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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–791

RECOVERY IMPLEMENTATION PROGRAM FOR THE ENDANGERED FISH SPECIES IN THE UPPER COLORADO RIVER

JULY 25, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2348]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2348) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PURPOSE.

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

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "Recovery Implementation Programs" means the intergovernmental programs established pursuant to the 1988 Cooperative Agreement to implement the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River dated September 29, 1987, and the 1992 Cooperative Agreement to implement the San Juan River Recovery Implementation Program dated October 21, 1992, and as they may be amended by the parties thereto.

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(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Upper Division States" means the States of Colorado, New Mexico, Utah, and Wyoming.

(4) The term "Colorado River Storage Project" or "storage project" means those dams, reservoirs, power plants, and other appurtenant project facilities and features authorized by and constructed in accordance with the Colorado River Storage Project Act (43 U.S.C. 620 et seq.).

(5) The term "capital projects" means planning, design, permitting or other compliance, pre-construction activities, construction, construction management, and replacement of facilities, and the acquisition of interests in land or water, as necessary to carry out the Recovery Implementation Programs.

(6) The term "facilities" includes facilities for the genetic conservation or propagation of the endangered fishes, those for the restoration of floodplain habitat or fish passage, those for control or supply of instream flows, and those for the removal or translocation of nonnative fishes.

(7) The term "interests in land and water" includes, but is not limited to, long-term leases and easements, and long-term enforcement, or other agreements protecting instream flows.

(8) The term "base funding" means funding for operation and maintenance of capital projects, implementation of recovery actions other than capital projects, monitoring and research to evaluate the need for or effectiveness of any recovery action, and program management, as necessary to carry out the Recovery Implementation Programs. Base funding also includes annual funding provided under the terms of the 1988 Cooperative Agreement and the 1992 Cooperative Agreement.

(9) The term "recovery actions other than capital projects" includes short-term leases and agreements for interests in land, water, and facilities; the reintroduction or augmentation of endangered fish stocks; and the removal, translocation, or other control of nonnative fishes.

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

SEC. 3. AUTHORIZATION TO FUND RECOVERY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL PARTICIPATION IN CAPITAL PROJECTS.—(1) There is hereby authorized to be appropriated to the Secretary, $46,000,000 to undertake capital projects to carry out the purposes of this Act. Such funds shall be considered a nonreimbursable Federal expenditure.

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

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

(b) COST OF CAPITAL PROJECTS.—The total costs of the capital projects undertaken for the Recovery Implementation Programs receiving assistance under this Act shall not exceed $100,000,000 of which—

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

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

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

(c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL PROJECTS.—(1) The Secretary, acting through the Bureau of Reclamation, may accept contributed funds from the Upper Division States, or political subdivisions or organizations with the Upper Division States, pursuant to agreements that provide for the contributions to be used for capital projects costs. Such non-Federal contributions shall not exceed $17,000,000.

(2) In addition to the contribution described in paragraph (1), the Secretary of Energy, acting through the Western Area Power Administration, and the Secretary of the Interior, acting through the Bureau of Reclamation, may utilize power revenues collected pursuant to the Colorado River Storage Project Act to carry out the purposes of this subsection. Such funds shall be treated as reimbursable costs assigned to power for repayment under section 5 of the Colorado River Storage Project Act. This additional contribution shall not exceed $17,000,000. Such funds shall be con-

sidered a non-Federal contribution for the purposes of this Act. The funding authorized by this paragraph over any 2-fiscal-year period shall be made available in amounts equal to the contributions for the same two fiscal year period made by the Upper Division States pursuant to paragraph (1).

(3) The additional funding provided pursuant to paragraph (2) may be provided through loans from the Colorado Water Conservation Board Construction Fund (37–60–121 C.R.S.) to the Western Area Power Administration in lieu of funds which would otherwise be collected from power revenues and used for storage project repayments. The Western Area Power Administration is authorized to repay such loan or loans from power revenues collected beginning in fiscal year 2012, subject to an agreement between the Colorado Water Conservation Board, the Western Area Power Administration, and the Bureau of Reclamation. The agreement and any future loan contracts that may be entered into by the Colorado Water Conservation Board, the Western Area Power Administration, and the Bureau of Reclamation shall be negotiated in consultation with Salt Lake City Area Integrated Projects Firm Power Contractors. The agreement and loan contracts shall include provisions designed to minimize impacts on electrical power rates and shall ensure that loan repayment to the Colorado Water Conservation Board, including principal and interest, is completed no later than September 30, 2057. The Western Area Power Administration is authorized to include in power rates such sums as are necessary to carry out this paragraph and paragraph (2).

