

Section-by-Section Analysis of “STREAM Act”
Senators Feinstein, Kelly and Sinema, as introduced in May 2022

- Section 1, Short Title; Table of Contents, indicates that this Act may be cited as the “Support To Rehydrate the Environment, Agriculture, and Municipalities Act” or the “STREAM Act”.
- Section 2, Definitions, includes important definitions of key terms, including:
 - Non-Federal storage project, which is any project in a Reclamation State that—
 - (A) involves the construction, expansion, or repair by an eligible entity of—
 - (i) a surface or groundwater storage project that is not federally owned;
 - (ii) a facility that is not federally owned conveying water to or from surface or groundwater storage; or
 - (iii) a natural water retention and release project; and
 - (B) provides a benefit in meeting any obligation under applicable Federal law (including regulations). Section 2(11).
 - Natural water retention and release projects, which use primarily natural processes and features, like wetlands, to allow increased utilization of existing storage facilities through aquifer recharge, floodplain retention, and altering the timing of runoff. Besides enhancing water supplies, these multi-benefit projects typically also promote ecosystem restoration and flood protection. Section 2(10).
 - Federal benefits. Section 2(8). As applied to storage, water recycling, and desalination projects, this term means
 - 1) public benefits provided directly by the project;
 - 2) fish and wildlife or water quality public benefits provided by the implementation of a watershed restoration plan approved together with the project, if there is an increased Federal commitment to pay for public benefits in the watershed as compared to such Federal commitments prior to the date of approval of the project; or
 - 3) water supply benefits identified pursuant to reclamation law.
 - Public benefits. Section 2(12). This term is defined to include:
 - 1) traditional non-reimbursable costs - fish/wildlife including refuges, flood control, recreation, water quality, etc.;
 - 2) drinking water supply for disadvantaged communities;
 - 3) emergency drinking water supply used in response to a gubernatorial disaster declaration; and
 - 4) energy benefits, including the value of associated greenhouse gas reductions and any reduction in energy costs for federal taxpayers.

Many of these key terms are further discussed below in the analysis of section 103, Storage and Conveyance Projects.

Title I, Infrastructure Development

- Section 101, Competitive Grant Program for the Funding of Water Recycling Projects, reauthorizes and amends the Title XVI competitive grant program for water recycling projects established in 2016 pursuant to the WIIN Act (Subtitle J, Public Law 114-322).

There are three key differences from the competitive grant program for water recycling authorized in the WIIN Act:

- 1) **The authorization of appropriations has been increased to \$300 million over 5 years, as compared to the prior \$100 million over 5 years.** Subsection (g).
 - 2) **Congress does not need to approve funding awards for specific projects through designating the project by name in an enacted appropriations bill.**
 - Reclamation can award funding to projects from available appropriations, after competitively evaluating grant applications from eligible projects.
 - 3) The draft bill raises the maximum federal funding contribution for each Title XVI project to \$50 million from the current ceiling of \$20 million in 1996 prices. Subsection (b)(1).
 - The cap remains \$20 million in 1996 prices for projects that have received that amount as of December 31, 2021.
 - The maximum federal cost-share remains at 25% (up to the new maximum federal contribution of \$50 million).
- Section 102, Annual Report to Congress
 - **This section requires the Commissioner of Reclamation to submit an annual report to Congress transmitting feasibility reports on Federal storage projects, and non-Federal storage projects with a federal investment exceeding \$250 million, for Congress to consider whether to authorize the projects.**
 - This section is modeled on the Section 7001 report that the Army Corps of Engineers submits to Congress for WRDA projects.
 - The language of the section closely tracks 33 U.S.C. 2282d regarding the Army Corps' Chief's reports.
 - **This section is intended to expedite approval of projects requiring Congressional authorization, by facilitating a "Reclamation WRDA" package of projects approved by the House and Senate authorizing committees.** If Congress chooses, this

“Reclamation WRDA” package could be added to the WRDA bill each Congress.

