

109TH CONGRESS  
1ST SESSION

# S. 232

---

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2005

Referred to the Committee on Resources

---

## AN ACT

To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

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

1 **SECTION 1. DEFINITIONS.**

2 As used in this Act—

3 (1) “Secretary” means the Secretary of the In-  
4 terior, acting through the Commissioner of Reclama-  
5 tion;

6 (2) “Reclamation” means the Bureau of Rec-  
7 lamation, United States Department of the Interior;

8 (3) “Fish passage and screening facilities”  
9 means ladders, collection devices, and all other kinds  
10 of facilities which enable fish to pass through, over,  
11 or around water diversion structures; facilities and  
12 other constructed works which modify, consolidate,  
13 or replace water diversion structures in order to  
14 achieve fish passage; screens and other devices which  
15 reduce or prevent entrainment and impingement of  
16 fish in a water diversion, delivery, or distribution  
17 system; and any other facilities, projects, or con-  
18 structed works or strategies which are designed to  
19 provide for or improve fish passage while maintain-  
20 ing water deliveries and to reduce or prevent en-  
21 trainment and impingement of fish in a water stor-  
22 age, diversion, delivery, or distribution system of a  
23 water project;

24 (4) “Federal reclamation project” means a  
25 water resources development project constructed, op-  
26 erated, and maintained pursuant to the Reclamation

1 Act of 1902 (32 Stat. 388), and acts amendatory  
2 thereof and supplementary thereto;

3 (5) “Non-Federal party” means any non-Fed-  
4 eral party, including federally recognized Indian  
5 tribes, non-Federal governmental and quasi-govern-  
6 mental entities, private entities (both profit and non-  
7 profit organizations), and private individuals;

8 (6) “Snake River Basin” means the entire  
9 drainage area of the Snake River, including all trib-  
10 utaries, from the headwaters to the confluence of the  
11 Snake River with the Columbia River;

12 (7) “Columbia River Basin” means the entire  
13 drainage area of the Columbia River located in the  
14 United States, including all tributaries, from the  
15 headwaters to the Columbia River estuary; and

16 (8) “Habitat improvements” means work to im-  
17 prove habitat for aquatic plants and animals within  
18 a currently existing stream channel below the ordi-  
19 nary high water mark, including stream reconfigura-  
20 tion to rehabilitate and protect the natural function  
21 of streambeds, and riverine wetland construction and  
22 protection.

23 **SEC. 2. AUTHORIZATION.**

24 (a) IN GENERAL.—Subject to the requirements of  
25 this Act, the Secretary is authorized to plan, design, and

1 construct, or provide financial assistance to non-Federal  
2 parties to plan, design, and construct, fish passage and  
3 screening facilities or habitat improvements at any non-  
4 Federal water diversion or storage project located any-  
5 where in the Columbia River Basin when the Secretary  
6 determines that such facilities would enable Reclamation  
7 to meet its obligations under section 7(a)(2) of the Endan-  
8 gered Species Act of 1973 (16 U.S.C. 1536(a)(2)) regard-  
9 ing the construction and continued operation and mainte-  
10 nance of all Federal reclamation projects located in the  
11 Columbia River Basin, excluding the Federal reclamation  
12 projects located in the Snake River Basin.

13 (b) PROHIBITION OF ACQUISITION OF LAND FOR  
14 HABITAT IMPROVEMENTS.—Notwithstanding subsection  
15 (a), nothing in this Act authorizes the acquisition of land  
16 for habitat improvements.

17 **SEC. 3. LIMITATIONS.**

18 (a) WRITTEN AGREEMENT.—The Secretary may un-  
19 dertake the construction of, or provide financial assistance  
20 covering the cost to the non-Federal parties to construct,  
21 fish passage and screening facilities at non-Federal water  
22 diversion and storage projects or habitat improvements lo-  
23 cated anywhere in the Columbia River Basin only after  
24 entering into a voluntary, written agreement with the non-

1 Federal party or parties who own, operate, or maintain  
2 the project, or any associated lands involved.

3 (b) FEDERAL SHARE.—The Federal share of the  
4 total costs of constructing the fish passage and screening  
5 facility or habitat improvements shall be not more than  
6 75 percent.

