

106TH CONGRESS
2D SESSION

S. 2239

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

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2000

Mr. ALLARD (for himself, Mr. CAMPBELL, Mr. HATCH, Mr. BENNETT, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the Bureau of Reclamation to provide cost sharing for the endangered fish recovery implementation programs for the Upper Colorado River 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
6 implementation of the endangered fish recovery implemen-
7 tation programs for the Upper Colorado River and San

1 Juan River basins in order to accomplish the objectives
2 of the programs within an established timeframe.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) 1988 COOPERATIVE AGREEMENT.—The
6 term “1988 Cooperative Agreement” means the co-
7 operative agreement to implement the Recovery Im-
8 plementation Program for Endangered Fish Species
9 in the Upper Colorado River dated September 29,
10 1987, as the agreement may be amended.

11 (2) 1992 COOPERATIVE AGREEMENT.—The
12 term “1992 Cooperative Agreement” means the co-
13 operative agreement to implement the San Juan
14 River Recovery Program dated October 21, 1992, as
15 the agreement may be amended.

16 (3) BASE FUNDING.—The term “base funding”
17 means—

18 (A) funding for—

19 (i) operation and maintenance of cap-
20 ital projects;

21 (ii) implementation of recovery actions
22 other than capital projects;

23 (iii) monitoring and research to evalu-
24 ate the need for or effectiveness of any re-
25 covery action; and

1 (iv) program management;
2 as necessary to carry out the Recovery Imple-
3 mentation Programs; and

4 (B) annual funding provided under the
5 1988 Cooperative Agreement and the 1992 Co-
6 operative Agreement.

7 (4) CAPITAL PROJECT.—The term “capital
8 project” means a project involving—

9 (A) facilities planning, design, permitting
10 (or other compliance), preconstruction activity,
11 construction, and construction management;

12 (B) replacement of facilities; and

13 (C) acquisition of an interest in land or
14 water;

15 as necessary to carry out the Recovery Implementa-
16 tion Programs.

17 (5) DEPLETION CHARGE.—The term “depletion
18 charge” means a one-time contribution in dollars per
19 acre-foot to be paid by each water project to the
20 United States Fish and Wildlife Service based on
21 the average annual new depletion.

22 (6) FACILITY.—The term “facility” includes a
23 facility for—

24 (A) genetic conservation or propagation of
25 the endangered fishes;

1 (B) restoration of floodplain habitat or fish
2 passage;

3 (C) control or supply of instream flows; or

4 (D) removal or translocation of nonnative
5 fishes.

6 (7) INTEREST IN LAND OR WATER.—The term
7 “interest in land or water” includes a long-term
8 lease, easement, or agreement protecting instream
9 flows.

10 (8) RECOVERY ACTION OTHER THAN A CAPITAL
11 PROJECT.—The term “recovery action other than a
12 capital project” includes—

13 (A) a short-term lease or agreement for an
14 interest in land, water, or facilities;

15 (B) the reintroduction or augmentation of
16 endangered fish stocks; and

17 (C) the removal, translocation, or other
18 control of a nonnative fishes.

19 (9) RECOVERY IMPLEMENTATION PROGRAMS.—
20 The term “Recovery Implementation Program”
21 means each of the intergovernmental programs es-
22 tablished under—

23 (A) the 1988 Cooperative Agreement; and

24 (B) the 1992 Cooperative Agreement.

1 (10) SECRETARY.—The term “Secretary”
2 means the Secretary of the Interior, acting through
3 the Commissioner of Reclamation.

4 (11) STORAGE PROJECT.—The term “storage
5 project” means the dams, reservoirs, power plants,
6 and other appurtenant project facilities and features
7 authorized by and constructed in accordance with
8 the Act of April 11, 1956 (commonly known as the
9 “Colorado River Storage Project Act”) (43 U.S.C.
10 620 et seq.).

11 (12) UPPER DIVISION STATE.—The term
12 “Upper Division State” means each of the States of
13 Colorado, New Mexico, Utah, and Wyoming.

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

15 (a) AUTHORIZATION OF APPROPRIATIONS FOR FED-
16 ERAL PARTICIPATION IN CAPITAL PROJECTS.—

17 (1) IN GENERAL.—There is authorized to be
18 appropriated to the Secretary \$46,000,000 to under-
19 take capital projects under this Act, to remain avail-
20 able until expended.

21 (2) NONREIMBURSABILITY.—Funds made avail-
22 able under paragraph (1) shall be a nonreimbursable
23 Federal expenditure.

24 (3) TERMINATION OF AUTHORITY.—

(A) UPPER COLORADO RIVER BASIN.—The authority of the Secretary under this Act or any other provision of law to implement capital projects for the Recovery Implementation Program under the 1988 Cooperative Agreement shall terminate on September 30, 2005.

