

119TH CONGRESS
1ST SESSION

S. 3409

To reaffirm that the Bureau of Reclamation retains exclusive ownership, operational control, and financial responsibility for the Lower Yellowstone Fish Bypass Channel, ensuring long-term conservation of the endangered pallid sturgeon and other native aquatic species in the Yellowstone River while protecting the Lower Yellowstone Irrigation Project and District from undue financial and operational burdens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2025

Mr. DAINES introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

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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. SHORT TITLE.**

2 This Act may be cited as the “Lower Yellowstone
3 River Native Fish Conservation Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Lower Yellowstone Fish Bypass Chan-
7 nel—

8 (A) was authorized under section 3109 of
9 the Water Resources Development Act of 2007
10 (Public Law 110–114; 121 Stat. 1135) as a
11 Federal mitigation measure for impacts on the
12 pallid sturgeon (*Scaphirhynchus albus*) under
13 the Endangered Species Act of 1973 (16 U.S.C.
14 1531 et seq.);

15 (B) was designed and constructed by the
16 Corps of Engineers and the Bureau of Rec-
17 lamation using funds from the Missouri River
18 Recovery Program and other Federal appro-
19 priations specifically allocated for ecosystem
20 restoration and endangered species mitigation;
21 and

22 (C) is located outside the physical and
23 operational boundaries of the Lower Yellow-
24 stone Irrigation Project and the Lower Yellow-
25 stone Irrigation District;

1 (2) the Bureau of Reclamation retains sole
2 ownership, operational jurisdiction, and maintenance
3 responsibilities for the Lower Yellowstone Fish By-
4 pass Channel and related infrastructure;

5 (3) the Lower Yellowstone Irrigation Project
6 was federally authorized in 1904 under the Act of
7 June 17, 1902 (32 Stat. 388, chapter 1093), to pro-
8 vide irrigation water to agricultural land in eastern
9 Montana and western North Dakota;

10 (4) the Lower Yellowstone Irrigation District,
11 established under Montana and North Dakota State
12 laws, has never had ownership, operational responsi-
13 bility, or maintenance obligations relating to the
14 Lower Yellowstone Fish Bypass Channel;

15 (5) the Endangered Species Act of 1973 (16
16 U.S.C. 1531 et seq.) mandates Federal protection
17 and recovery actions for listed species, including the
18 pallid sturgeon (*Scaphirhynchus albus*);

19 (6) endangered species recovery, including con-
20 struction of the Lower Yellowstone Fish Bypass
21 Channel, is solely a Federal responsibility;

22 (7) the Bureau of Reclamation opted to con-
23 struct the Lower Yellowstone Fish Bypass Channel
24 to comply with the Endangered Species Act of 1973
25 (16 U.S.C. 1531 et seq.) because the Intake Diver-

1 sion Dam is federally owned and operated, rather
2 than owned or operated by the Lower Yellowstone
3 Irrigation District or the Lower Yellowstone Irriga-
4 tion Project;

5 (8) the Lower Yellowstone Irrigation District or
6 the Lower Yellowstone Irrigation Project cannot and
7 should not be burdened with financial or operational
8 responsibility for a federally mandated environ-
9 mental mitigation project;

10 (9) the Lower Yellowstone Fish Bypass Chan-
11 nel is legally separate and distinct from the Lower
12 Yellowstone Irrigation Project and the Lower Yel-
13 lowstone Irrigation District; and

14 (10) without legislative clarity, future adminis-
15 trative actions could inappropriately attempt to shift
16 the burden of operations and maintenance costs of
17 the Lower Yellowstone Fish Bypass Channel onto
18 the Lower Yellowstone Irrigation District, which is
19 a scenario that contradicts the original intent of the
20 authorization for the Lower Yellowstone Fish By-
21 pass Channel under the Water Resources Develop-
22 ment Act of 2007 (Public Law 110–114; 121 Stat.
23 1041).