- Section 103, Storage and Conveyance Projects
 - **This section establishes a competitive grant program for non-Federal storage projects by adapting the structure and language of the competitive grant program for large-scale water recycling and reuse projects in Section 40905 of the Infrastructure Investment and Jobs Act.**
 - **This approach uses the Title XVI precedent of non-reimbursable funding for water supply where the project provides multiple benefits including environmental benefits within the watershed.**
 - Subsection 103(b) establishes a program to provide grants to eligible entities on a competitive basis for the planning, design, and construction of non-Federal storage projects.
 - Subsection 103(c) sets parameters for eligible projects:
 - Surface and groundwater storage, conveyance, and natural water retention and release projects are eligible;
 - The Federal cost-share cannot exceed \$250 million;
 - Projects must be constructed, operated and maintained by an eligible entity in a Reclamation state; and
 - Projects must provide a Federal benefit (definition of “Federal benefit” discussed below).
 - Subsection 103(d) sets conditions for grants for eligible projects:
 - For studying a project, if the Secretary has identified the potential for sufficient Federal benefits to proceed;
 - For construction, if
 - The eligible entity demonstrates that the project is feasible and provides a Federal benefit;
 - The eligible entity has sufficient funding to complete the project and is solvent; and
 - The Governor of the relevant State supports Federal funding of the project.
 - For construction of natural water retention and release projects, simplified procedures for projects costing less than \$10 million, and additional procedures for projects costing over \$10 million.
 - Subsection 103(e) establishes funding priority for a project that has 2 or more of the following: 1) substantial multiple benefits, 2) reductions in environmental impacts from water projects, 3) multi-state benefits, 4) collaborative development and support by multiple stakeholders; or 5) is located in a watershed where an integrated, comprehensive watershed management plan.
 - Subsection 103(f) states that

- **The Federal cost-share shall not exceed 25 percent of the total cost of the project** (with the exception of natural water retention and release projects, which can have up to a 90% Federal cost-share).
- **Any funding under the program for the value of public benefits shall be considered nonreimbursable.**
- **Public benefits are defined in Section 2(8) as either**
 - 1) public benefits provided directly by the project; or**
 - 2) fish and wildlife or water quality public benefits provided by the implementation of a watershed restoration plan approved together with the project,** if there is an increased Federal commitment to pay for public benefits in the watershed as compared to such Federal commitments prior to the date of approval of the project.
- **Water supply benefits are generally reimbursable, except that water supply benefits are nonreimbursable** up to the extent that the value of the water supply benefits is equal to the value of public benefits described above that are fish and wildlife or water quality benefits.
- To give an example, this means that if a project sponsor is seeking \$100 million in federal funding for a \$400 million non-Federal storage project, the sponsor can get that \$100 million funding on a non-reimbursable basis if there is \$50 million in public benefits from either the project itself or other projects as part of a watershed restoration plan approved with the project, and then an equal \$50 million in water supply benefits from the project if the public benefits include at least \$50 million in fish and wildlife or water quality benefits. Some examples of fish and wildlife or water quality benefits from a watershed plan could include:
 - water leasing during a dry year, water sharing agreements, water banking, ongoing water conservation, and related activities if they provide fish and wildlife or water quality benefits;
 - environmental restoration projects; and
 - natural water retention and release projects.
- If nonreimbursable funding is less than 25 percent of the total cost of the eligible project, **the Secretary may provide reimbursable funds to an eligible entity for the value of any water supply benefits identified pursuant to reclamation law** (as described in section 2(8)(D)) up to the limit of 25 percent of the total project cost.
- Other subsections of section 103:
 - Require compliance with environmental laws in subsection (g);
 - Require guidance on implementation from Reclamation within 1 year in subsection (h);
 - Require reports on implementation in subsection (i);
 - Require conveyance systems associated with storage projects to be eligible for funding under the section, in subsection (j).
- Subsection (k) authorizes \$750 million total in funding from FY 2024 through FY 2028 for:

1) non-Federal storage projects, including natural water retention and release projects, authorized pursuant to the provisions of this section;

2) storage projects that are eligible for study funding under section 40902(a)(1) of the Infrastructure Investment and Jobs Act, if for such projects the funding under this section is provided in accordance with the provisions of section 40902(b) and (c) of the Infrastructure Investment and Jobs Act; and

3) storage projects that have received construction funding under section 40902(a)(2) of the Infrastructure Investment and Jobs Act, if for such projects the funding under this section is provided in accordance with the provisions of section 40902(b) and (c) of the Infrastructure Investment and Jobs Act.

Any carryover storage funding appropriated pursuant to section 4007 of the WIIN Act may be used for the three categories of projects described above.