(B) SAN JUAN RIVER BASIN.—The authority of the Secretary under this Act or any other provision of law to implement capital projects for the Recovery Implementation Program under the 1992 Cooperative Agreement shall terminate on September 30, 2007.

(b) COST OF CAPITAL PROJECTS.—

(1) IN GENERAL.—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—

(A) costs for the Recovery Implementation Program under the 1988 Cooperative Agreement through fiscal year 2005 shall not exceed \$82,000,000; and

(B) costs for the Recovery Implementation Program under the 1992 Cooperative Agreement through fiscal year 2007 shall not exceed \$18,000,000.

1 (2) ADJUSTMENTS.—For each fiscal year begin-
 2 ning after the date of enactment of this Act, the
 3 Secretary shall adjust the amounts in paragraph (1)
 4 for inflation based on an appropriate economic
 5 index.

6 (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL
 7 PROJECTS.—

8 (1) USE OF CONTRIBUTED FUNDS.—The Sec-
 9 retary may—

10 (A) accept contributed funds not exceeding
 11 \$17,000,000 from the Upper Division States, or
 12 political subdivisions of or organizations in the
 13 Upper Division States, under agreements pro-
 14 viding that the contributions shall be used for
 15 capital projects costs; and

16 (B) expend such funds as if appropriated
 17 for that purpose.

18 (2) USE OF POWER REVENUES.—

19 (A) IN GENERAL.—The Secretary of En-
 20 ergy, acting through the Western Area Power
 21 Administration, and the Secretary may use
 22 power revenues not exceeding \$17,000,000 col-
 23 lected under the Act of April 11, 1956 (43
 24 U.S.C. 620 et seq.) to carry out this subsection.

(B) REIMBURSABILITY.—Revenues used as provided under subparagraph (A) shall be treated as reimbursable costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (43 U.S.C. 620d).

(C) TREATMENT AS NON-FEDERAL CONTRIBUTION.—Revenues used as provided in subparagraph (A) shall be considered a non-Federal contribution for the purposes of this Act.

(D) AVAILABILITY ON MATCHING BASIS.—Funding under this paragraph over any 2-fiscal-year period shall be made available in amounts equal to the contributions for the same 2-fiscal-year period made by the Upper Division States under paragraph (1).

(E) ALTERNATIVE FUNDING THROUGH LOANS.—

(i) IN GENERAL.—Funding under subparagraph (A) may be provided through loans from the Colorado Water Conservation Board Construction Fund established under section 37–60–121 of the Colorado Revised Statutes to the Western Area Power Administration in lieu of funds that would otherwise be collected from

1 power revenues and used for storage
2 project repayments.

3 (ii) AGREEMENT.—The Western Area
4 Power Administration is authorized to
5 repay a loan under clause (i) from power
6 revenues collected beginning in fiscal year
7 2012, subject to an agreement between the
8 Colorado Water Conservation Board, the
9 Western Area Power Administration, and
10 the Bureau of Reclamation.

11 (iii) REQUIREMENTS.—An agreement
12 under clause (i) and any loan contracts
13 that may be entered into by the Colorado
14 Water Conservation Board, the Western
15 Area Power Administration, and the Bu-
16 reau of Reclamation shall—

17 (I) be negotiated in consultation
18 with Salt Lake City Area Integrated
19 Projects Firm Power Contractors;

20 (II) include provisions designed
21 to minimize impacts on electrical
22 power rates; and

23 (III) ensure that loan repayment
24 to the Colorado Water Conservation
25 Board, including principal and inter-

1 est, is completed not later than Sep-
 2 tember 30, 2057.

3 (F) POWER RATES.—The Western Area
 4 Power Administration is authorized to include
 5 in power rates such sums as are necessary to
 6 carry out this paragraph.

7 (3) FUNDING IN ADDITION TO COST OF RE-
 8 PLACEMENT POWER.—

9 (A) IN GENERAL.—All contributions made
 10 under this subsection shall be in addition to—

11 (i) the cost of replacement power pur-
 12 chased as a result of the modification of
 13 the operation of the Colorado River Stor-
 14 age Project; and

15 (ii) the capital cost of water from
 16 Wolford Mountain Reservoir in Colorado.

17 (B) TREATMENT AS NON-FEDERAL CON-
 18 TRIBUTION.—The costs described in clauses (i)
 19 and (ii) of subparagraph (A) shall be considered
 20 as non-Federal contributions, not to exceed
 21 \$20,000,000.

22 (d) BASE FUNDING.—

23 (1) IN GENERAL.—

24 (A) POWER REVENUES.—Beginning with
 25 the first fiscal year beginning after the date of

1 enactment of this Act, the Secretary may use
2 power revenues collected under the Act of April
3 11, 1956 (43 U.S.C. 620 et seq.), for the an-
4 nual base funding contributions to the Recovery
5 Implementation Programs by the Bureau of
6 Reclamation.

