

**Calendar No. 793**106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 2239****[Report No. 106-403]**

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.

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**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

SEPTEMBER 7, 2000

Reported by Mr. MURKOWSKI, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

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**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,*

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 River and San  
6 Juan River basins in order to accomplish the objectives  
7 of the programs within an established timeframe.

8 **SEC. 2. DEFINITIONS.**

9       In this Act:

10           (1) 1988 COOPERATIVE AGREEMENT.—The  
11 term “1988 Cooperative Agreement” means the co-  
12 operative agreement to implement the Recovery Im-  
13 plementation Program for Endangered Fish Species  
14 in the Upper Colorado River dated September 29,  
15 1987, as the agreement may be amended.

16           (2) 1992 COOPERATIVE AGREEMENT.—The  
17 term “1992 Cooperative Agreement” means the co-  
18 operative agreement to implement the San Juan  
19 River Recovery Program dated October 21, 1992, as  
20 the agreement may be amended.

21           (3) BASE FUNDING.—The term “base funding”  
22 means—

23                   (A) funding for—

24                           (i) operation and maintenance of cap-  
25                           ital projects;

1 (ii) implementation of recovery actions  
2 other than capital projects;

3 (iii) monitoring and research to evalu-  
4 ate the need for or effectiveness of any re-  
5 covery action; and

6 (iv) program management;

7 as necessary to carry out the Recovery Imple-  
8 mentation Programs; and

9 (B) annual funding provided under the  
10 1988 Cooperative Agreement and the 1992 Co-  
11 operative Agreement.

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

14 (A) facilities planning, design, permitting  
15 (or other compliance), preconstruction activity,  
16 construction, and construction management;

17 (B) replacement of facilities; and

18 (C) acquisition of an interest in land or  
19 water;

20 as necessary to carry out the Recovery Implementa-  
21 tion Programs.

22 (5) DEPLETION CHARGE.—The term “depletion  
23 charge” means a one-time contribution in dollars per  
24 acre-foot to be paid by each water project to the

1 United States Fish and Wildlife Service based on  
2 the average annual new depletion.

3 (6) FACILITY.—The term “facility” includes a  
4 facility for—

5 (A) genetic conservation or propagation of  
6 the endangered fishes;

7 (B) restoration of floodplain habitat or fish  
8 passage;

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

10 (D) removal or translocation of nonnative  
11 fishes.

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

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

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

21 (B) the reintroduction or augmentation of  
22 endangered fish stocks; and

23 (C) the removal, translocation, or other  
24 control of a nonnative fishes.

1 (9) RECOVERY IMPLEMENTATION PROGRAMS.—

2 The term “Recovery Implementation Program”  
3 means each of the intergovernmental programs es-  
4 tablished under—

5 (A) the 1988 Cooperative Agreement; and

6 (B) the 1992 Cooperative Agreement.

7 (10) SECRETARY.—The term “Secretary”  
8 means the Secretary of the Interior, acting through  
9 the Commissioner of Reclamation.

10 (11) STORAGE PROJECT.—The term “storage  
11 project” means the dams, reservoirs, power plants,  
12 and other appurtenant project facilities and features  
13 authorized by and constructed in accordance with  
14 the Act of April 11, 1956 (commonly known as the  
15 “Colorado River Storage Project Act”) (43 U.S.C.  
16 620 et seq.).

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

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

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

23 (1) IN GENERAL.—There is authorized to be  
24 appropriated to the Secretary \$46,000,000 to under-

1 take capital projects under this Act, to remain avail-  
2 able until expended.

3 (2) NONREIMBURSABILITY.—Funds made avail-  
4 able under paragraph (1) shall be a nonreimbursable  
5 Federal expenditure.

6 (3) TERMINATION OF AUTHORITY.—

7 (A) UPPER COLORADO RIVER BASIN.—The  
8 authority of the Secretary under this Act or any  
9 other provision of law to implement capital  
10 projects for the Recovery Implementation Pro-  
11 gram under the 1988 Cooperative Agreement  
12 shall terminate on September 30, 2005.

13 (B) SAN JUAN RIVER BASIN.—The author-  
14 ity of the Secretary under this Act or any other  
15 provision of law to implement capital projects  
16 for the Recovery Implementation Program  
17 under the 1992 Cooperative Agreement shall  
18 terminate on September 30, 2007.

