

AMENDMENT TO SENATE AMENDMENT TO H.R.

5376

OFFERED BY MRS. BOEBERT OF COLORADO

At the end of title II, insert the following:

1 **Subtitle E—Western Water**
2 **Security**

3 **SEC. __001. SHORT TITLE; TABLE OF CONTENTS.**

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

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 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.

1 **SEC. __002. DEFINITIONS.**

2 In this subtitle:

3 (1) RIO GRANDE COMPACT.—The term “Rio
4 Grande Compact” means the compact approved by
5 Congress under the Act of May 31, 1939 (53 Stat.
6 785, chapter 155).

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

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

11 **PART 1—INFRASTRUCTURE AND WATER**

12 **MANAGEMENT IMPROVEMENT**

13 **SEC. __101. WATERSMART EXTENSION AND EXPANSION.**

14 (a) DEFINITION OF ELIGIBLE APPLICANT.—Section
15 9502 of the Omnibus Public Land Management Act of
16 2009 (42 U.S.C. 10362) is amended—

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

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

21 “(7) ELIGIBLE APPLICANT.—The term ‘eligible
22 applicant’ means—

23 “(A) any State, Indian tribe, irrigation dis-
24 trict, or water district;

1 “(B) any State, regional, or local author-
2 ity, the members of which include one or more
3 organizations with water or power delivery au-
4 thority;

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

7 “(D) any nonprofit conservation organiza-
8 tion.”;

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

12 (4) by inserting after paragraph (12) the fol-
13 lowing:

14 “(13) NATURAL WATER RECHARGE INFRA-
15 STRUCTURE.—The term ‘natural water recharge in-
16 frastructure’ means a single project, a number of
17 distributed projects across a watershed, or the rede-
18 sign and replacement, or removal, of built infra-
19 structure to incorporate natural aquatic elements, in
20 which the project—

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

23 “(B) mimics natural riverine, floodplain,
24 riparian, wetland, hydrologic, or other ecological
25 processes; and

1 “(C) results in aquifer recharge, transient
2 floodplain water retention, or restoration of
3 water in the landscape such that the water re-
4 turns to a wetland, riparian area, or surface
5 water channel.”.

6 (b) RESEARCH AGREEMENTS.—Section 9504(b)(1)
7 of the Omnibus Public Land Management Act of 2009 (42
8 U.S.C. 10364(b)(1)) is amended—

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

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

14 (3) by redesignating subparagraph (C) as sub-
15 paragraph (D); and

16 (4) by inserting after subparagraph (B) the fol-
17 lowing:

18 “(C) to increase natural water recharge in-
19 frastructure; or”.

20 (c) WATER MANAGEMENT IMPROVEMENT.—Section
21 9504(e) of the Omnibus Public Land Management Act of
22 2009 (42 U.S.C. 10364(e)) is amended by striking
23 “\$530,000,000” and inserting “\$700,000,000, subject to
24 the condition that \$50,000,000 of that amount shall be
25 used to carry out section 206 of the Energy and Water

1 Development and Related Agencies Appropriations Act,
2 2015 (43 U.S.C. 620 note; Public Law 113–235)”.

3 (d) CONFORMING AMENDMENT.—Section 4009(d) of
4 Public Law 114–322 (42 U.S.C. 10364 note) is amended
5 by striking “on the condition that of that amount,
6 \$50,000,000 of it is used to carry out section 206 of the
7 Energy and Water Development and Related Agencies Ap-
8 propriation Act, 2015 (43 U.S.C. 620 note; Public Law
9 113–235)”.

10 **SEC. __102. EMERGENCY DROUGHT FUNDING.**

11 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
12 301 of the Reclamation States Emergency Drought Relief
13 Act of 1991 (43 U.S.C. 2241) is amended—

14 (1) by striking “120,000,000” and inserting
15 “180,000,000”; and

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

23 (b) APPLICABLE PERIOD OF DROUGHT PROGRAM.—
24 Section 104 of the Reclamation States Emergency

1 Drought Relief Act of 1991 (43 U.S.C. 2214) is amended
2 by striking subsection (a) and inserting the following:

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

6 “(1) after the Governor or Governors of the af-
7 fected State or States, or the governing body of an
8 affected Indian Tribe with respect to a reservation,
9 has made a request for temporary drought assist-
10 ance and the Secretary has determined that the tem-
11 porary assistance is merited;

12 “(2) after a drought emergency has been de-
13 clared by the Governor or Governors of the affected
14 State or States; or

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

17 (c) REAUTHORIZATION.—Section 104(c) of the Rec-
18 lamation States Emergency Drought Relief Act of 1991
19 (43 U.S.C. 2214(c)) is amended by striking “2020” and
20 inserting “2030”.