7 (c) NON-FEDERAL SHARE.—

8 (1) Except as provided in paragraph (4), a  
9 written agreement entered into under subsection (a)  
10 shall provide that the non-Federal party agrees to  
11 pay the non-Federal share of the total costs of con-  
12 structing the fish passage and screening facility or  
13 habitat improvements.

14 (2) The non-Federal share may be provided in  
15 the form of cash or in-kind services.

16 (3) The Secretary shall—

17 (A) require the non-Federal party to pro-  
18 vide appropriate documentation of any in-kind  
19 services provided; and

20 (B) determine the value of the in-kind  
21 services.

22 (4) The requirements of this subsection shall  
23 not apply to Indian tribes.

24 (d) GRANT AND COOPERATIVE AGREEMENTS.—Any  
25 financial assistance made available pursuant to this Act

1 shall be provided through grant agreements or cooperative  
2 agreements entered into pursuant to and in compliance  
3 with chapter 63 of title 31, United States Code.

4 (e) TERMS AND CONDITIONS.—The Secretary may  
5 require such terms and conditions as will ensure perform-  
6 ance by the non-Federal party, protect the Federal invest-  
7 ment in fish passage and screening facilities or habitat im-  
8 provements, define the obligations of the Secretary and  
9 the non-Federal party, and ensure compliance with this  
10 Act and all other applicable Federal, State, and local laws.

11 (f) RIGHTS AND DUTIES OF NON-FEDERAL PAR-  
12 TIES.—All right and title to, and interest in, any fish pas-  
13 sage and screening facilities constructed or funded pursu-  
14 ant to the authority of this Act shall be held by the non-  
15 Federal party or parties who own, operate, and maintain  
16 the non-Federal water diversion and storage project, and  
17 any associated lands, involved. The operation, mainte-  
18 nance, and replacement of such facilities shall be the sole  
19 responsibility of such party or parties and shall not be a  
20 project cost assignable to any Federal reclamation project.

21 **SEC. 4. OTHER REQUIREMENTS.**

22 (a) PERMITS.—The Secretary may assist a non-Fed-  
23 eral party who owns, operates, or maintains a non-Federal  
24 water diversion or storage project, and any associated

1 lands, to obtain and comply with any required State, local,  
2 or tribal permits.

3 (b) FEDERAL LAW.—In carrying out this Act, the  
4 Secretary shall be subject to all Federal laws applicable  
5 to activities associated with the construction of a fish pas-  
6 sage and screening facility or habitat improvements.

7 (c) STATE WATER LAW.—

8 (1) In carrying out this Act, the Secretary shall  
9 comply with any applicable State water laws.

10 (2) Nothing in this Act affects any water or  
11 water-related right of a State, an Indian tribe, or  
12 any other entity or person.

13 (d) REQUIRED COORDINATION.—The Secretary shall  
14 coordinate with the Northwest Power and Conservation  
15 Council; appropriate agencies of the States of Idaho, Or-  
16 egon, and Washington; and appropriate federally recog-  
17 nized Indian tribes in carrying out the program authorized  
18 by this Act.

19 **SEC. 5. INAPPLICABILITY OF FEDERAL RECLAMATION LAW.**

20 (a) IN GENERAL.—The Reclamation Act of 1902 (32  
21 Stat. 388), and Acts amendatory thereof and supple-  
22 mentary thereto, shall not apply to the non-Federal water  
23 projects at which the fish passage and screening facilities  
24 authorized by this Act are located, nor to the lands which  
25 such projects irrigate.

1           (b) NONREIMBURSABLE AND NONRETURNABLE EX-  
2 PENDING.—Notwithstanding any provision of law to  
3 the contrary, the expenditures made by the Secretary pur-  
4 suant to this Act shall not be a project cost assignable  
5 to any Federal reclamation project (either as a construc-  
6 tion cost or as an operation and maintenance cost) and  
7 shall be non-reimbursable and non-returnable to the  
8 United States Treasury.

9 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

10           There are authorized to be appropriated such  
11 amounts as are necessary for the purposes of this Act.

Passed the Senate July 26, 2005.

Attest:

EMILY J. REYNOLDS,

*Secretary.*