Because the \$750 million authorization in this section would become the general source of storage funding provided through annual appropriations, we believe it is appropriate to allow this pot to be used for projects that are eligible for study funding under the Infrastructure Investment and Jobs Act. In addition, if projects are partly funded for construction under the Infrastructure Investment and Jobs Act, we believe it is appropriate to use this general pot of storage annual appropriations to provide funding to move these projects closer to the completion of construction that has already begun. Note that if any funding from this storage pot is used for projects authorized to receive funding under the Infrastructure Investment and Jobs Act, then the restrictions on which projects can receive funding and the cost-sharing and reimbursability rules from section 40902 of the Infrastructure Investment and Jobs Act would all apply to that funding.

- Subsection (l) amends section 40902(a)(2)(C)(i) of IJJA to make potentially eligible for construction funding under IJJA two projects whose feasibility studies were authorized by IJJA, the Verde Reservoirs Sediment Mitigation Project and the Tualatin River Basin Project. The projects will have to comply with the requirements of section 40902(a)(2) of IJJA to become eligible for construction funding under IJJA.
- Subsection (m) grandfathers Federal and non-Federal storage projects that receive construction funding under the \$1.15 billion in storage funding in IJJA so they do not need further authorization to complete construction. Absent this provision, partly built projects might have to stop in the middle of construction to get Congressional authorization when section 40902 of IJJA expires in 2026.
- Subsection (n) reauthorizes the CALFED legislation through fiscal year 2027.
- Section 104, Desalination Project Development, reauthorizes and amends the competitive grant program for desalination projects established in 2016 pursuant to the WIIN Act.

- There are three key differences from the competitive grant program for desalination authorized in the WIIN Act:
 - 1) **The authorization of appropriations has been increased to \$150 million over 5 years, as compared to the prior \$30 million over 5 years.** At least \$10 million is set aside for rural desalination projects. Subparagraph (F)(i).
 - 2) **Congress does not need to approve funding awards for specific projects through designating the project by name in an enacted appropriations bill.**
 - Reclamation can award funding to projects from available appropriations, after competitively evaluating grant applications from eligible projects.
 - 3) **The bill establishes priority criteria for which projects to fund.** Subsection (b). These are based on and slightly modified from the prioritization criteria for desalination projects in Rep. Huffman’s HR 3404, section 105(b).
- Subparagraph (B)(ii) includes provisions from former Senator Udall and former Representative Torres Small’s 2019 Western Water Security Act (S. 2718/HR 4891) on rural desalination projects.
- Just as for non-federal storage projects and natural water retention and release projects, the following are required to obtain funding for desalination projects (subparagraph (C)):
 - 1) The Governor of the affected state supports federal funding of the project, and the project is included in a state-approved plan; and
 - 2) For construction funding, the state or local sponsor determines, and Reclamation concurs, that the project is feasible, and sufficient funding is available to complete it.
- The definition of an eligible project:
 - Makes clear that public private partnerships are eligible for funding as long as a state or local government entity pays either for the construction of the project or the water provided by the project. Subparagraph (A)(i).
 - Also allows any “organization with water or power delivery authority” to apply for funding if that organization constructs, operates and maintains the project. Subparagraph (A)(i). This language comes from the definition of an “eligible applicant” in section 9502 of the Secure Water Act.
- Section 105, Reclamation Infrastructure Finance and Innovation Pilot Program
 - **Creates a new loan program at 30-year Treasury rates for water supply projects** known as the Reclamation Infrastructure Finance and Innovation Act (RIFIA). Subsection (a).
 - The \$125 million authorized funding for loans **would make available \$8 to \$12 billion in lending authority** under OMB’s scoring parameters for similar loans under WIFIA.