21 **SEC. __103. RIO GRANDE PUEBLO IRRIGATION INFRA-**
22 **STRUCTURE REAUTHORIZATION.**

23 Section 9106 of the Omnibus Public Land Manage-
24 ment Act of 2009 (Public Law 111–11; 123 Stat. 1304)
25 is amended—

1 (1) in subsection (c)(4), by striking “2 years
2 after the date of enactment of this Act, the Sec-
3 retary shall submit to the Committee on Energy and
4 Natural Resources of the Senate and the Committee
5 on Resources” and inserting “December 31, 2020,
6 the Secretary shall submit to the Committee on En-
7 ergy and Natural Resources of the Senate and the
8 Committee on Natural Resources”; and

9 (2) in subsection (g)(2)—

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

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

14 **PART 2—GROUNDWATER MANAGEMENT**

15 **SEC. __201. REAUTHORIZATION AND EXPANSION OF THE** 16 **TRANSBOUNDARY AQUIFER ASSESSMENT** 17 **PROGRAM.**

18 (a) DESIGNATION OF PRIORITY TRANSBOUNDARY
19 AQUIFERS.—Section 4(c)(2) of the United States-Mexico
20 Transboundary Aquifer Assessment Act (42 U.S.C. 1962
21 note; Public Law 109–448) is amended by striking “New
22 Mexico or Texas” and inserting “New Mexico, Texas, or
23 Arizona (other than an aquifer underlying Arizona and
24 Sonora, Mexico, that is partially within the Yuma ground-
25 water basin designated by the order of the Director of the

1 Arizona Department of Water Resources dated June 21,
2 1984”).

3 (b) REAUTHORIZATION.—

4 (1) AUTHORIZATION OF APPROPRIATIONS.—

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

10 (2) SUNSET OF AUTHORITY.—Section 9 of the
11 United States-Mexico Transboundary Aquifer As-
12 sessment Act (42 U.S.C. 1962 note; Public Law
13 109–448) is amended by striking “enactment of this
14 Act” and inserting “enactment of the Western
15 Water Security Act of 2020”.

16 **SEC. 202. GROUNDWATER MANAGEMENT ASSESSMENT**
17 **AND IMPROVEMENT.**

18 Section 9504(a) of the Omnibus Public Land Man-
19 agement Act of 2009 (42 U.S.C. 10364(a)) is amended—

20 (1) in paragraph (1)—

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

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

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

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

6 “(A) to assist States and water users in
7 complying with interstate compacts through
8 temporary, voluntary, and compensated trans-
9 actions that decrease consumptive water use at
10 a regional or watershed scale;”;

11 (E) in subparagraph (B) (as so redesign-
12 ated), by striking “to prevent” and inserting
13 “to achieve the prevention of”;

14 (F) in subparagraph (C) (as so redesign-
15 ated), by striking “to accelerate” and inserting
16 “to achieve the acceleration of”; and

17 (G) in subparagraph (D) (as so redesign-
18 ated)—

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

21 “(i) to increase ecological resilience to
22 climate change, including by enhancing
23 natural water recharge infrastructure with-
24 in a floodplain or riparian wetland, by ad-
25 dressing climate-related impacts or vulner-

1 ability to the water supply of the United
2 States;”;

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

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

7 “(iii) to plan for or address the im-
8 pacts of drought.”;

9 (2) by redesignating paragraphs (2) and (3) as
10 paragraphs (3) and (4), respectively;

11 (3) by inserting after paragraph (1) the fol-
12 lowing:

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

16 “(A) using an approach—

17 “(i) to conserve water;

18 “(ii) to increase water use efficiency;

19 “(iii) to facilitate water markets; or

20 “(iv) to enhance water management,
21 including increasing the use of renewable
22 energy in the management and delivery of
23 water or increasing natural water recharge
24 infrastructure;

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

3 “(C) to achieve the acceleration of the
4 adoption and use of advanced water treatment
5 technologies to increase water supply.”; and
6 (4) in paragraph (4) (as so redesignated)—

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

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

17 (B) in subparagraph (E)—

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

20 “(i) FEDERAL SHARE.—

21 “(I) IN GENERAL.—Except as
22 provided in subclause (II), the Federal
23 share of the cost of any infrastructure
24 improvement or activity that is the
25 subject of a grant or other agreement

1 entered into between the Secretary
2 and an eligible applicant under para-
3 graph (1) shall not exceed 50 percent
4 of the cost of the infrastructure im-
5 provement or activity.