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1 (1) LOWER YELLOWSTONE FISH BYPASS CHAN-
 2 NEL.—The term “Lower Yellowstone Fish Bypass
 3 Channel” means the 2.1-mile-long engineered fish
 4 passage channel constructed near Intake, Montana,
 5 designed to facilitate the migration of pallid stur-
 6 geon (*Scaphirhynchus albus*) and other native fish
 7 species around the Intake Diversion Dam located
 8 near Intake, Montana.

9 (2) LOWER YELLOWSTONE IRRIGATION DIS-
 10 TRICT.—The term “Lower Yellowstone Irrigation
 11 District” means the local, State-chartered water
 12 management entity responsible for operating and
 13 maintaining the irrigation components of the Lower
 14 Yellowstone Irrigation Project.

15 (3) LOWER YELLOWSTONE IRRIGATION
 16 PROJECT.—The term “Lower Yellowstone Irrigation
 17 Project” means the Federal irrigation system—

18 (A) authorized in 1904 under the Act of
 19 June 17, 1902 (32 Stat. 388, chapter 1093);
 20 and

21 (B) operated in partnership with the
 22 Lower Yellowstone Irrigation District for agri-
 23 cultural water delivery.

24 (4) OPERATIONS AND MAINTENANCE.—The
 25 term “operations and maintenance” means all ac-

tions, costs, and labor necessary to operate, repair, upgrade, and maintain the Lower Yellowstone Fish Bypass Channel.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

SEC. 4. REAFFIRMATION OF FEDERAL OWNERSHIP AND RESPONSIBILITY.

(a) SOLE OWNERSHIP AND CONTROL.—

(1) IN GENERAL.—The Secretary shall retain full ownership, operational authority, and financial responsibility for the Lower Yellowstone Fish Bypass Channel in perpetuity.

(2) ADMINISTRATIVE ACTIONS, AGREEMENTS, OR TRANSFERS.—No administrative action, agreement, or transfer shall alter, diminish, or delegate to any non-Federal entity, including the Lower Yellowstone Irrigation District or the Lower Yellowstone Irrigation Project, the responsibilities and authorities described in paragraph (1) with respect to the Lower Yellowstone Fish Bypass Channel.

(3) EFFECT.—Nothing in this Act prevents the Secretary from retaining the authority to enter into agreements with, coordinate, or otherwise work with the head of any other Federal agency, including with

1 respect to funding, planning, or implementation of
 2 activities authorized under this Act or any other Act.

3 (b) OPERATION AND MAINTENANCE OBLIGATIONS.—

4 The Secretary shall be solely responsible for funding, oper-
 5 ating, and maintaining the Lower Yellowstone Fish By-
 6 pass Channel, including any repairs, modifications, or
 7 adaptive management strategies.

8 (c) PROHIBITION OF COST TRANSFER.—No Federal
 9 agency may impose, mandate, or require the Lower Yel-
 10 lowstone Irrigation District, the Lower Yellowstone Irriga-
 11 tion Project, or any other non-Federal entity to assume
 12 financial or operational responsibility for any aspect of the
 13 Lower Yellowstone Fish Bypass Channel.

14 (d) RELATIONSHIP TO THE LOWER YELLOWSTONE
 15 IRRIGATION DISTRICT OR THE LOWER YELLOWSTONE IR-
 16 RIGATION PROJECT.—Nothing in this Act alters, amends,
 17 or otherwise affects the authorized purposes, water deliv-
 18 ery obligations, or operational responsibilities of the Lower
 19 Yellowstone Irrigation District or the Lower Yellowstone
 20 Irrigation Project.

21 **SEC. 5. PRESERVATION OF ENDANGERED SPECIES ACT OB-**
 22 **LIGATIONS.**

23 (a) FEDERAL RESPONSIBILITY FOR PALLID STUR-
 24 GEON RECOVERY.—

1 (1) IN GENERAL.—The Secretary and the Di-
2 rector of the United States Fish and Wildlife Service
3 shall retain exclusive responsibility for fulfilling obli-
4 gations relating to the pallid sturgeon
5 (*Scaphirhynchus albus*) under the Endangered Spe-
6 cies Act of 1973 (16 U.S.C. 1531 et seq.) with re-
7 spect to the Lower Yellowstone Fish Bypass Chan-
8 nel.

