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106TH CONGRESS
2^D SESSION

H. R. 2348

IN THE SENATE OF THE UNITED STATES

JULY 26, 2000

Received

JULY 27, 2000

Read the first time

SEPTEMBER 5, 2000

Read the second time and placed on the calendar

AN ACT

To authorize the Bureau of Reclamation to provide cost sharing for the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

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. PURPOSE.**

2 The purpose of this Act is to authorize and provide
3 funding for the Bureau of Reclamation to continue the
4 implementation of the endangered fish recovery implemen-
5 tation programs for the Upper Colorado and San Juan
6 River Basins in order to accomplish the objectives of these
7 programs within a currently established time schedule.

8 **SEC. 2. DEFINITIONS.**

9 As used in this Act:

10 (1) The term “Recovery Implementation Pro-
11 grams” means the intergovernmental programs es-
12 tablished pursuant to the 1988 Cooperative Agree-
13 ment to implement the Recovery Implementation
14 Program for the Endangered Fish Species in the
15 Upper Colorado River dated September 29, 1987,
16 and the 1992 Cooperative Agreement to implement
17 the San Juan River Recovery Implementation Pro-
18 gram dated October 21, 1992, and as they may be
19 amended by the parties thereto.

20 (2) The term “Secretary” means the Secretary
21 of the Interior.

22 (3) The term “Upper Division States” means
23 the States of Colorado, New Mexico, Utah, and Wy-
24 oming.

25 (4) The term “Colorado River Storage Project”
26 or “storage project” means those dams, reservoirs,

1 power plants, and other appurtenant project facili-
2 ties and features authorized by and constructed in
3 accordance with the Colorado River Storage Project
4 Act (43 U.S.C. 620 et seq.).

5 (5) The term “capital projects” means plan-
6 ning, design, permitting or other compliance, pre-
7 construction activities, construction, construction
8 management, and replacement of facilities, and the
9 acquisition of interests in land or water, as nec-
10 essary to carry out the Recovery Implementation
11 Programs.

12 (6) The term “facilities” includes facilities for
13 the genetic conservation or propagation of the en-
14 dangered fishes, those for the restoration of flood-
15 plain habitat or fish passage, those for control or
16 supply of instream flows, and those for the removal
17 or translocation of nonnative fishes.

18 (7) The term “interests in land and water” in-
19 cludes, but is not limited to, long-term leases and
20 easements, and long-term enforcement, or other
21 agreements protecting instream flows.

22 (8) The term “base funding” means funding for
23 operation and maintenance of capital projects, im-
24 plementation of recovery actions other than capital
25 projects, monitoring and research to evaluate the

1 need for or effectiveness of any recovery action, and
2 program management, as necessary to carry out the
3 Recovery Implementation Programs. Base funding
4 also includes annual funding provided under the
5 terms of the 1988 Cooperative Agreement and the
6 1992 Cooperative Agreement.

7 (9) The term “recovery actions other than cap-
8 ital projects” includes short-term leases and agree-
9 ments for interests in land, water, and facilities; the
10 reintroduction or augmentation of endangered fish
11 stocks; and the removal, translocation, or other con-
12 trol of nonnative fishes.

13 (10) The term “depletion charge” means a one-
14 time contribution in dollars per acre-foot to be paid
15 to the United States Fish and Wildlife Service based
16 on the average annual new depletion by each project.

17 **SEC. 3. AUTHORIZATION TO FUND RECOVERY PROGRAMS.**

18 (a) AUTHORIZATION OF APPROPRIATIONS FOR FED-
19 ERAL PARTICIPATION IN CAPITAL PROJECTS.—(1) There
20 is hereby authorized to be appropriated to the Secretary,
21 \$46,000,000 to undertake capital projects to carry out the
22 purposes of this Act. Such funds shall be considered a
23 nonreimbursable Federal expenditure.

24 (2) The authority of the Secretary, acting through
25 the Bureau of Reclamation, under this or any other provi-

1 sion of law to implement capital projects for the Recovery
2 Implementation Program for Endangered Fish Species in
3 the Upper Colorado River Basin shall expire in fiscal year
4 2005 unless reauthorized by an Act of Congress.