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

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

17 “(bb) INFRASTRUCTURE IM-
18 PROVEMENTS AND ACTIVITIES
19 DESCRIBED.—An infrastructure
20 improvement or activity referred
21 to in item (aa) is an infrastruc-
22 ture improvement or activity that
23 provides benefits to consumptive
24 water users and nonconsumptive

1 ecological or recreational values
2 in which—

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

10 “(BB) in the case of
11 other infrastructure im-
12 provements or activities, the
13 majority of the benefits are
14 nonconsumptive ecological or
15 recreational benefits.”; and

16 (ii) in clause (ii), in the matter pre-
17 ceding subclause (I), by striking “para-
18 graph (2)” and inserting “paragraph (3)”.

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

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

24 (1) in subparagraph (D), by striking “and” at
25 the end;

1 (2) in subparagraph (E), by striking the semi-
2 colon and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(F) oil, gas, and mineral development
5 under the Mineral Leasing Act (30 U.S.C. 181
6 et seq.), the Act of May 11, 1938 (commonly
7 known as the ‘Indian Mineral Leasing Act of
8 1938’) (25 U.S.C. 396a et seq.), sections 2319
9 through 2344 of the Revised Statutes (com-
10 monly known as the ‘Mining Law of 1872’) (30
11 U.S.C. 22 et seq.), and the Outer Continental
12 Shelf Lands Act (43 U.S.C. 1331 et seq.);”.

13 **PART 3—WATER CONSERVATION AND**
14 **ENVIRONMENTAL RESTORATION**

15 **SEC. __ 301. DEFINITIONS.**

16 In this part:

17 (1) **BASIN.**—The term “Basin”—

18 (A) is limited to areas within the State;

19 and

20 (B) means each of—

21 (i) the Upper Rio Grande Basin;

22 (ii) the Middle Rio Grande Basin;

23 (iii) the Lower Rio Grande Basin;

24 (iv) the Lower Pecos River Basin;

25 (v) the Gila River Basin;

- 1 (vi) the Canadian River Basin;
- 2 (vii) the San Francisco River Basin;
- 3 and
- 4 (viii) the San Juan River Basin.

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

- 6 (A) the Middle Rio Grande Conservancy
- 7 District;
- 8 (B) the Elephant Butte Irrigation District;
- 9 (C) the Carlsbad Irrigation District;
- 10 (D) the Arch Hurley Conservancy District;
- 11 (E) the Pecos Valley Artesian Conservation
- 12 District; or
- 13 (F) the San Juan Water Commission.

14 (3) PUEBLO.—The term “Pueblo” means each

15 of the following pueblos in the State:

- 16 (A) Cochiti.
- 17 (B) Santo Domingo.
- 18 (C) San Felipe.
- 19 (D) Santa Ana.
- 20 (E) Sandia.
- 21 (F) Isleta.

22 **SEC. __302. WATER ACQUISITION PROGRAM.**

23 (a) AUTHORIZATION.—The Secretary, acting through

24 the Commissioner of Reclamation, shall carry out in the

25 Basins a water acquisition program in coordination with

1 the other appropriate Federal agencies, State agencies,
2 and non-Federal stakeholders, under which the Secretary
3 shall—

4 (1) make acquisitions, or assist the State or a
5 District in making acquisitions, of water in the Ba-
6 sins by lease or purchase of water rights or contrac-
7 tual entitlements from willing lessors or sellers, con-
8 sistent with section 8 of the Act of June 17, 1902
9 (43 U.S.C. 383), the Rio Grande Compact, and ap-
10 plicable State law relating to the acquisition and ad-
11 ministration of water rights; and

12 (2) take any other actions, consistent with sec-
13 tion 8 of the Act of June 17, 1902 (43 U.S.C. 383),
14 the Rio Grande Compact, and applicable State law,
15 that the Secretary determines would achieve the pur-
16 poses of the water acquisition program described in
17 subsection (b).

