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IRRIGATION MITIGATION AND RESTORATION  
PARTNERSHIP ACT OF 1999

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MARCH 9, 2000.—Ordered to be printed

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Mr. MURKOWSKI, from the Committee on Energy and Natural  
Resources, submitted the following

REPORT

[To accompany H.R. 1444]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1444) to authorize the Secretary of the Interior to plan, design, and construct fish screens, fish passage devices, and related features to mitigate adverse impacts associated with irrigation system water diversions by local governmental entities in the States of Oregon, Washington, Montana, Idaho, and California, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION. 1. SHORT TITLE.**

This Act may be cited as the “Irrigation Mitigation and Restoration Partnership Act of 1999”.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) **PACIFIC OCEAN DRAINAGE AREA.**—The term “Pacific Ocean drainage area” means the area comprised of portions of the States of Oregon, Washington, Montana, and Idaho from which water drains into the Pacific Ocean.

(2) **PROGRAM.**—The term “Program” means the Irrigation Mitigation and Restoration Partnership Program established by section 3(a).

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

**SEC. 3. ESTABLISHMENT OF THE PARTNERSHIP PROGRAM.**

(a) **ESTABLISHMENT.**—There is established the Irrigation Mitigation and Restoration Partnership Program within the Department of the Interior.

(b) **GOALS.**—The goals of the Program are—

(1) to decrease fish mortality associated with the withdrawal of water from irrigation and other purposes without impairing the continued withdrawal of water for those purposes; and

(2) to decrease the incidence of juvenile and adult fish entering water supply systems.

(c) **IMPACTS ON FISHERIES.**—

(1) **IN GENERAL.**—Under the Program, the Secretary, in consultation with the heads of other appropriate agencies, shall develop and implement projects to mitigate impacts to fisheries resulting from the construction and operation of water diversions by local governmental entities including water and soil conservations districts, in the Pacific Ocean drainage area.

(2) **TYPES OF PROJECTS.**—Projects eligible under the Program may include the development, improvement, or installation of—

- (A) fish screens;
- (B) fish passage devices;
- (C) other facilities agreed to by non-Federal interests, relevant Federal and tribal agencies, and affected States; and
- (D) inventories by the States on the need and priority for projects described in subparagraphs (A) through (C).

(3) **PRIORITY.**—The Secretary shall give priority to any project that has a total cost of less than \$5,000,000.

**SEC. 4. PARTICIPATION IN THE PROGRAM.**

(a) **NON-FEDERAL.**—

(1) **IN GENERAL.**—Non-Federal participation in the Program shall be voluntary.

(2) **FEDERAL ACTION.**—The Secretary shall take no action that would result in any non-Federal entity being held financially responsible for any action under the Program, unless the entity applies to participate in the Program.

(b) **FEDERAL.**—Development and implementation of projects under the Program on land or facilities owned by the United States shall be nonreimbursable Federal expenditures.

**SEC. 5. EVALUATION AND PRIORITIZATION OF PROJECTS.**

Evaluation and prioritization of projects for development under the Program shall be conducted on the basis of—

- (1) benefits to fish species native to the project area, particularly to species that are listed as being, or considered by Federal or State authorities to be, endangered, threatened, or sensitive;
- (2) the size and type of water diversion;
- (3) the availability of other funding sources;
- (4) cost effectiveness; and
- (5) additional opportunities for biological or water delivery system benefits.

**SEC. 6. ELIGIBILITY REQUIREMENTS.**

(a) **IN GENERAL.**—A project carried out under the Program shall not be eligible for funding unless—

- (1) the project meets the requirements of the Secretary, as applicable, and any applicable State requirements; and
- (2) the project is agreed to by all Federal and non-Federal entities with authority and responsibility for the project.

(b) **DETERMINATION OF ELIGIBILITY.**—In determining the eligibility of a project under this Act, the Secretary shall—

- (1) consult with other Federal, State, tribal, and local agencies; and
- (2) make maximum use of all available data.

**SEC. 7. COST SHARING.**

(a) **NON-FEDERAL SHARE.**—The non-Federal share of the cost of development and implementation of any project under the Program on land or at a facility that is not owned by the United States shall be 35 percent.

(b) **NON-FEDERAL CONTRIBUTIONS.**—The non-Federal participants in any project under the Program on land or at a facility that is not owned by the United States shall provide all land, easements, rights-of-way, dredged material disposal areas and relocations necessary for the project.

(c) **CREDIT FOR CONTRIBUTIONS.**—The value of land, easements, rights-of-way, dredged material disposal areas, and relocations provided under subsection (b) for a project shall be credited toward the non-Federal share of the costs of the project.

(d) **ADDITIONAL COSTS.**—

(1) **NON-FEDERAL RESPONSIBILITIES.**—The non-Federal participants in any project carried out under the Program on land or at a facility that is not owned by the United States shall be responsible for all costs associated with operating, maintaining, repairing, rehabilitating, and replacing the project.