5 (3) The authority of the Secretary to implement the
6 capital projects for the San Juan River Basin Recovery
7 Implementation Program shall expire in fiscal year 2007
8 unless reauthorized by an Act of Congress.

9 (b) COST OF CAPITAL PROJECTS.—The total costs
10 of the capital projects undertaken for the Recovery Imple-
11 mentation Programs receiving assistance under this Act
12 shall not exceed \$100,000,000 of which—

13 (1) costs shall not exceed \$82,000,000 for the
14 Recovery Implementation Program for Endangered
15 Fish Species in the Upper Colorado River Basin
16 through fiscal year 2005; and

17 (2) costs shall not exceed \$18,000,000 for the
18 San Juan River Recovery Implementation Program
19 through fiscal year 2007.

20 The amounts set forth in this subsection shall be adjusted
21 by the Secretary for inflation in each fiscal year beginning
22 after the enactment of this Act.

23 (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL
24 PROJECTS.—(1) The Secretary, acting through the Bu-
25 reau of Reclamation, may accept contributed funds from

1 the Upper Division States, or political subdivisions or or-
2 ganizations with the Upper Division States, pursuant to
3 agreements that provide for the contributions to be used
4 for capital projects costs. Such non-Federal contributions
5 shall not exceed \$17,000,000.

6 (2) In addition to the contribution described in para-
7 graph (1), the Secretary of Energy, acting through the
8 Western Area Power Administration, and the Secretary of
9 the Interior, acting through the Bureau of Reclamation,
10 may utilize power revenues collected pursuant to the Colo-
11 rado River Storage Project Act to carry out the purposes
12 of this subsection. Such funds shall be treated as reim-
13 bursable costs assigned to power for repayment under sec-
14 tion 5 of the Colorado River Storage Project Act. This
15 additional contribution shall not exceed \$17,000,000.
16 Such funds shall be considered a non-Federal contribution
17 for the purposes of this Act. The funding authorized by
18 this paragraph over any 2-fiscal-year period shall be made
19 available in amounts equal to the contributions for the
20 same two fiscal year period made by the Upper Division
21 States pursuant to paragraph (1).

22 (3) The additional funding provided pursuant to
23 paragraph (2) may be provided through loans from the
24 Colorado Water Conservation Board Construction Fund
25 (37–60–121 C.R.S.) to the Western Area Power Adminis-

1 tration in lieu of funds which would otherwise be collected
2 from power revenues and used for storage project repay-
3 ments. The Western Area Power Administration is author-
4 ized to repay such loan or loans from power revenues col-
5 lected beginning in fiscal year 2012, subject to an agree-
6 ment between the Colorado Water Conservation Board,
7 the Western Area Power Administration, and the Bureau
8 of Reclamation. The agreement and any future loan con-
9 tracts that may be entered into by the Colorado Water
10 Conservation Board, the Western Area Power Administra-
11 tion, and the Bureau of Reclamation shall be negotiated
12 in consultation with Salt Lake City Area Integrated
13 Projects Firm Power Contractors. The agreement and
14 loan contracts shall include provisions designed to mini-
15 mize impacts on electrical power rates and shall ensure
16 that loan repayment to the Colorado Water Conservation
17 Board, including principal and interest, is completed no
18 later than September 30, 2057. The Western Area Power
19 Administration is authorized to include in power rates
20 such sums as are necessary to carry out this paragraph
21 and paragraph (2).

22 (4) All contributions made pursuant to this sub-
23 section shall be in addition to the cost of replacement
24 power purchased due to modifying the operation of the
25 Colorado River Storage Project and the capital cost of

1 water from WOLFORD Mountain Reservoir in Colorado. Such
2 costs shall be considered as non-Federal contributions, not
3 to exceed \$20,000,000.

4 (d) BASE FUNDING.—(1) Beginning in the first fiscal
5 year commencing after the date of the enactment of this
6 Act, the Secretary may utilize power revenues collected
7 pursuant to the Colorado River Storage Project Act for
8 the annual base funding contributions to the Recovery Im-
9 plementation Programs by the Bureau of Reclamation.
10 Such funding shall be treated as nonreimbursable and as
11 having been repaid and returned to the general fund of
12 the Treasury as costs assigned to power for repayment
13 under section 5 of the Colorado River Storage Project Act.

