (1) shall—

(A) be made available in accordance with this section, without further appropriation; and
(B) be in addition to amounts appropriated for the purposes described in this section under any other provision of law.

(c) EXPENDITURES FROM FUND.—

(1) IN GENERAL.—Subject to paragraph (2), for each of fiscal years 2031 through 2061, the Secretary may expend from the Fund, in accordance with this section, not more than an amount equal to the sum of—

(A) the amounts deposited in the Fund for the applicable fiscal year under subsection (b)(1); and

(B) the amount of interest accrued in the Fund for the fiscal year in which the expenditures are made.

(2) ADDITIONAL EXPENDITURES.—

(A) IN GENERAL.—The Secretary may expend more in any fiscal year than the amounts described in paragraph (1) if the additional amounts are available in the Fund as a result of a failure of the Secretary to expend all of the amounts available under paragraph (1) in 1 or more prior fiscal years.
(B) Retention in accounts.—Any additional amounts referred to in subparagraph (A) shall—

(i) accrue interest in accordance with this section; and

(ii) only be expended for the purposes for which expenditures from the Fund are authorized.

**SEC. 103. WATERSMART EXTENSION AND EXPANSION.**

(a) Definition of Eligible Applicant.—Section 9502 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10362) is amended—

(1) in the matter preceding paragraph (1), by striking “section” and inserting “subtitle”; and

(2) by striking paragraph (7) and inserting the following:

“(7) Eligible Applicant.—The term ‘eligible applicant’ means—

“(A) any State, Indian tribe, irrigation district, or water district;

“(B) any State, regional, or local authority, the members of which include 1 or more organizations with water or power delivery authority;
“(C) any other organization with water or power delivery authority; and

“(D) any nonprofit conservation organization, acting in partnership with any entity listed in subparagraphs (A) through (C), with respect to a project involving land or infrastructure owned by the entity.”.

(b) WATER MANAGEMENT IMPROVEMENT.—Section 9504(a) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by inserting “or carrying out any activity” after “any improvement”;

(B) by striking subparagraphs (A) through (E);

(C) by redesignating subparagraphs (F) through (H) as subparagraphs (B) through (D), respectively;

(D) by inserting before subparagraph (B) (as so redesignated) the following:

“(A) to assist States and water users in complying with interstate compacts or reducing basin water supply-demand imbalances, includ-
pensated transactions that decrease consump-

tive water use at a regional or watershed

scale;”;

(E) in subparagraph (B) (as so redesig-
nated), by striking “to prevent” and inserting
“to achieve the prevention of”;

(F) in subparagraph (C) (as so redesig-
nated), by striking “to accelerate” and inserting
“to achieve the acceleration of”; and

(G) in subparagraph (D) (as so redesig-
nated)—

(i) by striking clause (i) and inserting
the following:

“(i) to increase ecological resilience to
climate change by addressing climate-re-
lated impacts or vulnerability to the water
supply of the United States, including by
enhancing natural water storage within a
floodplain or riparian wetland;”;

(ii) in clause (ii), by striking the pe-
riod at the end and inserting “; or”; and

(iii) by adding at the end the fol-
lowing:

“(iii) to plan for or address the im-
pacts of drought.”;
(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following:

“(2) ELIGIBLE PROJECTS.—The improvements or activities eligible for assistance under paragraph (1) may include improvements or activities—

“(A) using an approach that—

“(i) conserves water;

“(ii) increases water use efficiency;

“(iii) facilitates water markets; or

“(iv) enhances water management, including increasing the use of renewable energy in the management and delivery of water or increasing natural water storage;

“(B) to improve the condition of natural water recharge infrastructure; or

“(C) to achieve the acceleration of the adoption and use of advanced water treatment technologies to increase water supply.”;

(4) in paragraph (3) (as so redesignated), by striking subparagraph (B) and inserting the following:

“(B) submit to the Secretary an application that includes—
“(i) a proposal of the improvement or activity to be planned, designed, constructed, or implemented by the eligible applicant; and