18 (b) PURPOSES.—The purposes of the water acqui-
19 sition program are—

20 (1) to enhance stream flow to benefit fish and
21 wildlife (including endangered species), water qual-
22 ity, and river ecosystem restoration in the Basins;

23 (2) to enhance stewardship and conservation of
24 working land, water, and watersheds in the Basins,

1 consistent with the purpose described in paragraph
2 (1); and

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

6 (c) COORDINATION.—To assist in developing and ad-
7 ministering the program, the Secretary may provide funds
8 to the State, a District, or a federally established nonprofit
9 entity with particular expertise in western water trans-
10 actions.

11 (d) DISTRICT PROJECTS.—Subject to the Rio Grande
12 Compact and applicable State law, the Secretary may de-
13 velop programs to provide—

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

18 (2) incentives to a District for the establish-
19 ment of a water leasing program from willing lessors
20 for agricultural producers and irrigators in that Dis-
21 trict to temporarily lease pre-1907 water rights (in-
22 stead of permanent severance from irrigable land)
23 for the purpose of providing benefits to species listed
24 as threatened or endangered under the Endangered

1 Species Act of 1973 (16 U.S.C. 1531 et seq.) and
2 other river ecosystem benefits; and

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

8 **SEC. 303. MIDDLE RIO GRANDE WATER CONSERVATION.**

9 (a) IN GENERAL.—The Secretary, in cooperation
10 with a District and in consultation with the Pueblos, may
11 provide funding and technical assistance for the installa-
12 tion of metering and measurement devices and the con-
13 struction of check structures on irrigation diversions, ca-
14 nals, laterals, ditches, and drains—

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

17 (A) reducing actual consumptive use; or

18 (B) not increasing the use of water; and

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

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

24 (1) IN GENERAL.—The Secretary shall provide
25 for the development of a comprehensive plan for the

1 San Acacia and Isleta reaches to plan, design, per-
2 mit, construct, and prioritize projects that balance
3 river maintenance, water availability, use, and deliv-
4 ery, and ecosystem benefits, including—

5 (A) planning, permitting, and construction
6 of a pumping station at Bosque del Apache Na-
7 tional Wildlife Refuge for the purpose of more
8 efficiently using water to provide—

9 (i) a stable supply for the Refuge; and

10 (ii) an efficient and reliable supply of
11 water to the Rio Grande for the benefit of
12 the endangered silvery minnow and South-
13 western willow flycatcher;

14 (B) planning, permitting, and construction
15 of a river channel realignment project near the
16 Rio Grande mile-83 for the purpose of con-
17 veying water and sediment through the reach to
18 Elephant Butte Reservoir and addressing river
19 channel aggradation while maintaining flood-
20 plain connectivity during the snowmelt runoff;

21 (C) planning, permitting, and construction
22 of a controlled outlet for the low flow convey-
23 ance channel to the Rio Grande between Fort
24 Craig, New Mexico, and Rio Grande mile-60 for
25 the purpose of water use and delivery, enhance-

1 ment and development of habitat areas, and
2 possible creation of a single-channel river eco-
3 system; and

4 (D) development of a Lower Reach plan—

5 (i) to identify additional projects and
6 maintenance activities with water use, sedi-
7 ment management, and delivery and eco-
8 system benefits; and

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

11 (2) PUBLIC PARTICIPATION.—In carrying out
12 this subsection, the Secretary shall provide a process
13 for public participation and comment during plan
14 development and alternative analysis.

15 **SEC. __304. SUSTAINING BIODIVERSITY DURING**
16 **DROUGHTS.**

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

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

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

1 **SEC. __305. REAUTHORIZATION OF COOPERATIVE WATER-**
2 **SHED MANAGEMENT PROGRAM.**

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

6 **PART 4—EFFECT ON EXISTING LAW**

7 **SEC. __401. EFFECT ON EXISTING LAW.**

8 (a) **IN GENERAL.**—An action taken by the Secretary
9 or another entity under this subtitle or an amendment
10 made by this subtitle shall comply with applicable State
11 laws in effect on the date of enactment of this subtitle.

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

17 (c) **RIO GRANDE COMPACT.**—Nothing in this subtitle
18 or an amendment made by this subtitle affects or is in-
19 tended to affect or interfere with any obligation of a State
20 under the Rio Grande Compact or any litigation relating
21 to the Rio Grande Compact.