9 (2) NO OBLIGATION ON THE LOWER YELLOW-
10 STONE IRRIGATION DISTRICT OR THE LOWER YEL-
11 LOWSTONE IRRIGATION PROJECT.—The Lower Yel-
12 lowstone Irrigation District and the Lower Yellow-
13 stone Irrigation Project shall not be required to per-
14 form, fund, or participate in any activities mandated
15 under the Endangered Species Act of 1973 (16
16 U.S.C. 1531 et seq.) relating to the Lower Yellow-
17 stone Fish Bypass Channel or pallid sturgeon
18 (*Scaphirhynchus albus*) conservation associated with
19 the Lower Yellowstone Fish Bypass Channel.

20 (b) COORDINATION WITH STATE AND FEDERAL
21 AGENCIES.—The Secretary shall coordinate with Montana
22 Fish, Wildlife and Parks, the North Dakota Game and
23 Fish Department, the United States Fish and Wildlife
24 Service, and other relevant agencies to ensure proper con-
25 servation measures for the pallid sturgeon

1 (Scaphirhynchus albus) without burdening private or local
 2 irrigation operations.

3 **SEC. 6. PROHIBITION OF TRANSFER OF RESPONSIBILITIES.**

4 (a) LIMITATION ON TRANSFER OR DELEGATION.—

5 (1) IN GENERAL.—The Secretary shall not
 6 transfer, delegate, or assign any financial, oper-
 7 ational, or maintenance responsibilities for the
 8 Lower Yellowstone Fish Bypass Channel to any non-
 9 Federal entity, including—

10 (A) the Lower Yellowstone Irrigation Dis-
 11 trict;

12 (B) the Lower Yellowstone Irrigation
 13 Project; and

14 (C) any State agency, local government, or
 15 private entity.

16 (2) CLARIFICATION.—No agreement, contract,
 17 or memorandum of understanding shall have the ef-
 18 fect of transferring to the Lower Yellowstone Irriga-
 19 tion District, the Lower Yellowstone Irrigation
 20 Project, or any other non-Federal entity the owner-
 21 ship of, responsibility for, or cost burden of the
 22 Lower Yellowstone Fish Bypass Channel.

23 (b) INVALIDATION OF PRIOR ATTEMPTS TO TRANS-
 24 FER RESPONSIBILITY.—

1 (1) IN GENERAL.—Any prior administrative ac-
2 tion, agreement, or cost-sharing arrangement that
3 attempts to impose financial or operational responsi-
4 bility for the Lower Yellowstone Fish Bypass Chan-
5 nel on the Lower Yellowstone Irrigation District or
6 the Lower Yellowstone Irrigation Project shall be
7 null and void.

8 (2) TERMINATION OF AGREEMENTS.—The Sec-
9 retary shall terminate any provision of any agree-
10 ment that is inconsistent with this Act.

11 **SEC. 7. LEGAL ENFORCEMENT AND JUDICIAL REVIEW.**

12 (a) RIGHT TO PETITION FOR FEDERAL COMPLI-
13 ANCE.—The Lower Yellowstone Irrigation District, the
14 Lower Yellowstone Irrigation Project, and any affected
15 stakeholder may file a complaint in Federal District Court
16 seeking a declaratory judgment or other appropriate relief
17 if the Secretary attempts to transfer to a non-Federal en-
18 tity operational or financial responsibility for the Lower
19 Yellowstone Fish Bypass Channel.

20 (b) JURISDICTION.—The United States District
21 Court for the District of Montana shall have exclusive ju-
22 risdiction over any dispute arising under this Act.

