

119TH CONGRESS
1ST SESSION

S. 386

To amend the Endangered Species Act of 1973 to provide exemptions from the consultation requirements required under that Act for agency actions that fulfill critical human water needs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2025

Ms. LUMMIS (for herself, Mr. BARRASSO, and Mr. SHEEHY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Endangered Species Act of 1973 to provide exemptions from the consultation requirements required under that Act for agency actions that fulfill critical human water needs, 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 cited as the “Critical Water Re-
5 sources Prioritization Act of 2025”.

1 **SEC. 2. CRITICAL WATER RESOURCES EXEMPTIONS UNDER**
 2 **THE ENDANGERED SPECIES ACT OF 1973.**

3 (a) IN GENERAL.—Section 7 of the Endangered Spe-
 4 cies Act of 1973 (16 U.S.C. 1536) is amended by adding
 5 at the end the following:

6 “(q) HUMAN NEEDS EXEMPTIONS FOR WATER RE-
 7 SOURCES.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) CRITICAL HUMAN WATER NEED.—
 10 The term ‘critical human water need’ means
 11 water required—

12 “(i) for a municipal drinking water
 13 supply;

14 “(ii) for emergency services, including
 15 firefighting;

16 “(iii) to maintain public health and
 17 safety, as determined by the Secretary or
 18 a relevant water management agency; or

19 “(iv) for food security, as determined
 20 by the Secretary.

21 “(B) WATER MANAGEMENT AGENCY.—The
 22 term ‘water management agency’ means any
 23 Federal, State, or local agency with authority to
 24 manage or allocate water resources.

25 “(2) EXEMPTIONS FOR CRITICAL HUMAN
 26 WATER NEEDS.—Notwithstanding any other provi-

1 sion of this Act, the Secretary may grant an exemp-
2 tion from the requirements of subsection (a)(2) for
3 any agency action carried out by a water manage-
4 ment agency to fulfill a critical human water need
5 if—

6 “(A) those requirements would directly
7 conflict with the fulfillment of the critical
8 human water need;

9 “(B) the water management agency has—

10 “(i) implemented all reasonable water
11 conservation measures;

12 “(ii) explored all feasible alternative
13 water sources; and

14 “(iii) determined no other reasonable
15 alternatives exist to meet the critical
16 human water need; and

17 “(C) the water management agency sub-
18 mits to the Secretary—

19 “(i) documentation of the conditions
20 described in subparagraphs (A) and (B);

21 “(ii) a plan to minimize adverse im-
22 pacts on affected species; and

23 “(iii) a timeline for reinstating those
24 requirements.

25 “(3) DURATION AND RENEWAL.—

“(A) INITIAL PERIOD.—An exemption granted by the Secretary under paragraph (2) shall be valid for a period of not more than 180 days.

“(B) RENEWAL.—The Secretary may renew an exemption under paragraph (2) for additional 180-day periods if the conditions described in subparagraphs (A) and (B) of paragraph (2) continue to exist and the applicable water management agency resubmits the information described in subparagraph (C) of that paragraph.

“(4) REPORTS.—

“(A) WATER MANAGEMENT AGENCY REPORTS.—A water management agency operating under an exemption granted under paragraph (2) shall submit to the Secretary monthly reports describing—

“(i) the ongoing critical human water need for which the exemption was made;

“(ii) efforts to develop alternative water sources; and

“(iii)(I) impacts on affected species; and

1 “(II) measures taken to minimize
2 those impacts.

3 “(B) SECRETARY REPORTS.—The Sec-
4 retary shall submit to Congress an annual re-
5 port describing—

6 “(i) all exemption made under this
7 subsection;

8 “(ii) the cumulative impact of those
9 exemptions on affected species; and

10 “(iii) recommendations for improving
11 the balance between critical human water
12 needs and species protection.

13 “(5) JUDICIAL REVIEW.—Any action taken
14 under this subsection shall be subject to judicial re-
15 view only for arbitrary and capricious agency action
16 under section 706 of title 5, United States Code.”.

17 (b) REGULATIONS.—Not later than 180 days after
18 the date of enactment of this Act, the Secretary (as de-
19 fined in section 3 of the Endangered Species Act of 1973
20 (16 U.S.C. 1532)) shall promulgate regulations to imple-
21 ment the amendments made by this section.

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