

108TH CONGRESS
1ST SESSION

S. 844

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

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2003

Mr. CRAPO (for himself, Ms. MURKOWSKI, Mr. ENZI, Mr. ALLARD, Mr. KYL, and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2003”.

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 many State
23 general adjudications. These delays inhibit the abil-
24 ity of both the States and Federal agencies to pro-
25 tect private and public property interests. Also, fail-

1 ure to complete the final adjudication of claims to
 2 water restricts the ability of resource managers to
 3 determine how much unappropriated water is avail-
 4 able to satisfy environmental and economic develop-
 5 ment demands.

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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