AMENDMENT TO SENATE AMENDMENT TO H.R. 5376

OFFERED BY MRS. BOEBERT OF COLORADO

At the end of title II, insert the following:

Subtitle E—Western Water Security

SEC. __001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the “Western Water Security Act of 2020”.

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

Sec. __001. Short title; table of contents.
Sec. __002. Definitions.

PART 1—INFRASTRUCTURE AND WATER MANAGEMENT IMPROVEMENT

Sec. __101. Watersmart extension and expansion.
Sec. __102. Emergency drought funding.
Sec. __103. Rio Grande Pueblo Irrigation Infrastructure Reauthorization.

PART 2—GROUNDWATER MANAGEMENT

Sec. __201. Reauthorization and expansion of the Transboundary Aquifer Assessment Program.
Sec. __202. Groundwater management assessment and improvement.
Sec. __203. Surface and groundwater water availability and the energy nexus.

PART 3—WATER CONSERVATION AND ENVIRONMENTAL RESTORATION

Sec. __301. Definitions.
Sec. __302. Water acquisition program.
Sec. __303. Middle Rio Grande Water Conservation.
Sec. __304. Sustaining biodiversity during droughts.
Sec. __305. Reauthorization of cooperative watershed management program.
PART 4—EFFECT ON EXISTING LAW

Sec. 401. Effect on existing law.

SEC. __002. DEFINITIONS.

In this subtitle:

(1) RIO GRANDE COMPACT.—The term “Rio Grande Compact” means the compact approved by Congress under the Act of May 31, 1939 (53 Stat. 785, chapter 155).

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

(3) STATE.—The term “State” means the State of New Mexico.

PART 1—INFRASTRUCTURE AND WATER MANAGEMENT IMPROVEMENT

SEC. __101. 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”;

(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 one or more organizations with water or power delivery authority;

“(C) any other organization with water or power delivery authority; or

“(D) any nonprofit conservation organization.”;

(3) by redesignating paragraphs (13) through (17) as paragraphs (14) through (18), respectively; and

(4) by inserting after paragraph (12) the following:

“(13) NATURAL WATER RECHARGE INFRASTRUCTURE.—The term ‘natural water recharge infrastructure’ means a single project, a number of distributed projects across a watershed, or the redesign and replacement, or removal, of built infrastructure to incorporate natural aquatic elements, in which the project—

“(A) uses natural materials appropriate to the specific site and landscape setting;

“(B) mimics natural riverine, floodplain, riparian, wetland, hydrologic, or other ecological processes; and
“(C) results in aquifer recharge, transient floodplain water retention, or restoration of water in the landscape such that the water returns to a wetland, riparian area, or surface water channel.”.

(b) Research Agreements.—Section 9504(b)(1) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(b)(1)) is amended—

(1) in the matter preceding subparagraph (A), by inserting “nonprofit conservation organization,” before “or organization”;

(2) in subparagraph (B), by striking “or” at the end;

(3) by redesignating subparagraph (C) as subparagraph (D); and

(4) by inserting after subparagraph (B) the following:

“(C) to increase natural water recharge infrastructure; or”.

c) Water Management Improvement.—Section 9504(e) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10364(e)) is amended by striking “$530,000,000” and inserting “$700,000,000, subject to the condition that $50,000,000 of that amount shall be used to carry out section 206 of the Energy and Water

(d) CONFORMING AMENDMENT.—Section 4009(d) of Public Law 114–322 (42 U.S.C. 10364 note) 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)”.

SEC. 102. EMERGENCY DROUGHT FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 301 of the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2241) is amended—

(1) by striking “120,000,000” and inserting “180,000,000”; and

(2) by striking “2020” and inserting “2025, of which not more than $30,000,000 shall be made available during that period for the conduct of actions authorized under title I of the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2211 et seq.) to benefit imperiled fish and wildlife”.