14 (2) For the Recovery Implementation Program for
15 the Endangered Fish Species in the Upper Colorado River
16 Basin, the contributions to base funding referred to in
17 paragraph (1) shall not exceed \$4,000,000 per year. For
18 the San Juan River Recovery Implementation Program,
19 such contributions shall not exceed \$2,000,000 per year.
20 The Secretary shall adjust such amounts for inflation in
21 fiscal years commencing after the enactment of this Act.
22 The utilization of power revenues for annual base funding
23 shall cease after the fiscal year 2011, unless reauthorized
24 by Congress; except that power revenues may continue to
25 be utilized to fund the operation and maintenance of cap-

1 ital projects and monitoring. No later than the end of fis-
2 cal year 2008, the Secretary shall submit a report on the
3 utilization of power revenues for base funding to the ap-
4 propriate Committees of the United States Senate and the
5 House of Representatives. The Secretary shall also make
6 a recommendation in such report regarding the need for
7 continued base funding after fiscal year 2011 that may
8 be required to fulfill the goals of the Recovery Implemen-
9 tation Programs. Nothing in this Act shall otherwise mod-
10 ify or amend existing agreements among participants re-
11 garding base funding and depletion charges for the Recov-
12 ery Implementation Programs.

13 (3) The Western Area Power Administration and the
14 Bureau of Reclamation shall maintain sufficient revenues
15 in the Colorado River Basin Fund to meet their obligation
16 to provide base funding in accordance with paragraph (2).
17 If the Western Area Power Administration and the Bu-
18 reau of Reclamation determine that the funds in the Colo-
19 rado River Basin Fund will not be sufficient to meet the
20 obligations of section 5(c)(1) of the Colorado River Stor-
21 age Project Act for a 3-year period, the Western Area
22 Power Administration and the Bureau of Reclamation
23 shall request appropriations to meet base funding obliga-
24 tions.

1 (e) AUTHORITY TO RETAIN APPROPRIATED
2 FUNDS.—At the end of each fiscal year any unexpended
3 appropriated funds for capital projects under this Act
4 shall be retained for use in future fiscal years. Unex-
5 pended funds under this Act that are carried over shall
6 continue to be used to implement the capital projects need-
7 ed for the Recovery Implementation Programs.

8 (f) ADDITIONAL AUTHORITY.—The Secretary may
9 enter into agreements and contracts with Federal and
10 non-Federal entities, acquire and transfer interests in
11 land, water, and facilities, and accept or give grants in
12 order to carry out the purposes of this Act.

13 (g) INDIAN TRUST ASSETS.—The Congress finds
14 that much of the potential water development in the San
15 Juan River Basin and in the Duchesne River Basin (a
16 subbasin of the Green River in the Upper Colorado River
17 Basin) is for the benefit of Indian tribes and most of the
18 federally designated critical habitat for the endangered
19 fish species in the San Juan River Basin is on Indian trust
20 lands, and 2½ miles of critical habitat on the Duchesne
21 River is on Indian Trust Land. Nothing in this Act shall
22 be construed to restrict the Secretary, acting through the
23 Bureau of Reclamation and the Bureau of Indian Affairs,
24 from funding activities or capital projects in accordance
25 with the Federal Government's Indian trust responsibility.

1 (h) TERMINATION OF AUTHORITY.—All authorities
2 provided by this section for the respective Recovery Imple-
3 mentation Program shall terminate upon expiration of the
4 current time period for the respective Cooperative Agree-
5 ment referenced in section 2(1) unless, at least one year
6 prior to such expiration, the time period for the respective
7 Cooperative Agreement is extended to conform with this
8 Act.

9 **SEC. 4. EFFECT ON RECLAMATION LAW.**

10 No provision of this Act nor any action taken pursu-
11 ant thereto or in furtherance thereof shall constitute a new
12 or supplemental benefit under the Act of June 17, 1902
13 (chapter 1093; 32 Stat. 388), and Acts supplemental
14 thereto and amendatory thereof (43 U.S.C. 371 et seq.).

Passed the House of Representatives July 25, 2000.

Attest:

JEFF TRANDAHL,

Clerk.

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