

116TH CONGRESS  
1ST SESSION

# H. R. 5445

To amend the Endangered Species Act of 1973 to encourage the construction of critical infrastructure, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2019

Mr. STEWART introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the Endangered Species Act of 1973 to encourage the construction of critical infrastructure, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be referred to as the “Critical Infra-  
5 structure Act of 2019”.

6 **SEC. 2. TRANSPARENCY AND REPORTING.**

7 (a) INFORMATION INCLUDED IN MONTHLY BILLING  
8 TO POWER CUSTOMERS.—The Administrators of each of  
9 the Bonneville Power Administration, the Western Area  
10 Power Administration, the Southwestern Power Adminis-

1 tration, and the Southeastern Power Administration shall  
2 include in monthly billings sent to each of their power cus-  
3 tomers information estimating and reporting all costs and  
4 factors affecting total power costs, including the costs of  
5 the customer's share of the direct and indirect costs that  
6 are incurred by the administration related to compliance  
7 with any Federal environmental laws impacting the con-  
8 servation of fish and wildlife considered by the Adminis-  
9 trator concerned, at that Administrator's sole discretion  
10 after consultation with consumers, to be relevant.

11 (b) DIRECT COSTS.—Direct costs reported under this  
12 section shall include Federal agency obligations related  
13 to—

14 (1) costs of studies;

15 (2) capital, operation, maintenance, and re-  
16 placement costs; and

17 (3) staffing costs.

18 (c) INDIRECT COSTS.—Indirect costs reported under  
19 this section shall include foregone generation (including  
20 as a result of water lost to comply with any Federal envi-  
21 ronmental laws impacting the conservation of fish and  
22 wildlife), and replacement power costs, including the net  
23 costs of any transmission.

24 (d) COORDINATION.—The Commissioner of the Bu-  
25 reau of Reclamation and the head of any other affected

1 Federal agency shall assist the Administrators with the  
2 identification of the costs.

3 (e) REPORT.—No later than January 30 of each  
4 year, each of the Administrators referred to in subsection  
5 (a), in coordination with the Bureau of Reclamation and  
6 other affected Federal agencies, shall provide an annual  
7 report to the appropriate committees of the House of Rep-  
8 resentatives and the Senate that includes—

9 (1) all estimated costs and factors affecting  
10 total power costs, including estimates of the total di-  
11 rect and indirect costs that are incurred by the ad-  
12 ministration related to compliance with any Federal  
13 environmental laws impacting the conservation of  
14 fish and wildlife considered by the Administrator  
15 concerned, at that Administrator’s sole discretion  
16 after consultation with consumers, to be relevant;  
17 and

18 (2) the sources of replacement power.

19 **SEC. 3. PROHIBITION OF DESIGNATION OF CERTAIN HABI-**  
20 **TAT IN AN ARTIFICIAL WATER DELIVERY OR**  
21 **STORAGE FACILITY AS CRITICAL HABITAT.**

22 Section 4(a)(3) of the Endangered Species Act of  
23 1973 (16 U.S.C. 1533(a)(3)) is amended by adding at the  
24 end the following:

1       “(C) The Secretary shall not designate as critical  
2 habitat any area in a water storage reservoir, water diver-  
3 sion structure, canal, or other water storage, diversion, or  
4 delivery facility, where habitat is periodically created and  
5 destroyed as a result of changes in water levels caused  
6 by the operation of such facility.”.

7 **SEC. 4. POWERLINES ACCESS CATEGORICAL EXCLUSION.**

8       Any project to install or maintain electrical trans-  
9 mission poles or powerlines shall be categorically excluded  
10 under the National Environmental Policy Act (42 U.S.C.  
11 4321 et seq.).

12 **SEC. 5. SPECIES PRESENCE IN BUFFER RIGHT-OF-WAY CAT-**  
13 **EGORICAL EXCLUSION.**

14       Notwithstanding any other provision of law, a con-  
15 struction project that includes a buffer area shall be cat-  
16 egorically excluded under the National Environmental Pol-  
17 icy Act (42 U.S.C. 4321 et seq.) if the project would other-  
18 wise only require an assessment under such Act because  
19 of the presence of prairie dogs in such buffer area.

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