(b) APPLICABLE PERIOD OF DROUGHT PROGRAM.—Section 104 of the Reclamation States Emergency
Drought Relief Act of 1991 (43 U.S.C. 2214) is amended by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—The programs and authorities established under this title shall become operative in any Reclamation State and in the State of Hawaii only—

“(1) after the Governor or Governors of the affected State or States, or the governing body of an affected Indian Tribe with respect to a reservation, has made a request for temporary drought assistance and the Secretary has determined that the temporary assistance is merited;

“(2) after a drought emergency has been declared by the Governor or Governors of the affected State or States; or

“(3) on approval of a drought contingency plan as provided in title II.”.

(c) REAUTHORIZATION.—Section 104(c) of the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2214(c)) is amended by striking “2020” and inserting “2030”.

SEC. 103. RIO GRANDE PUEBLO IRRIGA- STRUCTURE REAUTHORIZATION.

Section 9106 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1304) is amended—
(1) in subsection (c)(4), by striking “2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources” and inserting “December 31, 2020, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources”; and

(2) in subsection (g)(2)—

(A) by striking “$6,000,000” and inserting “such sums as may be necessary”; and

(B) by striking “2010 through 2019” and inserting “2020 through 2029”.

PART 2—GROUNDWATER MANAGEMENT

SEC. 201. REAUTHORIZATION AND EXPANSION OF THE TRANSBOUNDARY AQUIFER ASSESSMENT PROGRAM.

(a) Designation of Priority Transboundary Aquifers.—Section 4(c)(2) of the United States-Mexico Transboundary Aquifer Assessment Act (42 U.S.C. 1962 note; Public Law 109–448) is amended by striking “New Mexico or Texas” and inserting “New Mexico, Texas, or Arizona (other than an aquifer underlying Arizona and Sonora, Mexico, that is partially within the Yuma groundwater basin designated by the order of the Director of the
Arizona Department of Water Resources dated June 21, 1984).''

(b) REAUTHORIZATION.—

(1) AUTHORIZATION OF APPROPRIATIONS.—

Section 8(a) of the United States-Mexico Transboundary Aquifer Assessment Act (42 U.S.C. 1962 note; Public Law 109–448) is amended by striking “fiscal years 2007 through 2016” and inserting “fiscal years 2021 through 2029”.

(2) SUNSET OF AUTHORITY.—Section 9 of the United States-Mexico Transboundary Aquifer Assessment Act (42 U.S.C. 1962 note; Public Law 109–448) is amended by striking “enactment of this Act” and inserting “enactment of the Western Water Security Act of 2020”.

SEC. 202. GROUNDWATER MANAGEMENT ASSESSMENT AND 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 through temporary, voluntary, and compensated transactions that decrease consumptive water use at a regional or watershed scale;”;

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

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

(G) in subparagraph (D) (as so redesignated)—

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

“(i) to increase ecological resilience to climate change, including by enhancing natural water recharge infrastructure within a floodplain or riparian wetland, by addressing climate-related impacts or vulner-
ability to the water supply of the United States;’’;

(ii) in clause (ii), by striking the period at the end and inserting ‘‘; or’’; and

(iii) by adding at the end the following:

“(iii) to plan for or address the impacts 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—

“(i) to conserve water;

“(ii) to increase water use efficiency;

“(iii) to facilitate water markets; or

“(iv) to enhance water management, including increasing the use of renewable energy in the management and delivery of water or increasing natural water recharge infrastructure;
“(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.”; and

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

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

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

(B) in subparagraph (E)—

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

“(i) FEDERAL SHARE.—

“(I) IN GENERAL.—Except as
provided in subclause (II), the Federal
share of the cost of any infrastructure
improvement or activity that is the
subject of a grant or other agreement
entered into between the Secretary
and an eligible applicant under para-
graph (1) shall not exceed 50 percent
of the cost of the infrastructure im-
provement or activity.

“(II) INCREASED FEDERAL
SHARE FOR CERTAIN INFRASTRUC-
TURE IMPROVEMENTS AND ACTIVI-
TIES.—

“(aa) IN GENERAL.—The
Federal share of the cost of an
infrastructure improvement or
activity described in item (bb)
shall not exceed 75 percent of the
cost of the infrastructure im-
provement or activity.

