

106TH CONGRESS  
2D SESSION

# H. R. 4196

To subject the United States to imposition of fees and costs in proceedings relating to State water rights adjudications.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2000

Mr. SIMPSON (for himself, Mr. GIBBONS, Mr. WALDEN of Oregon, Mrs. CHENOWETH-HAGE, and Mr. SCHAFFER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To subject the United States to imposition of fees and costs in proceedings relating to State water rights adjudications.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Adjudication  
5 Fee Fairness Act of 2000”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Generally, water allocation in the western  
9 United States is based upon the doctrine of prior ap-  
10 propriation, under which water users’ rights are

1       quantified under State law. Appropriative rights  
2       carry designated priority dates that establish the rel-  
3       ative right of priority to use water from a source.  
4       Most States in the West have developed judicial and  
5       administrative proceedings, often called general ad-  
6       judications, to quantify and document these relative  
7       rights, including the rights to water claimed by the  
8       United States Government under either State or  
9       Federal law.

10           (2) State general adjudications are typically  
11       complicated, expensive civil court and administrative  
12       actions that can involve hundreds or even thousands  
13       of claimants. Such adjudications give certainty to  
14       water rights, provide direction for water administra-  
15       tion, and reduce conflict over water allocation and  
16       water usage. Those claiming and establishing rights  
17       to water are the primary beneficiaries of State gen-  
18       eral adjudication proceedings.

19           (3) The Congress has recognized the benefits of  
20       the State general adjudication system, and by enact-  
21       ment of section 208 of the Department of Justice  
22       Appropriation Act, 1953 (43 U.S.C. 666; popularly  
23       known as the “McCarran Amendment”), required  
24       the United States to submit to State court jurisdic-

1       tion and to file claims in State general adjudication  
2       proceedings.

3           (4) Water rights claims by Federal agencies  
4       under either State or Federal law are often the larg-  
5       est or most complex claims in State general adju-  
6       dications. However, the United States Supreme  
7       Court, in the case *United States v. Idaho*, 508 U.S.  
8       1 (1992), determined that the McCarran Amend-  
9       ment does not require the United States to pay some  
10      filing fees simply because they were misconstrued or  
11      perceived to be the same as costs taxed against all  
12      parties.

13          (5) Since Federal agency water rights claims  
14      are among the most difficult to adjudicate, and since  
15      the United States is not required to pay some fees  
16      and costs paid by non-Federal claimants, the burden  
17      of funding adjudication proceedings unfairly shifts  
18      to private water users and State taxpayers.

19          (6) The lack of Federal Government funding to  
20      support State water rights adjudications in relation  
21      to the complexity of the claims involved has pro-  
22      duced significant delays in completion of State gen-  
23      eral adjudications. These delays inhibit the ability of  
24      both the States and Federal agencies to protect pri-  
25      vate and public property interests. Also, failure to

1 complete the final adjudication of claims to water re-  
2 stricts the ability of resource managers to determine  
3 how much unappropriated water is available to sat-  
4 isfy environmental and economic development de-  
5 mands.

6 **SEC. 3. LIABILITY OF UNITED STATES FOR FEES AND**  
7 **COSTS IN WATER USE RIGHTS PROCEEDINGS.**

8 (a) IN GENERAL.—In any State administrative or ju-  
9 dicial proceeding for the adjudication or administration of  
10 rights to the use of water in which the United States is  
11 a party, the United States shall be subject to the imposi-  
12 tion of fees and costs on its claims to water rights under  
13 either State or Federal law to the same extent as a private  
14 party to the proceeding.

15 (b) APPLICATION.—Subsection (a) shall apply to pro-  
16 ceedings pending on or initiated after the date of enact-  
17 ment of this Act, including with respect to fees and costs  
18 imposed in such a proceeding before the date of the enact-  
19 ment of this Act.

20 (c) REPORT TO CONGRESS.—The head of any Fed-  
21 eral agency that files or has pending any water rights  
22 claim shall prepare and submit to the Congress, within  
23 90 days after the end of each fiscal year, a report that  
24 identifies—

1           (1) each such claim filed by the agency that has  
2 not yet been decreed;

3           (2) all fees and costs imposed on the United  
4 States for each claim identified under paragraph (1);

5           (3) any portion of such fees and costs that has  
6 not been paid; and

7           (4) the source of funds used to pay such fees  
8 and costs.

9           (d) FEES AND COSTS DEFINED.—In this section, the  
10 term “fees and costs” means any administrative fee, ad-  
11 ministrative cost, claim fee, judicial fee, or judicial cost  
12 imposed by a State on a party claiming a right to the  
13 use of water under either State or Federal law in a State  
14 proceeding referred to in subsection (a).

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