19 (b) COST OF CAPITAL PROJECTS.—

20 (1) IN GENERAL.—The total costs of the capital  
21 projects undertaken for the Recovery Implementa-  
22 tion Programs receiving assistance under this Act  
23 shall not exceed \$100,000,000, of which—

24 (A) costs for the Recovery Implementation  
25 Program under the 1988 Cooperative Agree-

1           ment through fiscal year 2005 shall not exceed  
2           \$82,000,000; and

3           (B) costs for the Recovery Implementation  
4           Program under the 1992 Cooperative Agree-  
5           ment through fiscal year 2007 shall not exceed  
6           \$18,000,000.

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

12          (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL  
13          PROJECTS.—

14           (1) USE OF CONTRIBUTED FUNDS.—The Sec-  
15          retary may—

16           (A) accept contributed funds not exceeding  
17           \$17,000,000 from the Upper Division States, or  
18           political subdivisions of or organizations in the  
19           Upper Division States, under agreements pro-  
20           viding that the contributions shall be used for  
21           capital projects costs; and

22           (B) expend such funds as if appropriated  
23           for that purpose.

24          (2) USE OF POWER REVENUES.—

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

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

12 (C) TREATMENT AS NON-FEDERAL CON-  
13 TRIBUTION.—Revenues used as provided in sub-  
14 paragraph (A) shall be considered a non-Fed-  
15 eral contribution for the purposes of this Act.

16 (D) AVAILABILITY ON MATCHING BASIS.—  
17 Funding under this paragraph over any 2-fis-  
18 cal-year period shall be made available in  
19 amounts equal to the contributions for the same  
20 2-fiscal-year period made by the Upper Division  
21 States under paragraph (1).

22 (E) ALTERNATIVE FUNDING THROUGH  
23 LOANS.—

24 (i) IN GENERAL.—Funding under  
25 subparagraph (A) may be provided



1 through loans from the Colorado Water  
2 Conservation Board Construction Fund es-  
3 tablished under section 37-60-121 of the  
4 Colorado Revised Statutes to the Western  
5 Area Power Administration in lieu of funds  
6 that would otherwise be collected from  
7 power revenues and used for storage  
8 project repayments.

9 (ii) AGREEMENT.—The Western Area  
10 Power Administration is authorized to  
11 repay a loan under clause (i) from power  
12 revenues collected beginning in fiscal year  
13 2012, subject to an agreement between the  
14 Colorado Water Conservation Board, the  
15 Western Area Power Administration, and  
16 the Bureau of Reclamation.

17 (iii) REQUIREMENTS.—An agreement  
18 under clause (i) and any loan contracts  
19 that may be entered into by the Colorado  
20 Water Conservation Board, the Western  
21 Area Power Administration, and the Bu-  
22 reau of Reclamation shall—

23 (I) be negotiated in consultation  
24 with Salt Lake City Area Integrated  
25 Projects Firm Power Contractors;

1 (II) include provisions designed  
2 to minimize impacts on electrical  
3 power rates; and

4 (III) ensure that loan repayment  
5 to the Colorado Water Conservation  
6 Board, including principal and inter-  
7 est, is completed not later than Sep-  
8 tember 30, 2057.

9 (F) POWER RATES.—The Western Area  
10 Power Administration is authorized to include  
11 in power rates such sums as are necessary to  
12 carry out this paragraph.

13 (3) FUNDING IN ADDITION TO COST OF RE-  
14 PLACEMENT POWER.—

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

17 (i) the cost of replacement power pur-  
18 chased as a result of the modification of  
19 the operation of the Colorado River Stor-  
20 age Project; and

21 (ii) the capital cost of water from  
22 Wolford Mountain Reservoir in Colorado.

23 (B) TREATMENT AS NON-FEDERAL CON-  
24 TRIBUTION.—The costs described in clauses (i)  
25 and (ii) of subparagraph (A) shall be considered

1 as non-Federal contributions, not to exceed  
2 \$20,000,000.

3 (d) BASE FUNDING.—

4 (1) IN GENERAL.—

5 (A) POWER REVENUES.—Beginning with  
6 the first fiscal year beginning after the date of  
7 enactment of this Act, the Secretary may use  
8 power revenues collected under the Act of April  
9 11, 1956 (43 U.S.C. 620 et seq.), for the an-  
10 nual base funding contributions to the Recovery  
11 Implementation Programs by the Bureau of  
12 Reclamation.

13 (B) TREATMENT.—Use of revenues as pro-  
14 vided under subparagraph (A) shall be treated  
15 as nonreimbursable and as having been repaid  
16 and returned to the general fund of the Treas-  
17 ury as costs assigned to power for repayment  
18 under section 5 of the Act of April 11, 1956  
19 (43 U.S.C. 620d).

