

Union Calendar No. 457

106TH CONGRESS
2^D SESSION

H. R. 2348

[Report No. 106-791]

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1999

Mr. HANSEN (for himself, Mr. COOK, Mr. CANNON, Mr. UDALL of Colorado, Mr. MCINNIS, Mr. SCHAFFER, Mr. TANCREDO, and Mrs. CUBIN) introduced the following bill; which was referred to the Committee on Resources

JULY 25, 2000

Additional sponsors: Ms. DEGETTE and Mr. UDALL of New Mexico

JULY 25, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 24, 1999]

A BILL

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,*

3 **SECTION 1. PURPOSE.**

4 *The purpose of this Act is to authorize and provide*
5 *funding for the Bureau of Reclamation to continue the im-*
6 *plementation of the endangered fish recovery implementa-*
7 *tion programs for the Upper Colorado and San Juan River*
8 *Basins in order to accomplish the objectives of these pro-*
9 *grams within a currently established time schedule.*

10 **SEC. 2. DEFINITIONS.**

11 *As used in this Act:*

12 (1) *The term “Recovery Implementation Pro-*
13 *grams” means the intergovernmental programs estab-*
14 *lished pursuant to the 1988 Cooperative Agreement to*
15 *implement the Recovery Implementation Program for*
16 *the Endangered Fish Species in the Upper Colorado*
17 *River dated September 29, 1987, and the 1992 Coop-*
18 *erative Agreement to implement the San Juan River*
19 *Recovery Implementation Program dated October 21,*
20 *1992, and as they may be amended by the parties*
21 *thereto.*

22 (2) *The term “Secretary” means the Secretary of*
23 *the Interior.*

24 (3) *The term “Upper Division States” means the*
25 *States of Colorado, New Mexico, Utah, and Wyoming.*

1 (4) *The term “Colorado River Storage Project”*
2 *or “storage project” means those dams, reservoirs,*
3 *power plants, and other appurtenant project facilities*
4 *and features authorized by and constructed in accord-*
5 *ance with the Colorado River Storage Project Act (43*
6 *U.S.C. 620 et seq.).*

7 (5) *The term “capital projects” means planning,*
8 *design, permitting or other compliance, pre-construc-*
9 *tion activities, construction, construction manage-*
10 *ment, and replacement of facilities, and the acquisi-*
11 *tion of interests in land or water, as necessary to*
12 *carry out the Recovery Implementation Programs.*

13 (6) *The term “facilities” includes facilities for*
14 *the genetic conservation or propagation of the endan-*
15 *gered fishes, those for the restoration of floodplain*
16 *habitat or fish passage, those for control or supply of*
17 *instream flows, and those for the removal or*
18 *translocation of nonnative fishes.*

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

23 (8) *The term “base funding” means funding for*
24 *operation and maintenance of capital projects, imple-*
25 *mentation of recovery actions other than capital*

1 *projects, monitoring and research to evaluate the need*
2 *for or effectiveness of any recovery action, and pro-*
3 *gram management, as necessary to carry out the Re-*
4 *covery Implementation Programs. Base funding also*
5 *includes annual funding provided under the terms of*
6 *the 1988 Cooperative Agreement and the 1992 Cooper-*
7 *ative Agreement.*

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

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

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

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

1 (2) *The authority of the Secretary, acting through the*
2 *Bureau of Reclamation, under this or any other provision*
3 *of law to implement capital projects for the Recovery Imple-*
4 *mentation Program for Endangered Fish Species in the*
5 *Upper Colorado River Basin shall expire in fiscal year*
6 *2005 unless reauthorized by an Act of Congress.*

7 (3) *The authority of the Secretary to implement the*
8 *capital projects for the San Juan River Basin Recovery Im-*
9 *plementation Program shall expire in fiscal year 2007 un-*
10 *less reauthorized by an Act of Congress.*

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

15 (1) *costs shall not exceed \$82,000,000 for the Re-*
16 *covery Implementation Program for Endangered Fish*
17 *Species in the Upper Colorado River Basin through*
18 *fiscal year 2005; and*