“(ii)(I) a proposal for a pre- and post-project monitoring plan that would demonstrate ways in which the proposed improvement or activity would result in improved streamflows and aquatic habitat;

“(II) an analysis of ways in which the proposed improvement or activity would improve compliance with interstate compacts; or

“(III) an analysis of ways in which the proposed improvement or activity would reduce basin-scale water supply-demand imbalances.”; and

(5) in paragraph (4) (as so redesignated)—

(A) in subparagraph (A), by striking “(F)” and inserting “(G)”;

(B) in subparagraph (B)(i), by striking subclause (II) and inserting the following:

“(II) to use the assistance provided under a grant or agreement to increase the consumptive use of water
for agricultural operations above the pre-project levels, as determined pursuant to the law of the State in which the operation of the eligible applicant is located.”;

(C) in subparagraph (E)—

(i) by striking clause (i) and inserting the following:

“(i) FEDERAL SHARE.—The Federal share of the cost of any infrastructure improvement or activity that is the subject of the grant or other agreement entered into between the Secretary and an eligible applicant under paragraph (1)—

“(I) shall not exceed 50 percent of the cost of the infrastructure improvement or activity; or

“(II) in the case of an infrastructure improvement or activity that provides benefits to consumptive water users and nonconsumptive ecological or recreational values in which the nonconsumptive benefit accounts for at least 30 percent of the cost of the improvement or activity, as deter-
mined by the Secretary, shall not exceed 75 percent of the cost of the infrastructure improvement or activity.”; and

(ii) in clause (ii), in the matter preceding subclause (I), by striking “paragraph (2)” and inserting “paragraph (3)”; and

(D) by adding at the end the following:

“(G) LIMITATION.—Not more than 30 percent of the total amounts provided to eligible applicants through grants or other agreements for a fiscal year under paragraph (1) shall be provided to nonprofit conservation organizations.”.

(e) Authorization of Appropriations.—

(1) In general.—Section 9504 of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364) is amended by striking subsection (e) and inserting the following:

“(e) Authorization of Appropriations.—

“(1) In general.—Subject to paragraph (2), there are authorized to be appropriated to carry out this section—

“(A) $50,000,000 for fiscal year 2021;
“(B) $55,000,000 for fiscal year 2022;
“(C) $60,000,000 for fiscal year 2023;
“(D) $65,000,000 for fiscal year 2024;
and
“(E) $70,000,000 for fiscal year 2025.
“(2) REQUIREMENT.—Of the amounts made available under paragraph (1), $50,000,000 for the period of fiscal years 2021 through 2025 shall be used to carry out section 206 of the Energy and Water Development and Related Agencies Appropriation Act, 2015 (43 U.S.C. 620 note; Public Law 113–235).”.

(2) CONFORMING AMENDMENT.—Section 4009(d) of Public Law 114–322 (42 U.S.C. 10364 note; Public Law 114–322) is amended by striking “on the condition that of that amount, $50,000,000 of it is used to carry out section 206 of the Energy and Water Development and Related Agencies Appropriation Act, 2015 (43 U.S.C. 620 note; Public Law 113–235)”.
TITLE II—ECOSYSTEM PROTECTION AND RESTORATION

SEC. 201. WATERBIRD AND SHOREBIRD HABITAT CREATION PROGRAM.

(a) Authorization of Habitat Creation Program.—

(1) In general.—Subject to paragraphs (2) and (3), the Secretary shall establish a program under which the Secretary shall provide financial assistance to eligible agricultural producers in Reclamation States, in the form of direct payments or credits, as applicable, to compensate the eligible agricultural producers for the creation and maintenance of waterbird and shorebird habitats.

(2) Limitation on amount of financial assistance.—Not more than a total of $3,500,000 of financial assistance may be provided for each fiscal year under paragraph (1).

(3) Conditions.—Financial assistance shall be provided under paragraph (1) only if the Secretary determines that the activities receiving the financial assistance would—

(A) create new habitat that would not otherwise be created; or
(B) maintain existing habitat that would not otherwise be maintained.