- Subsection (b) defines “eligible projects” to include projects that promote water conservation or water use efficiency in addition to water supply projects.
- Subsection (d) adopts the requirements of the Water Infrastructure Finance and Innovation Act (WIFIA) for determination of project eligibility and loan selection, and program administration.
- The roles of the Environmental Protection Agency (EPA) and the Bureau of Reclamation are defined by the agreement between the agencies that was completed in October 2019 pursuant to the 2018 Water Resources Development Act legislation. Under the agreement EPA will retain responsibility for administering any loans under the section.
- Subsection (e) authorizes \$150 million total for fiscal years 2024 through 2028, including \$125 million in federal outlays for supporting loans; and \$25 million in administrative costs for Reclamation and EPA.
- The \$125 million in federal outlays would support \$8 to \$12 billion in loan amounts under OMB’s guidance for the parallel WIFIA program.
- A portion of the \$25 million in administrative costs could be used for technical assistance for small community projects, including paying a portion of the costs for acquiring rating opinion letters.
- Section 106, Drinking Water Assistance for Disadvantaged Communities
 - **This section provides considerable flexibility for the Secretary to design a program for drinking water assistance to disadvantaged communities tailored to the needs of specific states in consultation with other federal agencies and state authorities working on this important issue.**
 - This section authorizes the Secretary, acting through the Commissioner of Reclamation, to enter into grants, contracts, or financial assistance agreements to provide drinking water for disadvantaged communities in a manner as determined by the Commissioner of Reclamation for up to 100 percent of the cost of the planning, design, or construction of water projects, or facilities or features of water projects. Subsection (a).
 - The term “disadvantaged community” is defined in section (2)(5) as a low-income community as described in section 45D(e) of the Internal Revenue Code of 1986.
 - \$100 million is authorized to be appropriated over 5 years. Subsection (b)(1).
 - The Secretary shall use at least a portion of the funds authorized by this section to incorporate into multiple benefit projects features or facilities to assist in providing domestic water supplies to disadvantaged communities. Subsection (b)(2).

- Section 107, Extraordinary Operation and Maintenance Work; Project Modification
 - This section amends the existing Aging Infrastructure Program (Public Law 111-11, Title IX, Subtitle G) to authorize projects to not only repair aging Bureau of Reclamation facilities, but to modify the facilities to achieve increased public benefits and other project benefits.
 - Congress appropriated \$3.2 billion for the Aging Infrastructure Program in the Infrastructure Investment and Jobs Act.
 - If we are spending this much money to retool Reclamation infrastructure for the needs of the 21st century, the Secretary should have the authority to modify the projects to achieve increased public benefits and other project benefits, where she believes it is appropriate to do so.
 - Paragraph (2) of the new subsection (e) establishes a few basic principles for any project modification:
 - It shall add no more than 25% of the project cost for projects costing over \$100 million, or no more than \$25 million for projects costing under \$100 million (projects exceeding these thresholds would need to be authorized by Congress);
 - At least 50% of the new benefits provided by the modification of the project must be public benefits (note that “new benefits” is a term defined in paragraph (1)); and
 - In order to undertake a project modification, the Secretary shall obtain the consent of:
 - The transferred works operating entity if the project involved is a transferred works; and
 - Any project beneficiary that would experience an adverse impact from the operation of the modified project (note that “adverse impact” is a term defined in paragraph (1)).
 - If the modified project creates a new project beneficiary, the Secretary cannot subsequently reoperate the project to increase the benefits to that new beneficiary without the consent of any project beneficiaries that would experience an adverse impact.
 - The costs of planning, design and environmental compliance of the modified project shall be allocated in accordance with Reclamation procedures, with the caveat that any project beneficiary who does not receive any increase in long-term average annual water deliveries as a result of the modification shall not be allocated any reimbursable portion of these costs.

- Paragraph (3) sets up a process for the Secretary to obtain consent for a modified project from project beneficiaries that would experience an adverse impact. If the necessary consent is not obtained within twelve months of the date consent is requested, the extraordinary maintenance of the project shall proceed without the modification, subject to one twelve-month extension to obtain required consents at the Secretary's discretion.
- Paragraph (4) addresses the reallocation of costs based on project changes and increased public benefits. Public benefits shall be non-reimbursable, and the cost allocation of reimbursable costs to each project beneficiary shall reflect the changes in benefits that the project is providing to that beneficiary.
- Paragraph (5) addresses incentives to participate in modified projects where public benefits are increased, but not water contractor benefits.
 - The water contractors will face strong disincentives to participate in these projects. Some contractors may see their benefits reduced. All contractors will have to accept significant delay in obtaining the benefits of the restoration of these projects. It will take significant time to modify the projects in a manner that the contractors can accept, and then to conduct environmental compliance on the proposed modification. The contractors will also have to accept modified project operations that give increased priority to public benefits.
 - To offset these disincentives for water contractors to participate in projects which increase just public benefits, the bill reduces the reimbursable costs for such modified projects by 15%. The result is that each project beneficiary will pay 85% of the reimbursable costs for the modified project that the beneficiary would otherwise have been allocated.
 - **This paragraph sets up a financial incentive for water contractors to support modified projects that solely increase environmental and other public benefits without increasing water diversions or other water supply benefits.** Without this financial incentive, I expect water contractors will generally oppose such modification of the projects that they rely on for water deliveries.
 - This paragraph is also consistent with the provision of some non-reimbursable benefits for water supply in the context of other authorizations for projects that provide both water supply and substantial public benefits in a watershed:
 - Title XVI provides 25% non-reimbursable benefits for projects providing water supply that have watershed benefits through the use of recycled water;
 - The large-scale water recycling program that Congress just authorized in the Infrastructure Investment and Jobs Act provides up to 75% non-reimbursable benefits for projects that likewise provide both water supply and watershed