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

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

1 (c) *NON-FEDERAL CONTRIBUTIONS TO CAPITAL*
2 *PROJECTS.*—(1) *The Secretary, acting through the Bureau*
3 *of Reclamation, may accept contributed funds from the*
4 *Upper Division States, or political subdivisions or organi-*
5 *zations with the Upper Division States, pursuant to agree-*
6 *ments that provide for the contributions to be used for cap-*
7 *ital projects costs. Such non-Federal contributions shall not*
8 *exceed \$17,000,000.*

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

1 (3) *The additional funding provided pursuant to para-*
2 *graph (2) may be provided through loans from the Colorado*
3 *Water Conservation Board Construction Fund (37-60-121*
4 *C.R.S.) to the Western Area Power Administration in lieu*
5 *of funds which would otherwise be collected from power reve-*
6 *nues and used for storage project repayments. The Western*
7 *Area Power Administration is authorized to repay such*
8 *loan or loans from power revenues collected beginning in*
9 *fiscal year 2012, subject to an agreement between the Colo-*
10 *rado Water Conservation Board, the Western Area Power*
11 *Administration, and the Bureau of Reclamation. The agree-*
12 *ment and any future loan contracts that may be entered*
13 *into by the Colorado Water Conservation Board, the West-*
14 *ern Area Power Administration, and the Bureau of Rec-*
15 *lamation shall be negotiated in consultation with Salt Lake*
16 *City Area Integrated Projects Firm Power Contractors. The*
17 *agreement and loan contracts shall include provisions de-*
18 *signed to minimize impacts on electrical power rates and*
19 *shall ensure that loan repayment to the Colorado Water*
20 *Conservation Board, including principal and interest, is*
21 *completed no later than September 30, 2057. The Western*
22 *Area Power Administration is authorized to include in*
23 *power rates such sums as are necessary to carry out this*
24 *paragraph and paragraph (2).*

1 (4) *All contributions made pursuant to this subsection*
2 *shall be in addition to the cost of replacement power pur-*
3 *chased due to modifying the operation of the Colorado River*
4 *Storage Project and the capital cost of water from Wolford*
5 *Mountain Reservoir in Colorado. Such costs shall be consid-*
6 *ered as non-Federal contributions, not to exceed*
7 *\$20,000,000.*

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

18 (2) *For the Recovery Implementation Program for the*
19 *Endangered Fish Species in the Upper Colorado River*
20 *Basin, the contributions to base funding referred to in para-*
21 *graph (1) shall not exceed \$4,000,000 per year. For the San*
22 *Juan River Recovery Implementation Program, such con-*
23 *tributions shall not exceed \$2,000,000 per year. The Sec-*
24 *retary shall adjust such amounts for inflation in fiscal*
25 *years commencing after the enactment of this Act. The utili-*

1 *zation of power revenues for annual base funding shall cease*
2 *after the fiscal year 2011, unless reauthorized by Congress;*
3 *except that power revenues may continue to be utilized to*
4 *fund the operation and maintenance of capital projects and*
5 *monitoring. No later than the end of fiscal year 2008, the*
6 *Secretary shall submit a report on the utilization of power*
7 *revenues for base funding to the appropriate Committees*
8 *of the United States Senate and the House of Representa-*
9 *tives. The Secretary shall also make a recommendation in*
10 *such report regarding the need for continued base funding*
11 *after fiscal year 2011 that may be required to fulfill the*
12 *goals of the Recovery Implementation Programs. Nothing*
13 *in this Act shall otherwise modify or amend existing agree-*
14 *ments among participants regarding base funding and de-*
15 *pletion charges for the Recovery Implementation Programs.*

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

1 *tration and the Bureau of Reclamation shall request appro-*
2 *priations to meet base funding obligations.*

3 *(e) AUTHORITY TO RETAIN APPROPRIATED FUNDS.—*

4 *At the end of each fiscal year any unexpended appropriated*
5 *funds for capital projects under this Act shall be retained*
6 *for use in future fiscal years. Unexpended funds under this*
7 *Act that are carried over shall continue to be used to imple-*
8 *ment the capital projects needed for the Recovery Implemen-*
9 *tation Programs.*

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

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

1 *activities or capital projects in accordance with the Federal*
2 *Government's Indian trust responsibility.*

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

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

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

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