(b) Authorization of Appropriations.—There is authorized to be appropriated to the Secretary $3,500,000 to carry out this section for each of fiscal years 2021 through 2026, to remain available until expended.

e) Report.—Not later than October 1, 2021, and every 2 years thereafter, the Secretary shall submit to Congress a report that describes the environmental performance of activities that are receiving, or have received, financial assistance under the program established under subsection (a)(1) during the period covered by the report.

SEC. 202. SUSTAINING BIODIVERSITY DURING DROUGHTS.

Section 9503(b) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10363(b)) is amended—

(1) in paragraph (3)(D), by inserting “and native biodiversity” after “wildlife habitat”; and

(2) in paragraph (4)(B), by inserting “and drought biodiversity plans to address sustaining native biodiversity during periods of drought” after “restoration plans”.

SEC. 203. REAUTHORIZATION AND EXPANSION OF COOPERATIVE WATERSHED MANAGEMENT PROGRAM.

(a) DEFINITIONS.—Section 6001 of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1015) is amended—

(1) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;

(2) by inserting after paragraph (1) the following:

“(2) DISADVANTAGED COMMUNITY.—The term ‘disadvantaged community’ means a community (including a city, town, county, or reasonably isolated and divisible segment of a larger municipality) with an annual median household income that is less than 100 percent of the statewide annual median household income for the State in which the community is located, according to the most recent decennial census.”;

(3) in paragraph (6)(B)(i) (as so redesignated)—

(A) in subclause (VIII), by striking “and” at the end;

(B) in subclause (IX), by adding “and” after the semicolon at the end; and

(C) by adding at the end the following:
“(X) disadvantaged communities;”; and

(4) in paragraph (7) (as so redesignated)—

(A) in subparagraph (D), by striking “or” at the end;

(B) by redesigning subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following:

“(E) generates environmental benefits, such as benefits to fisheries, wildlife, and aquatic habitat; or”.

(b) APPLICATION.—Section 6002 of the Omnibus Public Lands Management Act (16 U.S.C. 1015a) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) Establishment of Application Process; Criteria.—Not later than March 30, 2021, the Secretary shall update—

“(1) the application process for the program; and

“(2) in consultation with the States, the prioritization and eligibility criteria for considering
applications submitted in accordance with the application process.”; and

(2) by striking subsection (g) and inserting the following:

“(g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section—

“(1) $20,000,000 for each of fiscal years 2012 through 2020; and

“(2) $40,000,000 for each of fiscal years 2021 through 2024.”.

SEC. 204. MULTIBENEFIT PROJECTS TO IMPROVE WATERSHED HEALTH.

(a) Definition of Eligible Applicant.—In this section, the term “eligible applicant” means—

(1) any [Reclamation] State, Indian Tribe, irrigation district, water district, or organization with water or power delivery authority;

(2) any [Reclamation] State, regional authority, or local agency or authority; and

(3) any nonprofit conservation organization.

(b) Establishment of Competitive Grant Program.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the heads of relevant agencies, shall establish a competitive grant
program under which the Secretary shall award grants to eligible applicants for the design, implementation, and monitoring of conservation outcomes of habitat restoration projects that improve watershed health in a Reclamation State by accomplishing 1 or more of the following:

(1) Ecosystem benefits.
(2) Restoration of native species beyond existing or planned measures necessary to comply with Federal or State laws relating to species recovery.
(3) Mitigation against the impacts of climate change to fish and wildlife habitats.
(4) Protection against invasive species.
(5) Restoration of aspects of the natural ecosystem.
(6) Enhancement of commercial or recreational fishing.
(7) Enhancement of river-based recreation, such as kayaking, rafting, and canoeing.

c) REQUIREMENTS.—

(1) IN GENERAL.—In awarding a grant to an eligible applicant under subsection (b), the Secretary—

(A) shall give priority to an eligible applicant that would carry out a habitat restoration
project that achieves more than 1 of the benefits described in that subsection; and

(B) may not provide a grant to carry out a habitat restoration project, the purpose of which is to meet existing environmental mitigation or compliance obligations under Federal or State law.