20 (2) LIMITATION.—

21 (A) IN GENERAL.—

22 (i) UPPER COLORADO RIVER BASIN.—  
23 For the Recovery Implementation Program  
24 under the 1988 Cooperative Agreement,  
25 the contributions to base funding under

1 paragraph (1) shall not exceed \$4,000,000  
2 per fiscal year.

3 (ii) SAN JUAN RIVER BASIN.—For the  
4 Recovery Implementation Program under  
5 the 1992 Cooperative Agreement, the con-  
6 tributions to base funding under paragraph  
7 (1) shall not exceed \$2,000,000 per fiscal  
8 year.

9 (B) ADJUSTMENTS.—The Secretary shall  
10 adjust the amounts in subparagraph (A) for in-  
11 flation in fiscal years beginning after the date  
12 of enactment of this Act.

13 (C) TERMINATION OF AUTHORITY.—The  
14 use of power revenues for annual base funding  
15 shall terminate on September 30, 2011, except  
16 that power revenues may continue to be used to  
17 fund the operation and maintenance of capital  
18 projects and monitoring.

19 (D) REPORT.—

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

24 (ii) RECOMMENDATION.—The report  
25 under clause (i) shall include a rec-

1           ommendation regarding the need for con-  
2           tinued base funding after fiscal year 2011  
3           that may be required to fulfill the goals of  
4           the Recovery Implementation Programs.

5           (E) EFFECT OF ACT.—Nothing in this Act  
6           affects any agreement among participants re-  
7           garding base funding and depletion charges for  
8           the Recovery Implementation Programs.

9           (3) SUFFICIENCY OF REVENUES.—

10           (A) IN GENERAL.—The Western Area  
11           Power Administration and the Bureau of Rec-  
12           lamation shall maintain sufficient revenues in  
13           the Upper Colorado River Basin Fund to meet  
14           the obligation of the Western Area Power Ad-  
15           ministration and the Bureau of Reclamation to  
16           provide base funding in accordance with this  
17           subsection.

18           (B) DETERMINATION OF INSUFFI-  
19           CIENCY.—If the Western Area Power Adminis-  
20           tration and the Bureau of Reclamation deter-  
21           mine that the funds in the Upper Colorado  
22           River Basin Fund will not be sufficient to meet  
23           the obligations of the Western Area Power Ad-  
24           ministration and the Bureau of Reclamation  
25           under section 5(c)(1) of the Act of April 11,

1           1956 (43 U.S.C. 620d(c)(1)), for a 3-year pe-  
2           riod, the Western Area Power Administration  
3           and the Bureau of Reclamation shall request  
4           appropriations to meet base funding obligations.

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

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

8           (2) acquire and transfer interests in land,  
9           water, and facilities; and

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

11          (f) INDIAN TRUST ASSETS.—

12          (1) FINDINGS.—Congress finds that—

13                (A) much of the potential water develop-  
14                ment in the San Juan River basin and in the  
15                Duchesne River basin (a subbasin of the Green  
16                River in the Upper Colorado River basin) is for  
17                the benefit of Indian tribes;

18                (B) most of the federally designated crit-  
19                ical habitat for the endangered fish species in  
20                the San Juan River basin is on Indian trust  
21                land; and

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

24          (2) EFFECT OF ACT.—Nothing in this Act re-  
25          stricts the Secretary of the Interior, acting through

1 the Commissioner of Reclamation or the Director of  
 2 the Bureau of Indian Affairs, in funding activities or  
 3 capital projects in the performance of the Indian  
 4 trust responsibility of the United States.

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

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

14 ~~Construction of a facility or acquisition of an interest~~  
 15 ~~in land or water under this Act shall not render the facility~~  
 16 ~~or interest in land or water or associated processes and~~  
 17 ~~procedures subject to the Act of June 17, 1902 (32 Stat.~~  
 18 ~~388, chapter 1093), and Acts supplemental to and amend-~~  
 19 ~~atory of that Act (43 U.S.C. 371 et seq.).~~

20 *No provision of this Act nor any action taken pursu-*  
 21 *ant thereto or in furtherance thereof shall constitute a new*  
 22 *or supplemental benefit under the Act of June 17, 1902,*  
 23 *(32 Stat. 388, chapter 1093), and Acts supplemental to and*  
 24 *amendatory thereof (43 U.S.C. 371 et seq.).*

**Calendar No. 793**

106TH CONGRESS  
2D SESSION

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**[Report No. 106-403]**

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**A BILL**

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SEPTEMBER 7, 2000

Reported with an amendment