(4) All contributions made pursuant to this subsection shall be in addition to the cost of replacement power purchased due to modifying the operation of the Colorado River Storage Project and the capital cost of water from Wolford Mountain Reservoir in Colorado. Such costs shall be considered as non-Federal contributions, not to exceed $20,000,000.

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

(2) For the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River Basin, the contributions to base funding referred to in paragraph (1) shall not exceed $4,000,000 per year. For the San Juan River Recovery Implementation Program, such contributions shall not exceed $2,000,000 per year. The Secretary shall adjust such amounts for inflation in fiscal years commencing after the enactment of this Act. The utilization of power revenues for annual base funding shall cease after the fiscal year 2011, unless reauthorized by Congress; except that power revenues may continue to be utilized to fund the operation and maintenance of capital projects and monitoring. No later than the end of fiscal year 2008, the Secretary shall submit a report on the utilization of power revenues for base funding to the appropriate Committees of the United States Senate and the House of Representatives. The Secretary shall also make a recommendation in such report regarding the need for continued base funding after fiscal year 2011 that may be required to fulfill the goals of the Recovery Implementation Programs. Nothing in this Act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the Recovery Implementation Programs.

(3) The Western Area Power Administration and the Bureau of Reclamation shall maintain sufficient revenues in the Colorado River Basin Fund to meet their obligation to provide base funding in accordance with paragraph (2). If the Western Area Power Administration and the Bureau of Reclamation determine that the funds in the Colorado River Basin Fund will not be sufficient to meet the obligations of section 5(c)(1) of the Colorado River Storage Project Act for a 3-year period, the Western Area Power Administration and the Bureau of Reclamation shall request appropriations to meet base funding obligations.

(e) AUTHORITY TO RETAIN APPROPRIATED FUNDS.—At the end of each fiscal year any unexpended appropriated funds for capital projects under this Act shall be retained for use in future fiscal years. Unexpended funds under this Act that are carried over shall continue to be used to implement the capital projects needed for the Recovery Implementation Programs.

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

(g) INDIAN TRUST ASSETS.—The Congress finds that much of the potential water development in the San Juan River Basin and in the Duchesne River Basin (a

subbasin of the Green River in the Upper Colorado River Basin) is for the benefit of Indian tribes and most of the federally designated critical habitat for the endangered fish species in the San Juan River Basin is on Indian trust lands, and 2½ miles of critical habitat on the Duchesne River is on Indian Trust Land. Nothing in this Act shall be construed to restrict the Secretary, acting through the Bureau of Reclamation and the Bureau of Indian Affairs, from funding activities or capital projects in accordance with the Federal Government's Indian trust responsibility.

(h) TERMINATION OF AUTHORITY.—All authorities provided by this section for the respective Recovery Implementation Program shall terminate upon expiration of the current time period for the respective Cooperative Agreement referenced in section 2(1) unless, at least one year prior to such expiration, the time period for the respective Cooperative Agreement is extended to conform with this Act.

SEC. 4. EFFECT ON RECLAMATION LAW.

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

PURPOSE OF THE BILL

The purpose of H.R. 2348 is 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.

BACKGROUND

The Colorado River Basin is home to 14 native fish species. Eight of these have seriously declined, and four species—the Colorado pikeminnow (until recently it was known as the squawfish), razorback sucker, humpback chub and bonytail—are listed as endangered under the federal Endangered Species Act.

Two cooperative intergovernmental programs have been established in the Upper Colorado River Basin to allow needed water use and development to continue to proceed in compliance with the federal Endangered Species Act. These are the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin and the San Juan River Endangered Fish Recovery Implementation Program.