(2) Compliance.—A habitat restoration project awarded a grant under subsection (a) shall comply with all applicable Federal and State laws.

(d) Cost-Sharing Requirement.—The Federal share of the cost of any habitat restoration project that is awarded a grant under subsection (b)—

(1) shall not exceed 50 percent of the cost of the habitat restoration project; or

(2) in the case of a habitat restoration project that provides benefits to ecological or recreational values in which the nonconsumptive water conservation benefit or habitat restoration benefit accounts for at least 75 percent of the cost of the habitat restoration project, as determined by the Secretary, shall not exceed 75 percent of the cost of the habitat restoration project.
(c) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $150,000,000 for each of fiscal years 2021 through 2024.

SEC. 205. DROUGHT PLANNING AND PREPAREDNESS FOR CRITICALLY IMPORTANT FISHERIES.

(a) Definitions.—In this section:

(1) Critically important fishery.—The term “critically important fishery” means—

(A) a fishery located in a Reclamation State that is commercially, culturally, or recreationally important;

(B) a fishery located in a Reclamation State that contains fish species that are listed as threatened or endangered pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) a fishery located in a Reclamation State that is used by 1 or more Indian Tribes in the Reclamation State for ceremonial subsistence or commercial purposes.

(2) Indian tribe.—The term “Indian Tribe” has the meaning given the term “Indian tribe” in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).
(3) Qualified Tribal Government.—The term “qualified Tribal Government” means any government of an Indian Tribe that the Secretary determines—

(A) is involved in fishery management and recovery activities, including activities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(B) has the management and organizational capability to maximize the benefits of assistance provided under subsection (c).

(4) Secretary.—The term “Secretary” means the Secretary, acting through the Director of the United States Fish and Wildlife Service.

(b) Drought Plan for Critically Important Fisheries.—

(1) In General.—Not later than January 1, 2021, and every 3 years thereafter, the Secretary, in consultation with the Director of the National Marine Fisheries Service, the Commissioner of Reclamation, the Chief of Engineers, applicable State fish and wildlife agencies, and qualified Tribal Governments, shall prepare a plan to sustain the survival of critically important fisheries during future periods of extended drought through—
(A) voluntary, compensated actions by private landowners and water right holders; or

(B) other investments in drought preparedness made by the Secretary.

(2) CONSIDERATIONS.—In preparing the plan under paragraph (1), the Secretary shall consider—

(A) habitat restoration efforts designed to provide drought refugia and increased fishery resilience during droughts;

(B) relocating the release location and timing of hatchery fish to avoid predation and temperature impacts;

(C) barging of hatchery release fish to improve survival and reduce straying;

(D) coordination with water users, the Commissioner of Reclamation, State fish and wildlife agencies, qualified Tribal Governments, and interested public water agencies regarding voluntary water transfers, including through groundwater substitution activities, to determine if water releases can be collaboratively managed in a way that provides additional benefits for critically important fisheries without negatively impacting wildlife habitat;
(E) hatchery management modifications, such as expanding hatchery production of fish during periods of extended drought, if appropriate for a particular river basin;

(F) hatchery retrofit projects, such as the installation and operation of filtration equipment and chillers, to reduce disease outbreak, egg mortality, and other impacts of droughts in high water temperatures;

(G) increasing rescue operations of upstream migrating fish;

(H) improving temperature modeling and related forecasted information to predict water management impacts to the habitat of critically important fisheries with a higher degree of accuracy than current models;

(I) programs to reduce predation losses at artificially created predation hot spots;

(J) habitat restoration efforts designed to provide drought refugia and increased fisheries resilience during droughts; and

(K) retrofitting existing water facilities to provide improved temperature conditions for fish.
(c) Public Comment.—Before finalizing a plan under subsection (b), the Secretary shall provide for a public comment period of not less than 90 days.

