



November 3, 2009

Comments on S.1733, the Clean Energy Jobs and American Power Act

The Oregon Water Resources Congress (OWRC) is providing comments on S.1733, the Clean Energy Jobs and American Power Act (as Introduced). We recognize that adapting to climate change has become a national concern, fairly high on this Congress' and this Administration's priority list. Our comments are focused on Title III, Transition and Adaptation as it relates to water supply (water quantity and availability and water quality) and our members' ability to deliver water to their customers and ensure the state's ability to continue to produce food, fiber and have a healthy economy. We are also including a white paper on climate change that outlines OWRC member concerns, needs and perspectives.

Share the Cost of Adaptation

The results of adapting or not adapting to climate change accrue to everyone not just water suppliers, and thus the responses must be supported by everyone, not just the responsibility of the water suppliers. This means there must be a national effort to fund water strategies for adaptation under which water suppliers cannot and should not be expected to pay the costs for adaptation but also benefit from addressing the issue. We recognize that districts, as water managers and managers of water supply and delivery systems, must be integral to this adaptation effort, but funding for the adaptation efforts must come from a broader source that recognizes that broad benefit and reflects the broad needs that are being met (irrigation, human consumption, industry, broader economic needs, environmental needs including stream flow for fish and habitat restoration, recreation).

Share the Regulatory Burden

Similarly, the regulations called for and implied in the legislation will come at great expense to water suppliers. The expenses from implementing new regulations as a result of climate change should be borne by all those that benefit, not just the water suppliers and water managers. Additionally, the ensuing process for implementing regulatory programs should be transparent in how those identified needs are addressed.

Balance Adaptation Needs

Climate change adaptation strategies should seek a balance among the different interests. This legislation is heavily focused on fish and wildlife needs which are not the exclusive needs for water that will be impacted by the predicted impact on water from climate change. While it does address water supply needs for irrigation and other activities, even those provisions give priority directly or indirectly to fish and wildlife and other environmental needs. Many of the anticipated impacts of climate change on water for agriculture will also impact other societal needs that rely on water. Changes in precipitation patterns and snow pack will alter streamflow which will adversely impact protected fish species. Those will also affect recreational activities depending on reservoirs and streamflow (fishing, boating, kayaking, etc). Domestic water suppliers rely on

the same kinds of storage and streamflow to serve human needs as our member districts rely on to serve irrigation.

To focus so heavily on fish and wildlife needs ignores those other needs and creates a dangerous imbalance among the other uses including human consumption and economic needs. It also fails to recognize the predicted changing population patterns that indicate that the nation's population will shift northward in response to climate change. For example, how will information collected under the National Fish and Wildlife Habitat and Corridors Information Program on pages 354-358, be used in making land use decisions? There are many other factors, such as changing population centers that must be used in land use decisions, some of which must be the driving factors for those decisions.

Any mention of irrigation and agriculture needs in S. 1733 refers to "land currently in production." This turns a blind eye to the predictions that climate change will cause crop patterns to shift as the climate warms, moving significant amounts of agriculture north. If irrigation water supply improvements can only be made on land currently in production, how will the nation accommodate these shifting crop patterns and be able to meet the population's food needs? Finding a balancing between these needs is a crucial part to implementing a successful suite of natural resources adaptation strategies.

Include the breadth of water infrastructure systems

Funding for water infrastructure needs to encompass the full breadth of water delivery systems. The legislation is lacking recognition that a water system that delivers water for agriculture needs includes more than just the delivery system. In addition to pipes, canals, and ditches the system includes water storage (dams and reservoirs); diversion facilities (that may supply reservoirs or may divert directly into the canals) and pipes that deliver the water; fish screens and fish passage at the diversion points and fish screens at other points in the system; measurement devices to measure and control the amount of water being diverted and the amount being delivered into the canals and even to each water users; technology to monitor and manage the water flow in the system; pumps to move the water through the system; and hydroelectric power generation systems at the dams and, more recently, in the pipes or canals of the system. All of these are critical to the water delivery system and must be considered in programs that fund improvements to irrigation water delivery systems. In addition, given the predicted changes in precipitation patterns and snow melt and the resulting changes in stream flow patterns in the Pacific Northwest, there must be provisions for adding new features to this system infrastructure to capture rain and snow and store it for release when needed for irrigation and for streamflows to protect fish and other species.

Recognize existing agencies and programs that manage water resources

The legislation gives great responsibility to the EPA and seemingly fails to recognize the long standing role of the U.S. Army Corps of Engineers and Bureau of Reclamation in managing the nation's waters and waterways. This focus on the EPA comes with an emphasis on water quality over the management of water as a resource for meeting different needs. While our members recognize and support the need to continue to improve the quality of the nation's water, to manage water based on water quality alone ignores long standing state roles in managing the water resources for beneficial uses, and relates earlier comments that this legislation ignores many water uses in favor of fish and wildlife needs.