(2) **FEDERAL RESPONSIBILITY.**—The Federal Government shall be responsible for costs referred to in paragraph (1) for projects carried out on Federal land or at a Federal facility.

**SEC. 8. LIMITATION ON ELIGIBILITY FOR FUNDING.**

A project that receives funds under this Act shall be ineligible to receive Federal funds from any other source for the same purpose.

**SEC. 9. REPORT.**

On the expiration of the third fiscal year for which amounts are made available to carry out this Act, the Secretary shall submit to Congress a report describing—

- (1) the projects that have been completed under this Act;
- (2) the projects that will be completed with amounts made available under this Act during the remaining fiscal years for which amounts are authorized to be appropriated under section 10; and
- (3) recommended changes to the Program as a result of projects that have been carried out under this Act.

**SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—There is authorized to be appropriated to carry out this Act \$25,000,000 for each of fiscal years 2001 through 2005.

(b) **LIMITATIONS.**—

(1) **SINGLE STATE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), not more than 25 percent of the total amount of funds made available under this section may be used for 1 or more projects in any single State.

(B) **WAIVER.**—On notification to Congress, the Secretary may waive the limitation under subparagraph (A) if a State is unable to use the entire amount of funding made available to the State under this Act.

(2) **ADMINISTRATIVE EXPENSES.**—Not more than 6 percent of the funds authorized under this section for any fiscal year may be used for Federal administrative expenses of carrying out this Act.

2. Amend the title so as to read: “A bill to authorize the Secretary of the Interior to establish a program to plan, design, and construct facilities to mitigate impacts associated with irrigation system water diversions by local governmental entities in the Pacific Ocean drainage of the States of Oregon, Washington, Montana, and Idaho.”.

**PURPOSE OF THE MEASURE**

As ordered reported, H.R. 1444 would establish a program to authorize the Secretary of the Interior to plan, design, and construct facilities to mitigate impacts associated with irrigation system water diversions by local governmental entities in the Pacific Ocean drainage of the States of Oregon, Washington, Montana, and Idaho. This program is to be carried out in a partnership, with the Secretary of the Interior consulting with the head of other appropriate agencies, as well as a local government entities, including soil and water conservation districts in these four States.

**BACKGROUND AND NEED**

The Bureau of Reclamation and the U.S. Army Corps of Engineers currently operate 14 large-scale water projects in the Columbia River Basin. These facilities provide navigation assistance, flood control, irrigation, hydroelectric power and various recreational opportunities for the citizens in the Pacific Northwest.

Salmon migrate through the rivers basins in those states and traverse the system as juvenile and adult fish. One of the factors that can affect or halt this migration is the diversion of water from the system for irrigation. Two of the goals of H.R. 1444 are to decrease fish mortality association with this withdrawal and decrease

the incidence of fish entering the water supply systems. Fish screens and fish passage devices have been identified as one of the best means to aid in addressing these goals. Information has been provided to the Committee that current State and Federal law require installation of fish screens on many of these irrigation diversions.

The Federal and State agencies responsible for managing these river systems in the Pacific Drainage area have worked to get fish screens and fish passage devices incorporated into the irrigation systems in these states. There is currently a gap in this effort in that Federal assistance is not available for local governmental entities outside the mainstream Columbia River system despite the need to conserve juvenile salmon populations. This legislation would help close that gap according to testimony before the Subcommittee on Water and Power Resources.

#### LEGISLATIVE HISTORY

H.R. 1444 passed the House of Representatives by a voice vote on November 9, 1999 and was referred to the Committee on Energy and Natural Resources on November 19, 1999. Companion legislation, S. 1723, was introduced by Senators Wyden and G. Smith on October 13, 1999. A hearing was held in the Water and Power Subcommittee on October 20, 1999. At the business meeting on February 10, 2000, the Committee on Energy and Natural Resources took up the House passed version, H.R. 1444, struck the text and inserted the text of S. 1723, as amended. The Committee then ordered H.R. 1444 favorably reported, as amended.

#### COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on February 10, 2000, by an unanimous vote of a quorum present, recommends that the Senate pass H.R. 1444, if amended as described herein.

#### COMMITTEE AMENDMENTS

During the consideration of H.R. 1444, the Committee took up the House passed version and adopted a substitute amendment.

As introduced, S. 1723 made the program the responsibility of the Bureau of Reclamation. The substitute amendment changes the title of the bill to reflect broader responsibilities between federal agencies so the mitigation and restoration partnership envisioned for irrigation facilities would be carried out by the Secretary of the Interior, and the U.S. Fish and Wildlife Service since the program focus is to mitigate impact to fisheries resulting from the construction and operation of water diversions by local governments, not necessarily those by the Bureau of Reclamation.

The Committee intends for this work to be carried out in the Pacific Drainage of Oregon, Washington, Montana, and Idaho. The Committee notes that other Federal programs, such as the Columbia River Basin Fish and Wildlife Protection program provide funding for similar projects and does not intend that entities receiving funding under those other Federal programs be eligible to also receive funding under this program for the same projects.