The Upper Colorado Recovery Program was initiated by a Cooperative Agreement signed on January 21, 1988, by Secretary of the Interior Donald Hodel, the Governors of the States of Colorado, Utah and Wyoming and the Administrator of the Western Area Power Administration. The goal of the Upper Colorado Recovery Program is to recover the Colorado pikeminnow (Ptychocheilus lucius), humpback chub (Gila cypha), razorback sucker (Xyrauchen texanus) and bonytail (Gila elegans) while continuing to meet future water supply needs in the Upper Basin states of Colorado, Utah, Wyoming. It is the intent of the Committee that passage of this legislation and authorization of the program will assure that there are no additional adverse dam operational changes required. The States of Wyoming, Colorado and Utah, environmental organizations, power users, water users, the Bureau of Reclamation, the U.S. Fish and Wildlife Service (USFWS), and the Western Area Power Administration have been actively conducting and jointly managing the Recovery Program since its initiation in 1988.

The States of Colorado and New Mexico, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the Navajo Nation, the Jicarilla Apache Indian Tribe, the U.S. Bureau of Reclamation, the USFWS, the Bureau of Indian Affairs, the Bureau of Land

Management and water users are the participants in the San Juan River Program. The Program was initiated by a Cooperative Agreement entered into on October 21, 1992, by the participating States and agencies, and has as its goal to recover the Colorado pikeminnow and the razorback sucker while continuing to meet present and future water needs in the Upper Basin States of Colorado and New Mexico.

H.R. 2348 authorizes the Bureau of Reclamation to provide cost sharing for the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins. The legislation would authorize $46 million to be paid by the federal government (non-reimbursable federal expenditure); $17 million to be paid by the States; and $17 million from Colorado River Storage Project power revenues. The legislation indicates that the $17 million from the Colorado River Storage Project "shall be treated as reimbursable costs assigned to power for repayment under section 5 of the Colorado River Storage Project Act (43 U.S.C. 620 et seq.)."

After the capital projects are constructed, power revenues will provide the annual "base funding" for the Recovery Implementation Program. This funding will be treated as having been repaid and returned to general fund of the Treasury as costs assigned to power for repayment under the Colorado River Storage Project Act. After fiscal year 2011, power revenues will continue to fund the operation and maintenance of capital projects and monitoring.

COMMITTEE ACTION

H.R. 2348 was introduced on June 24, 1999, by Congressman James Hansen (R–UT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On October 21, 1999, the Subcommittee held a hearing on the bill. On June 15, 1999, the Subcommittee met to mark up the bill. Congressman John Doolittle (R–CA) offered an amendment that altered the base-line funding of the project and required the USFWS to pay for the base-line funding. The amendment was adopted by voice vote. The bill, as amended, was then ordered to be reported to the Full Committee by voice vote. On June 20, 2000, the Full Resources Committee met to consider the bill. Congressman Hansen offered an amendment in the nature of a substitute that incorporated the language of H.R. 2348 as introduced. In addition, the language made several technical clarifications to the bill itself. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Purpose

This section describes the intent of this legislation.

Section 2. Definitions

This section provides definitions of terms used in the bill including: "Recovery Implementation Programs", "Secretary", "Upper Division States", "Colorado River Storage Project", "capital projects", "facilities", "interests in land and water", "base funding", "recovery actions other than capital projects", and "depletion charge".

Section 3. Authorization To Fund Recovery Programs

This section authorizes the Upper Colorado and San Juan River Basins Fish Recovery Program that incorporates $46 million as a non-reimbursable Federal expenditure; $17 million to be paid by the States; and $17 million from Colorado River Storage Project power revenues for fish and wildlife purposes.

It is the intent of the Committee that passage of this legislation and the authorization of funding for the base line monitoring and research program will not expand to a basic science research program or a means to have the USFWS permit studies on issues not directly related to the operation of the capital projects. The Committee does not want the monitoring to expand beyond the scope of the authorized program as has been the case with the long-term monitoring and research program authorized in section 1805, under Public Law 102–575, of the Grand Canyon Protection Act.