23 (c) NO PRIVATE CAUSE OF ACTION AGAINST NON-
24 FEDERAL ENTITIES.—Nothing in this Act creates a pri-
25 vate cause of action against the Lower Yellowstone Irriga-

tion District, the Lower Yellowstone Irrigation Project, or any other non-Federal entity with respect to the operations and maintenance of the Lower Yellowstone Fish Bypass Channel.

SEC. 8. LONG-TERM FEDERAL FUNDING AND RESOURCE ALLOCATION.

(a) ONGOING FEDERAL RESPONSIBILITY FOR OPERATIONS AND MAINTENANCE.—

(1) IN GENERAL.—The Secretary shall be the sole entity responsible for operations and maintenance and repairs of the Lower Yellowstone Fish Bypass Channel.

(2) FUNDING.—The Secretary shall fund all necessary repairs, modifications, and infrastructure improvements to maintain the effectiveness of the Lower Yellowstone Fish Bypass Channel.

(3) NO FINANCIAL BURDEN.—The Lower Yellowstone Irrigation District, the Lower Yellowstone Irrigation Project, and any other non-Federal entity shall not bear any financial burden for maintenance, repairs, or monitoring of the Lower Yellowstone Fish Bypass Channel.

(b) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) IN GENERAL.—There is authorized to be
2 appropriated to the Secretary \$1,000,000 for fiscal
3 year 2026 and each fiscal year thereafter—

4 (A) to ensure continuous, uninterrupted
5 operation of the Lower Yellowstone Fish By-
6 pass Channel;

7 (B) to conduct necessary engineering eval-
8 uations, repairs, and upgrades in the Lower
9 Yellowstone Fish Bypass Channel as part of an
10 ongoing Federal commitment to the Lower Yel-
11 lowstone Fish Bypass Channel; and

12 (C) to implement adaptive management
13 strategies in the Lower Yellowstone Fish By-
14 pass Channel to address environmental,
15 hydrological, and biological changes affecting
16 pallid sturgeon (*Scaphirhynchus albus*) passage.

17 (2) ADMINISTRATION OF FUNDS.—The Sec-
18 retary—

19 (A) shall administer the funds made avail-
20 able under paragraph (1); and

21 (B) may not transfer or delegate to any
22 non-Federal entity the funds made available
23 under that paragraph.

24 (c) REPORTING REQUIREMENT.—The Secretary shall
25 submit to the Committee on Energy and Natural Re-

1 sources of the Senate and the Committee on Natural Re-
2 sources of the House of Representatives a biennial report
3 describing—

4 (1) the operational status of the Lower Yellow-
5 stone Fish Bypass Channel;

6 (2) any ongoing or anticipated repairs, modi-
7 fications, or adaptive management actions with re-
8 spect to the Lower Yellowstone Fish Bypass Chan-
9 nel;

10 (3) an updated cost analysis of operations and
11 maintenance of the Lower Yellowstone Fish Bypass
12 Channel; and

13 (4) coordination efforts between the Secretary,
14 the Director of the United States Fish and Wildlife
15 Service, the Chief of Engineers, and State agencies
16 with respect to the Lower Yellowstone Fish Bypass
17 Channel.

18 **SEC. 9. EFFECT.**

19 Nothing in this Act—

20 (1) modifies or diminishes the authorized pur-
21 poses of the Lower Yellowstone Irrigation Project or
22 the Lower Yellowstone Irrigation District;

23 (2) affects any existing water rights of, or con-
24 tracts or agreements between, the Secretary and the

1 Lower Yellowstone Irrigation District or the Lower
2 Yellowstone Irrigation Project;

3 (3) imposes any new regulatory obligations, re-
4 quirements, or liabilities on the Lower Yellowstone
5 Irrigation District, the Lower Yellowstone Irrigation
6 Project, or any other non-Federal entity;

7 (4) modifies or impairs State water law or any
8 existing agreements relating to water distribution
9 and irrigation operations; or

10 (5) alters the statutory and regulatory obliga-
11 tions of Federal agencies under the Endangered
12 Species Act of 1973 (16 U.S.C. 1531 et seq.) or the
13 National Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.).

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