“(bb) INFRASTRUCTURE IM-
PROVEMENTS AND ACTIVITIES
DESCRIBED.—An infrastructure
improvement or activity referred
to in item (aa) is an infrastruc-
ture improvement or activity that
provides benefits to consumptive
water users and nonconsumptive
ecological or recreational values

in which—

“(AA) in the case of an infrastructure improvement or activity that conserves water, the conserved water is returned to a surface water source with ecological or recreational benefits; or

“(BB) in the case of other infrastructure improvements or activities, the majority of the benefits are nonconsumptive ecological or recreational benefits.”; and

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

SEC. 203. SURFACE AND GROUNDWATER WATER AVAIL-
ABILITY AND THE ENERGY NEXUS.

Section 9508(d)(3) of the Omnibus Public Land Management Act of 2009 (42 U.S.C. 10368(d)(3)) is amended—

(1) in subparagraph (D), by striking “and” at the end;
(2) in subparagraph (E), by striking the semi-
colon and inserting ‘‘; and’’; and

(3) by adding at the end the following:

‘‘(F) oil, gas, and mineral development
under the Mineral Leasing Act (30 U.S.C. 181
et seq.), the Act of May 11, 1938 (commonly
known as the ‘Indian Mineral Leasing Act of
1938’) (25 U.S.C. 396a et seq.), sections 2319
through 2344 of the Revised Statutes (com-
monly known as the ‘Mining Law of 1872’) (30
U.S.C. 22 et seq.), and the Outer Continental
Shelf Lands Act (43 U.S.C. 1331 et seq.);’’.

PART 3—WATER CONSERVATION AND
ENVIRONMENTAL RESTORATION

SEC. 301. DEFINITIONS.

In this part:

(1) Basin.—The term ‘‘Basin’’—

(A) is limited to areas within the State;

and

(B) means each of—

(i) the Upper Rio Grande Basin;

(ii) the Middle Rio Grande Basin;

(iii) the Lower Rio Grande Basin;

(iv) the Lower Pecos River Basin;

(v) the Gila River Basin;
(vi) the Canadian River Basin;

(vii) the San Francisco River Basin;

and

(viii) the San Juan River Basin.

(2) DISTRICT.—The term “District” means—

(A) the Middle Rio Grande Conservancy District;

(B) the Elephant Butte Irrigation District;

(C) the Carlsbad Irrigation District;

(D) the Arch Hurley Conservancy District;

(E) the Pecos Valley Artesian Conservation District; or

(F) the San Juan Water Commission.

(3) PUEBLO.—The term “Pueblo” means each of the following pueblos in the State:

(A) Cochiti.

(B) Santo Domingo.

(C) San Felipe.

(D) Santa Ana.

(E) Sandia.

(F) Isleta.

SEC. 302. WATER ACQUISITION PROGRAM.

(a) AUTHORIZATION.—The Secretary, acting through the Commissioner of Reclamation, shall carry out in the Basins a water acquisition program in coordination with
the other appropriate Federal agencies, State agencies, and non-Federal stakeholders, under which the Secretary shall—

(1) make acquisitions, or assist the State or a District in making acquisitions, of water in the Basins by lease or purchase of water rights or contractual entitlements from willing lessors or sellers, consistent with section 8 of the Act of June 17, 1902 (43 U.S.C. 383), the Rio Grande Compact, and applicable State law relating to the acquisition and administration of water rights; and

(2) take any other actions, consistent with section 8 of the Act of June 17, 1902 (43 U.S.C. 383), the Rio Grande Compact, and applicable State law, that the Secretary determines would achieve the purposes of the water acquisition program described in subsection (b).

(b) PURPOSES.—The purposes of the water acquisition program are—

(1) to enhance stream flow to benefit fish and wildlife (including endangered species), water quality, and river ecosystem restoration in the Basins;

(2) to enhance stewardship and conservation of working land, water, and watersheds in the Basins,
consistent with the purpose described in paragraph (1); and

(3) to address water supply-demand imbalances in the Basins, consistent with State law and the purpose described in paragraph (1).

(c) COORDINATION.—To assist in developing and administering the program, the Secretary may provide funds to the State, a District, or a federally established nonprofit entity with particular expertise in western water transactions.