7 (B) TREATMENT.—Use of revenues as pro-
8 vided under subparagraph (A) shall be treated
9 as nonreimbursable and as having been repaid
10 and returned to the general fund of the Treas-
11 ury as costs assigned to power for repayment
12 under section 5 of the Act of April 11, 1956
13 (43 U.S.C. 620d).

14 (2) LIMITATION.—

15 (A) IN GENERAL.—

16 (i) UPPER COLORADO RIVER BASIN.—
17 For the Recovery Implementation Program
18 under the 1988 Cooperative Agreement,
19 the contributions to base funding under
20 paragraph (1) shall not exceed \$4,000,000
21 per fiscal year.

22 (ii) SAN JUAN RIVER BASIN.—For the
23 Recovery Implementation Program under
24 the 1992 Cooperative Agreement, the con-
25 tributions to base funding under paragraph

1 (1) shall not exceed \$2,000,000 per fiscal
2 year.

3 (B) ADJUSTMENTS.—The Secretary shall
4 adjust the amounts in subparagraph (A) for in-
5 flation in fiscal years beginning after the date
6 of enactment of this Act.

7 (C) TERMINATION OF AUTHORITY.—The
8 use of power revenues for annual base funding
9 shall terminate on September 30, 2011, except
10 that power revenues may continue to be used to
11 fund the operation and maintenance of capital
12 projects and monitoring.

13 (D) REPORT.—

14 (i) IN GENERAL.—Not later than Sep-
15 tember 30, 2008, the Secretary shall sub-
16 mit to Congress a report on the use of
17 power revenues for base funding.

18 (ii) RECOMMENDATION.—The report
19 under clause (i) shall include a rec-
20 ommendation regarding the need for con-
21 tinued base funding after fiscal year 2011
22 that may be required to fulfill the goals of
23 the Recovery Implementation Programs.

24 (E) EFFECT OF ACT.—Nothing in this Act
25 affects any agreement among participants re-

1 garding base funding and depletion charges for
2 the Recovery Implementation Programs.

3 (3) SUFFICIENCY OF REVENUES.—

4 (A) IN GENERAL.—The Western Area
5 Power Administration and the Bureau of Rec-
6 lamation shall maintain sufficient revenues in
7 the Upper Colorado River Basin Fund to meet
8 the obligation of the Western Area Power Ad-
9 ministration and the Bureau of Reclamation to
10 provide base funding in accordance with this
11 subsection.

12 (B) DETERMINATION OF INSUFFI-
13 CIENCY.—If the Western Area Power Adminis-
14 tration and the Bureau of Reclamation deter-
15 mine that the funds in the Upper Colorado
16 River Basin Fund will not be sufficient to meet
17 the obligations of the Western Area Power Ad-
18 ministration and the Bureau of Reclamation
19 under section 5(c)(1) of the Act of April 11,
20 1956 (43 U.S.C. 620d(c)(1)), for a 3-year pe-
21 riod, the Western Area Power Administration
22 and the Bureau of Reclamation shall request
23 appropriations to meet base funding obligations.

24 (e) ADDITIONAL AUTHORITY.—The Secretary may—

1 (1) enter into agreements and contracts with
2 Federal and non-Federal entities;

3 (2) acquire and transfer interests in land,
4 water, and facilities; and

5 (3) accept or give grants to carry out this Act.

6 (f) INDIAN TRUST ASSETS.—

7 (1) FINDINGS.—Congress finds that—

8 (A) much of the potential water develop-
9 ment in the San Juan River basin and in the
10 Duchesne River basin (a subbasin of the Green
11 River in the Upper Colorado River basin) is for
12 the benefit of Indian tribes;

13 (B) most of the federally designated crit-
14 ical habitat for the endangered fish species in
15 the San Juan River basin is on Indian trust
16 land; and

17 (C) 2½ miles of the critical habitat on the
18 Duchesne River is on Indian trust land.

19 (2) EFFECT OF ACT.—Nothing in this Act re-
20 stricts the Secretary of the Interior, acting through
21 the Commissioner of Reclamation or the Director of
22 the Bureau of Indian Affairs, in funding activities or
23 capital projects in the performance of the Indian
24 trust responsibility of the United States.

1 (g) TERMINATION OF SPENDING AUTHORITY.—All
2 spending authorities provided by this section for the Re-
3 covery Implementation Programs shall terminate on expi-
4 ration of the time period in effect on the date of enactment
5 of this Act for 1988 Cooperative Agreement and the 1992
6 Cooperative Agreement, respectively, unless, at least 1
7 year before such expiration, the time period for the cooper-
8 ative agreement is extended to conform with this Act.

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

10 Construction of a facility or acquisition of an interest
11 in land or water under this Act shall not render the facility
12 or interest in land or water or associated processes and
13 procedures subject to the Act of June 17, 1902 (32 Stat.
14 388, chapter 1093), and Acts supplemental to and amend-
15 atory of that Act (43 U.S.C. 371 et seq.).

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