benefits through the use of recycled water;

- Section 103 of this bill provides non-reimbursable benefits for non-Federal storage and conveyance projects to the extent that they provide increased public benefits in the watershed.
 - Given the inevitability of increasingly severe and lengthy droughts as the West's climate changes, it will be essential to provide incentives to collaborate on multi-benefit projects that bring agricultural, environmental, and urban interests together to address the very serious challenge of maintaining sufficiently reliable water supply for all. This proposed amendment to the Aging Infrastructure Program seeks to increase incentives for such necessary collaboration.
- Section 108, Use of Revenue to Improve Drought Resilience or Dam Safety
 - **Issue:** Pursuant to the Sale of Water for Miscellaneous Purposes Act of 1920 (43 USC 521), the Warren Act of 1911 (43 USC 525), and corresponding Bureau of Reclamation (BOR) policy, any revenue from the sale of surplus water must be deposited into the Reclamation Fund and credited to capital repayment of the associated project. Under existing law, revenue from the sale of water continues to flow to the Reclamation Fund even after water users completed capital repayment of their project. As a result, there is no longer any benefit to the contractor from sale of surplus water unless the contractor receives another federal loan on the project.
 - **Importance:** Across the West, drought is stressing many water systems and new constraints often lead to water scarcity even in normal years. This is being compounded by aging BOR facilities that require significant investment to ensure they can continue to operate in a safe and effective fashion, especially as dams and other facilities are forced to withstand more variable and severe precipitation event as a result of climate change. Congress has responded to these challenges over the years by authorizing the Safety of Dams (SOD), Extraordinary Maintenance (XM), and other programs that assist water users in upgrading and repairing existing infrastructure by allowing for extended repayment of costs through contracts that are distinct from the capital repayment obligations for the original construction of BOR projects.
 - Despite the fact that operational flexibility and conservation are growing increasingly important in water management, existing Reclamation law provides very little incentive for paid-out BOR contractors that either have occasional surplus water or could create surplus water through system upgrades to make the investments or undertake the lengthy marketing and contracting necessary to realize a sale. This is especially true for projects that are currently in need of improvements that will increase drought resiliency or dam safety or are repaying Reclamation for SOD or XM projects and can't use any incremental revenues to help cover payments.
 - **Solution:** This section changes existing law to ensure that water users are able to apply revenues derived from the temporary sale of surplus water to infrastructure to improve

drought resiliency or dam safety and for other existing BOR repayment obligations. This change to the treatment of revenue will incentivize water utilities to make water available to relieve water shortages in their region, improve project drought resiliency, improve dam safety, and accelerate repayment of existing obligations.

Title II, Improved Technology and Data

- Section 201, Reauthorization of the Transboundary Aquifer Assessment Program
 - This section reauthorizes the United States-Mexico Transboundary Aquifer Assessment Act (42 U.S.C. 1962 note; Public Law 109-448).
 - This section derives from former Senator Udall and former Representative Torres Small's 2019 Western Water Security Act (S. 2718/HR 4891).