To prevent the unauthorized expansion of the monitoring and research program and overspending, the Committee expects the Secretary to include in the annual budget justification for the Bureau of Reclamation a detailed work program and budget information that includes staffing, overhead, tasks, and an explanation of the role the USFWS will play in the monitoring and research program. The Committee also expects that the budget justification, after fiscal year 2011, shall continue to include a projection for the monitoring and research program costs for each year after fiscal year 2011, until the monitoring has been completed. The Committee expects this information to be provided by the Secretary to this Committee, and to the Senate Energy and Natural Resources Committee.

Section 4. Effect on Reclamation Law

This section makes clear that construction of facilities and acquisition of land and water rights shall not render those same subject to, or that funds received under this bill shall not be considered a supplemental or additional benefit under, the Reclamation Act of 1902 and acts supplementary thereto and amendatory thereof.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under sec-

tion 402 of the Congressional Budget Act of 1974. While a cost estimate has been requested, it has not been received. The Committee believes that enacting this bill will not have a significant impact on the budget of the United States.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, the Committee does not believe that this bill contains any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has not received a cost estimate for this bill from the Director of the Congressional Budget Office at the time this bill report was filed.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

This bill makes no changes in existing law.

DISSENTING VIEWS

During the late 1950s and early 60s, the States of Wyoming, Utah and Colorado, along with personnel from the U.S. Fish and Wildlife Service participated in a project to "rid the area of coarse fish . . ." (i.e., several of these now endangered fish). This rotenoning project, "which occurred between Sept. 2 and Sept. 8, 1962, was supported by a majority of the public, according to interviewees and newspaper clippings." (Historical Accounts of Upper Colorado River Basin Endangered Fish, produced by the Information and Education Committee of the Upper Colorado River Basin. Page 38.) Now, Congress is asked to provide tens of millions of dollars to save the same fish they had earlier hoped to kill.

H.R. 2348 fails to address three important policy issues regarding financial management and fiscal responsibility.

First, the legislation fails to include the Fish and Wildlife Service (Service) as an active funding partner. When money is allocated from a specific agency, the agency makes decisions on how it should be allocated. Under the current bill, the Bureau of Reclamation is responsible for the construction costs of the project, and can properly budget for these costs. However, the Bureau of Reclamation and the Western Area Power Administration (WAPA) will be responsible for the O&M costs of facilities to be operated and maintained by the Service. This in effect, provides the Service a blank check for the O&M of the project, and its monitoring. If the legislation required the Service to pay these costs, then Congress would know whether this program, when competing against other Service priorities, is important enough for the Service to seek funding for the program.

Second, the legislation proposes to utilize power revenues to pay for the base funding of the recovery program without effecting power rates. This has the effect of moving money from an existing repayment obligation to finance a new program, while at the same time crediting it to the Treasury as if the original debt had been repaid. Specifically, this occurs under Section 3(d)(1)(2) of the bill that requires the power revenue to continue to fund the operation and maintenance of capital projects and the continued monitoring of the recovery program. In effect, this legislation diverts money that should be paid to the Treasury for an existing obligation and uses it to pay for a new obligation.

The third problem this type of financing mechanism causes is a lack of Congressional oversight. This type of funding outside of the ongoing scrutiny of the Congress, creates an opportunity for run away spending. Our experience with this mechanism has been disastrous both financially and administratively. This is most evident in P.L. 102–575, Section 1805, the Grand Canyon Protection Act. The diversion of reimbursable power revenues to fund unrelated expenditures has resulted in more than a hundred million dollars

in administrative studies being spent without effective Congressional oversight. Senate Report 106–000, the Energy and Water Development Appropriation Bill, on page 91, concerning the Grand Canyon Protection Act, states,

> In the past, the Committee has expressed concern about the increasing funding requirements for and the steadily expanding scope of activities of the Grand Canyon Monitoring and Research Center. Funding levels continue an upward trend and as a result, the Committee has included a provision in the bill to limit funding at the fiscal year 2000 level adjusted for inflation. Limiting available funding will allow for work prioritization, focusing on the most important activities. The Committee encourages the agency to seek additional funding from outside non-Federal sources if necessary.

The mistakes inherent in the funding approach used in the Grand Canyon Protection Act should not be duplicated. Once the monitoring begins, there should not be any unauthorized expansion of the monitoring and research program.

JOHN T. DOOLITTLE.

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