The goals of this new program are to address the fish mortality problems associated with these irrigation withdrawals and decrease the incidence of these fish entering the water supply systems. The Committee does not intend for any significant research to be carried out with the funding provided.

The projects constructed and operated by local governmental entities, including soil and water conservation districts that are eligible under this program shall be eligible to have fish screens, fish passage devices or other facilities that are agreed to by the interests listed in the bill to be development, improved or installed on their projects. The four States are also expected to undertake an inventory under the program so some priority can be established.

The Committee would also like to make it clear that under the eligibility requirements, the project where the work is to be undertaken will be done so only with the non-Federal entities with authority and responsibility for the project. The cost-sharing for such work will be 35 percent for the non-Federal share and the Federal government shall pick up the full share for any projects carried out on Federal land or at a Federal facility.

The Committee believes there is great value in the report that is to be prepared after three years, especially with respect to any changes that need to be made in the program. There is \$25 million for the next five fiscal years that is authorized to carry out this work and the Committee expects the 6 percent cap on administrative expenses to be adhered to during the course of the authorization. Given the importance of this program, the Committee would also like the Secretary to make use of the waiver provision in the limitation section if a particular State is not going to make use of the program.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1—Short title*

##### *Section 2—Definitions*

##### *Section 3—Establishment of the Partnership Program*

This section establishes the Program, outlines the goals of the program, requires the Secretary to consult with the heads of appropriate agencies in developing and implementing projects, lists the types of projects eligible and requires the Secretary to give priority to projects costing less than \$5,000,000.

##### *Section 4—Participation in the program*

This section provides that non-Federal participation shall be voluntary, that the Secretary cannot take any action that would result in financial liability for any non-participating, non-Federal entity and that costs for projects involving U.S. land or facilities shall be nonreimbursable.

##### *Section 5—Evaluation and prioritization of projects*

This section requires that projects be evaluated and prioritized based on five criteria.

*Section 6—Eligibility requirements*

This section requires that projects meet certain criteria to be eligible for funding.

*Section 7—Cost sharing*

This section provides direction for Federal and non-Federal cost-sharing for development and implementation of projects.

*Section 8—Limitation on eligibility for funding*

This section provides that projects receiving funds under this Act shall not be eligible to receive Federal funds from any other source for the same purpose.

*Section 9—Report*

This section requires the Secretary to submit a report to Congress on the projects completed, or to be completed, and any recommended changes to the Program.

*Section 10—Authorization of appropriations*

This section authorizes \$25,000,000 for each of fiscal years 2001 through 2005 and describes limitations on amounts to single states, provides for a waiver and limits administrative expenses.

## COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, February 22, 2000.

Hon. FRANK H. MURKOWSKI,  
Chairman, Committee on Energy and Natural Resources,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1444, the Irrigation Mitigation and Restoration Partnership Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director.)

Enclosure.

*H.R. 1444—Irrigation Mitigation and Restoration Partnership Act of 1999*

Summary: Assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1444 would cost \$8 million in fiscal year 2001 and a total of \$95 million through fiscal year 2005. An additional \$30 million would be spent in years after 2005. H.R. 1444 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local govern-

ments might incur some costs as a result of the bill's enactment, but those costs would be voluntary.

H.R. 1444 would establish the irrigation mitigation and restoration partnership program within the Department of the Interior. The new program would support projects to mitigate adverse impacts on fisheries in Oregon, Washington, Montana, and Idaho that are caused by the construction and operation of irrigation facilities controlled by local governments. The program would finance the construction and operation of fish ladders, fish screens, and other facilities that decrease fish mortality from the operation of irrigation and other water diversion systems. For this purpose, H.R. 1444 would authorize the appropriation of \$25 million annually over the 2001–2005 period. Such amounts would finance 100 percent of the costs of developing and implementing projects on federal land and 35 percent of such costs on nonfederal land. Nonfederal participants in each project would be responsible for all costs of operating and maintaining the constructed facilities.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1444 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environmental). CBO assumes that the entire amounts authorized will be appropriated for each fiscal year. Outlays are based on spending patterns for similar programs of the U.S. Fish and Wildlife Service.

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level .....	25	25	25	25	25
Estimated Outlays .....	8	16	21	25	25

Pay-as-you-go consideration: None.

Intergovernmental and Private-sector impact: H.R. 1444 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would require nonfederal participants in the funded projects to pay 35 percent of development and implementation costs and all operating and maintenance costs. Participation by state and local governments would be voluntary.

Previous CBO estimate: On September 8, 1999, CBO submitted a cost estimate for H.R. 1444 as ordered reported by the House Committee on Resources on August 4, 1999. The costs of the two versions of the bill are identical.

Estimate prepared by: Deborah Reis.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1444. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1444, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On October 22, 1999 the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 1723. These reports had not been received at the time this report was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The Administration did not provide testimony at the October 20, 1999 hearing.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill H.R. 1444, as ordered reported.