(d) DISTRICT PROJECTS.—Subject to the Rio Grande Compact and applicable State law, the Secretary may develop programs to provide—

(1) cost-share assistance to a District to reduce water depletions by agricultural producers and irrigators in that District by making irrigation system improvements and increasing system efficiency;

(2) incentives to a District for the establishment of a water leasing program from willing lessors for agricultural producers and irrigators in that District to temporarily lease pre-1907 water rights (instead of permanent severance from irrigable land) for the purpose of providing benefits to species listed as threatened or endangered under the Endangered
Species Act of 1973 (16 U.S.C. 1531 et seq.) and other river ecosystem benefits; and

(3) cost-share assistance to a District to implement infrastructure or operational changes that will allow for effective management of a leasing program, while maintaining adequate water deliveries to other agricultural producers and irrigators.

SEC. 303. MIDDLE RIO GRANDE WATER CONSERVATION.

(a) IN GENERAL.—The Secretary, in cooperation with a District and in consultation with the Pueblos, may provide funding and technical assistance for the installation of metering and measurement devices and the construction of check structures on irrigation diversions, canals, laterals, ditches, and drains—

(1) to ensure the conservation and efficient use of water within that District by—

(A) reducing actual consumptive use; or

(B) not increasing the use of water; and

(2) to improve the measurement and allocation of water, including water acquired through the water acquisition program established under section 302.

(b) RIO GRANDE, SAN ACACIA, AND ISLETA REACHES.—

(1) IN GENERAL.—The Secretary shall provide for the development of a comprehensive plan for the
San Acacia and Isleta reaches to plan, design, permit, construct, and prioritize projects that balance river maintenance, water availability, use, and delivery, and ecosystem benefits, including—

(A) planning, permitting, and construction of a pumping station at Bosque del Apache National Wildlife Refuge for the purpose of more efficiently using water to provide—

(i) a stable supply for the Refuge; and

(ii) an efficient and reliable supply of water to the Rio Grande for the benefit of the endangered silvery minnow and Southwestern willow flycatcher;

(B) planning, permitting, and construction of a river channel realignment project near the Rio Grande mile-83 for the purpose of conveying water and sediment through the reach to Elephant Butte Reservoir and addressing river channel aggradation while maintaining floodplain connectivity during the snowmelt runoff;

(C) planning, permitting, and construction of a controlled outlet for the low flow conveyance channel to the Rio Grande between Fort Craig, New Mexico, and Rio Grande mile-60 for the purpose of water use and delivery, enhance-
ment and development of habitat areas, and
possible creation of a single-channel river eco-

system; and

(D) development of a Lower Reach plan—

(i) to identify additional projects and
maintenance activities with water use, sedi-
ment management, and delivery and eco-

system benefits; and

(ii) to prioritize implementation of all
projects and activities.

(2) Public Participation.—In carrying out
this subsection, the Secretary shall provide a process
for public participation and comment during plan
development and alternative analysis.

SEC. 304. SUSTAINING BIODIVERSITY DURING

DROUGHTS.

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

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

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

(85238212)
August 9, 2022 (4:19 p.m.)
SEC. 305. REAUTHORIZATION OF COOPERATIVE WATER-SHED MANAGEMENT PROGRAM.

Section 6002(g)(4) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 1015a(g)(4)) is amended by striking “2020” and inserting “2031”.

PART 4—EFFECT ON EXISTING LAW

SEC. 401. EFFECT ON EXISTING LAW.

(a) In general.—An action taken by the Secretary or another entity under this subtitle or an amendment made by this subtitle shall comply with applicable State laws in effect on the date of enactment of this subtitle.

(b) State law.—Nothing in this subtitle or an amendment made by this subtitle affects, is intended to affect, or interferes with a law of the State relating to the control, appropriation, use, or distribution of water, or any vested right acquired under the law.

(c) Rio Grande Compact.—Nothing in this subtitle or an amendment made by this subtitle affects or is intended to affect or interfere with any obligation of a State under the Rio Grande Compact or any litigation relating to the Rio Grande Compact.