Title III, Ecosystem Restoration and Protection

- Section 301, Ecosystem Restoration
 - This section makes limited amendments to the competitive grant program for habitat restoration projects established in section 40907 of the Infrastructure Investment and Jobs Act.
 - Subsection (a) adds definitions of two new terms, "Committee" and "Project". The term "Committee" describes the "Integrated Water Management Leadership Committee" described more fully in subsection (c).
 - Subsection (b) amends section 40907(c)(1) of the Infrastructure Investment and Jobs Act (Public Law 117-58) to direct that Interior:

“(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 that are express requirements of a permit or order issued under Federal or State law, unless such requirements expressly contemplate reliance on Federal funding in performance of the requirements.”
 - Subsection (c) supplements the \$100 million provided to the competitive grant program for habitat restoration in the bipartisan infrastructure law with:
 - 1) An authorization of \$150 million total for the competitive grant program from fiscal year 2024 through fiscal year 2028; and
 - 2) An authorization of \$100 million total from fiscal year 2024 through fiscal year 2028 for other grants, contracts, and agreements to achieve the habitat restoration purposes of this section and consistent with its requirements, as authorized in this section.
 - 3) Among other purposes, this \$100 million could be used to ensure that when

Sacramento Valley rice growers sell their water and idle their crops, some water is left behind and applied to bare fields in late summer and early fall to create shallow flooded habitat during a critical shorebird migration period. See subsection (f) of amended section 40907 of the amended Infrastructure Investment and Jobs Act.

- Subsection (c) also directs the Secretary to establish an Integrated Water Management Federal Leadership Committee which coordinates federal agency efforts to implement integrated water management projects, if requested to do so for a particular project by an eligible entity or qualified non-government organization partner.
- Finally, subsection (c) requires the Secretary to comply with applicable environmental laws in implementing this section.
- Section 302, Performance-based Restoration Authority
 - **Multiple large- and small-scale ecosystem restoration projects have been authorized or are required by law, yet implementation of these projects often stalls when federal agencies have competing priorities or don't have the resources or technical experience to undertake them successfully.** This section expedites the implementation of certain types of habitat and ecosystem restoration projects by **authorizing the Secretary of the Interior (Secretary) to enter into performance-based financial arrangements for the delivery of ecological targets and outcomes by experienced non-federal entities.** This section does not create a new program, but instead allows the use of performance-based financial arrangements under the Secretary's existing ecosystem and habitat restoration authorities. It is needed to both expedite completion of many restoration projects—including large, multi-year projects—and to clarify that performance-based financial mechanisms are an authorized use of federal funds for such projects. The section additionally furthers the goals of reducing costs to the federal government in undertaking such projects and increasing flexibility in the administration of funding for such projects, consistent with federal acquisition regulations.
 - In General. Subsection (b) authorizes the Secretary, in implementing existing authorities under Federal law related to habitat and ecosystem restoration, to—
 - (1) enter into performance-based contracts, grant agreements, and cooperative agreements for habitat and ecosystem restoration, mitigation, and enhancement projects where ecological targets and outcomes are
 - clearly defined,
 - agreed upon in advance, and
 - capable of being successfully achieved
 - (2) enter into performance-based contracts with eligible restoration providers experienced in financing and completing successful ecological habitat and restoration, mitigation, and enhancement activities.
 - (3) provide grant and award agreements for habitat and ecosystem restoration, mitigation, and enhancement projects as described in paragraph (1) and allow for the use of performance-based tools in such agreements.
 - (4) provide pass-through financing for funds granted or awarded to non-federal third parties utilizing performance-based contracts for projects authorized under

paragraph (1).

(5) use performance-based financial mechanisms for multi-year projects.

- Guidelines. Subsection (c) directs the Secretary to—
 - (1) develop guidelines for using performance-based financing and to consult with experienced external organizations in developing such guidelines. Such consultation shall not constitute or require establishing a committee under the Federal Advisory Committee Act. Guidelines shall include guidance on
 - appropriate proposal and project evaluation criteria,
 - restoration provider eligibility criteria,
 - criteria for defining achievable ecological outcomes, and
 - determination of restoration provider financial assurances sufficient to ensure ecological outcomes will be successfully achieved.
- Identification of Eligible Projects. Subsection (d) directs the Secretary to identify opportunities for using performance-based financing for projects authorized in subsection (b)(1) and issue a request for proposals from eligible restoration providers to undertake such projects.
- Certification. Under subsection (e), the Secretary shall certify that work was completed in accordance with ecological requirements and outcomes previously agreed to.
- Technical Assistance. Subsection (f) authorizes the Secretary to provide technical assistance to restoration providers for studies, design, engineering, and permitting.
- Rule of Construction. Subsection (g) clarifies that nothing in the section authorizes the Secretary to waive any obligation of the Secretary or non-Federal parties under federal environmental law.
- Non-Federal Funding. Subsection (h) authorizes use of performance-based financing under the act for non-federal project cost shares, on the condition that the non-federal cost-share responsibility remains with the non-federal party.
- Cost Share. Subsection (i) clarifies that nothing in the section shall affect a cost-sharing requirement under Federal law that is applicable to a project carried out under the performance-based restoration authority established under subsection (a).
- Mitigation. Subsection (j) clarifies that nothing in this section shall authorize Federal funding to meet existing environmental mitigation or compliance obligations that are express requirements of a permit or order issued under Federal or State law, unless such requirements expressly contemplate reliance on Federal funding in performance of the requirements
- Report. Subsection (k) requires the Secretary to