(d) Authorization of Appropriations for Fish Recovery Efforts.—There is authorized to be appropriated to the Secretary to carry out fish, stream, and hatchery activities relating to fish recovery efforts, including activities carried out in coordination with the Director of the National Marine Fisheries Service, the Commissioner of Reclamation, the Chief of Engineers, applicable State fish and wildlife agencies, or a qualified Tribal Government, $25,000,000 for fiscal year 2021.

(e) Effect.—Nothing in this section affects any obligation under any Federal environmental law.

SEC. 206. AQUATIC CONNECTIVITY RESTORATION.

(a) Definition of Eligible Entity.—In this section, the term “eligible entity” means—

(1) a Reclamation State;

(2) a department, agency, or political subdivision of a Reclamation State;

(3) a public agency organized pursuant to the laws of a Reclamation State;

(4) an Indian tribe (as that term is defined in section 4 of the Indian Self-Determination and Edu-
cation Assistance Act (25 U.S.C. 5304)) in a Reclama-

tion State; or

(5) a nonprofit organization operating in a Reclama-
tion State.

(b) GENERAL AUTHORITY.—Subject to the require-
ments of this section, on the request of any eligible entity,
the Secretary may negotiate and enter into an agreement
to fund the design, study, and construction of an aquatic
ecosystem restoration and protection project, if the Sec-
retary determines that the project is likely to improve the
quality of the environment in a Reclamation State by im-
proving fish passage through the removal or bypass of bar-
riers to fish passage.

(c) REQUIREMENTS.—

(1) IN GENERAL.—Construction of a project
under this section may be initiated only after—

(A) except as provided in paragraph (2),
an eligible entity has entered into an agreement
with the Secretary to pay not less than 35 per-
cent of the costs of project construction; and

(B) the Secretary determines that the pro-
posed project—

(i) would not harm the water rights of
water right holders of the water source;
(ii) would not result in an unmitigated result to the environment; and

(iii) is consistent with the responsibilities of the Secretary, as agreed to by all entities that own or operate any fish passage barrier affected by the project—

(I) in the role of the Secretary as trustee for Indian tribes; and

(II) to ensure compliance with any applicable international and Tribal treaties and agreements and interstate compacts and agreements;

(iv) is in the financial interest of the United States, based on the determination that the project advances Federal objectives, including environmental enhancement objectives in a Reclamation State; and

(v) protects the public aspects of the eligible facility, including water rights managed for public purposes, such as flood control or fish and wildlife.

(2) EXCEPTION.—Paragraph (1)(A) shall not apply to an eligible entity described in subsection (a)(4).
(d) Priority for Projects Providing Public Safety and Regional Benefits.—In providing assistance for projects under this section, the Secretary shall give priority to projects that—

(1) are likely to provide public safety benefits; and

(2) are regional in nature, including projects that span 2 or more river basins.

(e) Environmental Laws.—In participating in a project under this section, the Secretary shall comply with—

(1) any applicable Federal environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) any environmental law of the Reclamation State in which the project is located that relates to the construction, expansion, or operation of a water storage project or fish and wildlife protection, if the law of the Reclamation State does not relieve the Secretary of any Federal requirement otherwise applicable under this section.

(f) Funding.—There is authorized to be appropriated to carry out this section $25,000,000 for each of fiscal years 2021 through 2026, to remain available until expended.

(a) Definition of Pacific Drainage Area.—Section 2(1) of the Fisheries Restoration and Irrigation Mitigation Act of 2000 (16 U.S.C. 777 note; Public Law 106–502) is amended by inserting “or a terminal lake” before the period at the end.

(b) Authorization of Appropriations.—Section 10(a) of the Fisheries Restoration and Irrigation Mitigation Act of 2000 (16 U.S.C. 777 note; Public Law 106–502) is amended by striking “$15,000,000 through 2021” and inserting “$25,000,000 for each of fiscal years 2021 through 2027”.