Ensure accountability and transparency

Several provisions in the bill give non-governmental organizations (NGOs) new authority and new roles. We are concerned that these private entities with no accountability to anyone other than those who contribute to their cause carry the same level of recognition as federal agencies, state and local governments, all of which are directly accountable to the public and all of which are required to conduct their business in public and transparently. This legislation creates major new policies and the responsibility for the implementation and monitoring of those policies must be given to those entities that have public accountability and the kind of transparency expected of public agencies.

A specific example of this is on page 354 that provides that NGO's will have some responsibility for maintaining the database developed as part of the Geospatial Interoperability Framework. This type of data should be under the control of the federal agencies to ensure its integrity and reliability. If the NGO's responsibility is as a contractor to the federal government, there is no need to provide for NGO involvement in maintaining the data in the legislation. Including this provision in the bill implies something more than an NGO serving as a contractor.

Additionally, it is unclear what mechanisms will be in place to coordinate data collection and data compilation among different parties and then coordinate among different needs (for example, coordination of the data collected for the National Wildlife Habitat and Corridors Information Program (Sec. 371) with water supply availability data and the water supply prediction models). It is crucial that the most comprehensive information is readily available for districts and others to use in planning and adapting to climate change impacts to water.

Avoid supplanting state role in water management

As noted elsewhere, this legislation seems to place the federal government in a role that supplants the traditional states' role in managing its water for the needs of its citizens. To create a federal water management role is counter to that state right – an action that upends long relied upon policies for managing water. We do not disagree that there is a federal role in addressing climate change, but to use climate change adaptation as a tool to replace state management of water with federal management is unacceptable.

We support a federal role that assists states to develop plans to meet water needs under changing climatic conditions and we recognize that there are roles for the federal government through existing laws such as the Clean Water Act, the Safe Drinking Water Act, the Endangered Species Act and others that provide national policy. But those laws do not usurp the states' roles in managing water resources. We also recognize that the federal government has an interest in the facilities it owns and operates and how they will be managed to meet the demands created by climate change. Further, we acknowledge that the federal government has an interest in how funding it makes available for adaptation to climate change is used, but we do not believe the provision of funding should give the federal government the right to substitute itself for the states to manage the water supply in a state.

It is also unclear in this legislation if the funding that goes to the states in some of the provisions of the bill is expected to or can even be allowed to be passed on to local governments for studies and project implementation.

Avoid duplication and conflicts with existing programs

S. 1733 creates a number of new programs. We believe it would be beneficial to have an evaluation of whether these conflict with or duplicate existing programs. This should be done both to ensure consistency with existing programs and reduce duplication at a time when the federal budget is seriously strained by other needs and when state and local governments are struggling to meet basic service needs and cannot absorb new mandates from above in their budgets. There is a strong need to ensure that this isn't just another layer of regulations that will become a hurdle to being able to proactively address the impact of climate change on districts' ability to deliver water for crops.

Specific Language Revisions to S. 1733 (IS)

1. Please add the Fisheries Restoration Irrigation Mitigation Act (FRIMA), as amended by PL-111-11, Section 13002, to the list of eligible programs on pages 343-344.
2. Add language that provides that funding directly from the Bonneville Power Administration (BPA) or through one of the entities that it funds is considered non-federal funding for purposes of programs funded in this bill. Sample language "Any amounts provided by the Bonneville Power Administration directly or through a grant to another entity for a project carried under the section of this Act shall be credited toward the non-Federal share of the costs of the project."
3. Clarify eligible uses for Water System Mitigation and Adaption Partnerships on page 362, lines 21-23 to ensure that storage infrastructure can also be modified or relocated, including converting an above ground storage facility to below ground, shifting from relying on snowpack as the means of storage to a man-made storage facility (above or below ground) to capture rain that has replaced snowfall, and other storage adaption options.
4. Include "water availability" in the list of reasons to modify or replace existing systems page 364, lines 1-3. Adding this term will provide greater flexibility for water providers to adapt as different situations arise and new technology or ideas become available.
5. Include language that recognizes the impact of people on ecosystems as a result on climate change in project funding eligibility on page 364, lines 7-10. It is currently unclear how this criteria work when the stress comes from shifting population (more people moving north; urbanization impacts, etc.)? Legislation needs to recognize these stressors as they are part of the predicted result of climate change and will "exacerbate stresses on ecosystems," particularly in the Pacific Northwest.