- (1) issue and submit to Congress a report describing results of, and impediments to, the use of performance-based financing within 3 years of the date of enactment, and
- (2) address such impediments, if any—to the extent practicable—and to protect the public interest and investment in projects financed under the Act.

Title IV, Miscellaneous

- Section 401, Amendments to Drought Program Under the Reclamation States Emergency Drought Relief Act of 1991
 - Droughts have become more frequent than when the Reclamation States Emergency Drought Relief Act was enacted in 1991. As a result, some amendments appear appropriate to the Act to reflect the increased frequency of droughts.
 - The existing Act limits permanent facilities that it authorizes to groundwater wells.
 - Given the increased frequency of droughts, it seems more efficient to install a greater number of permanent facilities than to frequently install and remove temporary facilities.
 - Subsection (a) therefore provides authorization during a declared drought emergency for any permanent facilities or projects up to a federal investment of \$30 million that are supported by the relevant State (or tribe if the facility is on an Indian reservation).
 - The \$30 million threshold comes from the Infrastructure Investment and Jobs Act, which creates a precedent authorizing Interior to proceed with projects up to \$30 million without Congressional authorization of the specific projects (in that Act this precedent is applied to small storage projects).
 - Subsection (a) also requires that a well drilled to minimize losses and damages from drought conditions must either 1) align with applicable local, state, or regional groundwater sustainability goals; or 2) support drinking water supplies for a disadvantaged community or Tribe.
 - Subsection (a) further addresses the problem of drought shortfalls in environmental funding programs like the Central Valley Improvement Act that derive their funding from per acre fees in water delivered.
 - Because their funding varies by the amount of water delivered, these programs provide substantially less environmental funding precisely when the funding is most needed, during droughts.
 - Subsection (a) would authorize non-reimbursable funding to make up these shortfalls, without affecting the Secretary's legal obligations to the environment or existing

authority to make up shortfalls in environmental funding in non-drought years.

- Subsection (b) amends the existing Act to clarify that it applies to drought emergencies declared for portions of States, and does not require drought emergencies to apply to an entire State.
- Subsection (b) also extends the Reclamation States Emergency Drought Relief Act authorization to 2031.
- Subsection (c) amends the Secure Water Act of 2009 to provide that an application for WaterSMART funding to drill a groundwater well for municipal supply to minimize losses and damages from drought conditions shall not increase the applicant's net water use beyond the period of any drought emergency, unless the groundwater well is for the purpose of supplying drinking water for a disadvantaged community or Tribe, or if the new groundwater use is partially offset by aquatic habitat enhancement during the drought period, or over the long-term, including a future drought period.
- Section 402, Clarification of Authority to Use Coronavirus Fiscal Recovery Funds to Meet a Non-Federal Matching Requirement for Authorized Water Projects
 - The Infrastructure Investment and Jobs Act (the bipartisan infrastructure law) allows COVID relief funds granted to states and counties to be used for the local cost-share for Bureau of Reclamation water projects.
 - This section contains a technical amendment to section 40909 of the Act.
 - The technical amendment would allow COVID relief funds to be used for the local cost-share not just for Reclamation projects, but for non-Federal projects that are authorized by Congress to receive Reclamation funding.
 - Once COVID relief funds have been authorized for the local cost-share of authorized Bureau of Reclamation projects, we see no reason not to extend their use to the local cost-share of non-Federal projects authorized to receive Reclamation funding.
- Section 403, Environmental Compliance
 - This section requires the Act to be implemented consistent with applicable State law and Federal environmental law.
- Section 404, Effect
 - This section provides that nothing in this Act shall interfere with any obligation of a State under the Rio Grande Compact or any other interstate compact approved by Congress.