

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM  
AND PATHFINDER MODIFICATION AUTHORIZATION ACT

—————  
OCTOBER 22, 2007.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed  
—————

Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 1462]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1462) to authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir, 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 all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Purposes.

**TITLE I—PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

Sec. 101. Definitions.  
Sec. 102. Implementation of Program.  
Sec. 103. Cost-sharing contributions.  
Sec. 104. Authority to modify Program.  
Sec. 105. Effect.  
Sec. 106. Authorization of appropriations.  
Sec. 107. Termination of authority.

**TITLE II—PATHFINDER MODIFICATION PROJECT**

Sec. 201. Authorization of project.  
Sec. 202. Authorized uses of pathfinder reservoir.

(1) the Secretary of the Interior, acting through the Commissioner of Reclamation and in partnership with the States, other Federal agencies, and other non-Federal entities, to continue the cooperative effort among the Federal and non-Federal entities through the implementation of the Platte River Recovery Implementation Program for threatened and endangered species in the Central and Lower Platte River Basin without creating Federal water rights or requiring the grant of water rights to Federal entities; and

(2) the modification of the Pathfinder Dam and Reservoir.

## **TITLE I—PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM**

### **SEC. 101. DEFINITIONS.**

In this title:

(1) **AGREEMENT.**—The term “Agreement” means the Platte River Recovery Implementation Program Cooperative Agreement entered into by the Governors of the States and the Secretary.

(2) **FIRST INCREMENT.**—The term “First Increment” means the first 13 years of the Program.

(3) **GOVERNANCE COMMITTEE.**—The term “Governance Committee” means the governance committee established under the Agreement and composed of members from the States, the Federal Government, environmental interests, and water users.

(4) **INTEREST IN LAND OR WATER.**—The term “interest in land or water” includes a fee title, short- or long-term easement, lease, or other contractual arrangement that is determined to be necessary by the Secretary to implement the land and water components of the Program.

(5) **PROGRAM.**—The term “Program” means the Platte River Recovery Implementation Program established under the Agreement.

(6) **PROJECT OR ACTIVITY.**—The term “project or activity” means—

(A) the planning, design, permitting or other compliance activity, preconstruction activity, construction, construction management, operation, maintenance, and replacement of a facility;

(B) the acquisition of an interest in land or water;

(C) habitat restoration;

(D) research and monitoring;

(E) program administration; and

(F) any other activity that is determined to be necessary by the Secretary to carry out the Program.

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

(8) **STATES.**—The term “States” means the States of Nebraska, Wyoming, and Colorado.

### **SEC. 102. IMPLEMENTATION OF PROGRAM.**

(a) **IN GENERAL.**—The Secretary, in cooperation with the Governance Committee, may—

(1) participate in the Program; and

(2) carry out any projects and activities that are designated for implementation during the First Increment.

(b) **AUTHORITY OF SECRETARY.**—For purposes of carrying out this title, the Secretary, in cooperation with the Governance Committee, may—

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

(2) acquire interests in land, water, and facilities from willing sellers without the use of eminent domain;

(3) subsequently transfer any interests acquired under paragraph (2); and

(4) accept or provide grants.

### **SEC. 103. COST-SHARING CONTRIBUTIONS.**

(a) **IN GENERAL.**—As provided in the Agreement, the participating States shall contribute not less than 50 percent of the total contributions necessary to carry out the Program.

(b) **NON-FEDERAL CONTRIBUTIONS.**—The following contributions shall constitute the States’ share of the Program:

(1) \$30,000,000 in non-Federal funds, with the balance of funds remaining to be contributed to be adjusted for inflation on October 1 of the year after the date of enactment of this Act and each October 1 thereafter.

(2) Credit for contributions of water or land for the purposes of implementing the Program, as determined to be appropriate by the Secretary.

(c) IN-KIND CONTRIBUTIONS.—The Secretary or the States may elect to provide a portion of the Federal share or non-Federal share, respectively, in the form of in-kind goods or services, if the contribution of goods or services is approved by the Governance Committee, as provided in Attachment 1 of the Agreement.

**SEC. 104. AUTHORITY TO MODIFY PROGRAM.**

The Program may be modified or amended before the completion of the First Increment if the Secretary and the States determine that the modifications are consistent with the purposes of the Program.

**SEC. 105. EFFECT.**

(a) EFFECT ON RECLAMATION LAWS.—No action carried out under this title shall, with respect to the acreage limitation provisions of the reclamation laws—

(1) be considered in determining whether a district (as the term is defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb)) has discharged the obligation of the district to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district;

(2) serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of the construction obligations of the district; or

(3) serve as the basis for increasing the construction repayment obligation of the district, which would extend the period during which the acreage limitation provisions would apply.

(b) EFFECT ON WATER RIGHTS.—Nothing in this title—

(1) creates Federal water rights; or

(2) requires the grant of water rights to Federal entities.

**SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There is authorized to be appropriated to carry out projects and activities under this title \$157,140,000, as adjusted under subsection (c).

(b) NONREIMBURSABLE FEDERAL EXPENDITURES.—Any amounts expended under subsection (a) shall be considered to be nonreimbursable Federal expenditures.

(c) ADJUSTMENT.—The balance of funds remaining to be appropriated shall be adjusted for inflation on October 1 of the year after the enactment of this Act and each October 1 thereafter.

(d) AVAILABILITY OF FUNDS.—At the end of each fiscal year, any unexpended funds for projects and activities made available under subsection (a) shall be retained for use in future fiscal years to implement projects and activities under the Program.

**SEC. 107. TERMINATION OF AUTHORITY.**

The authority for the Secretary to implement the First Increment shall terminate on September 30, 2020.

## **TITLE II—PATHFINDER MODIFICATION PROJECT**

**SEC. 201. AUTHORIZATION OF PROJECT.**

(a) IN GENERAL.—The Secretary of the Interior, acting through the Commissioner of Reclamation (referred to in this title as the “Secretary”), may—

(1) modify the Pathfinder Dam and Reservoir; and

(2) enter into 1 or more agreements with the State of Wyoming to implement the Pathfinder Modification Project (referred to in this title as the “Project”), as described in Appendix F to the Final Settlement Stipulation in *Nebraska v. Wyoming*, 534 U.S. 40 (2001).

(b) FEDERAL APPROPRIATIONS.—No Federal appropriations are required to modify the Pathfinder Dam under this section.

**SEC. 202. AUTHORIZED USES OF PATHFINDER RESERVOIR.**

The approximately 54,000 acre-feet capacity of Pathfinder Reservoir, which has been lost to sediment but will be recaptured by the Project, may be used for municipal, environmental, and other purposes, as described in Appendix F to the Final Settlement Stipulation in *Nebraska v. Wyoming*, 534 U.S. 40 (2001).

## PURPOSE OF THE BILL

The purpose of H.R. 1462, as amended by the Committee on Natural Resources, is to authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir.

## BACKGROUND AND NEED FOR LEGISLATION

The North and South Platte Rivers begin in the eastern Rockies near the Continental Divide and combine to form the Platte River, which flows eastward through Nebraska for 330 miles before joining the Missouri River near Plattsmouth, Nebraska. When combined with the North Platte, the Platte River is over 900 miles long, with a drainage basin of 90,000 square miles.

Before the 1880s, the Platte River in Nebraska was a broad and braided river subject to high spring floods, high sediment loads, and occasional summer droughts. These conditions caused continuous movement of the braided river channels and sandbars, resulting in a broad, shallow, sandy channel, generally devoid of vegetation. This created an ideal habitat for many avian species and was a key part of the Central Flyway, a bird migratory route stretching from Canada to South Texas.

In the early days of the frontier, the trade route to the west beyond the Rocky Mountains followed the North Platte River. Settlement in the North Platte Valley in western Nebraska began in the early 1880's. Rainfall was scarce and private irrigation was built without storage reservoirs. Shortly after enactment of the Reclamation Act of 1902, the Reclamation Service (now known as the Bureau of Reclamation) began studying water needs in the area. The North Platte Project was subsequently authorized in 1903.

The North Platte Project's Pathfinder Dam was one of the first constructed by the Reclamation Service. The water storage and irrigation service areas for the North Platte Project extend 111 miles along the North Platte River Valley from Guernsey, Wyoming, to Bridgeport, Nebraska. The project provides full service irrigation for about 226,000 acres, divided into four irrigation districts. Supplemental irrigation service is furnished to eight water user associations serving a combined area of about 109,000 acres. Other smaller water projects have also been developed in the basin.

Water development in the basin has caused significant changes in water flows and land use. With changes in the hydrology of the river and the structure of riparian habitats, the sustainability of migratory and resident birds and other animals has been compromised, and habitat for certain "targeted" species has been adversely affected.

The Platte River Recovery Implementation Program authorized by Title I of H.R. 1462, as amended, is designed to secure defined benefits for target species and their associated habitats while also providing Endangered Species Act (ESA) compliance for existing and certain new water related activities in the Platte River basin.

The focus of the habitat recovery program is the 95 miles between Lexington and Chapman, Nebraska. Several species listed under the ESA use the Central Platte River Valley for habitat, in-

cluding the four target species (whooping crane, piping plover, interior least tern, and pallid sturgeon). In addition, the Central Platte River Valley is an important migratory destination for the whooping crane.

Over the last 150 years, as much as 90 percent of the habitat used by these three bird species along the Central Platte River has been lost. The goal of the Recovery Program is to revitalize the Platte River and increase downstream flows during certain times of the year by 130,000 to 150,000 acre-feet. These actions are expected to enhance habitat and reduce the likelihood that other species found in the area will become listed as endangered or threatened.

The recovery program is designed to be incremental, with the first increment spanning 13 years after enactment. A Governance Committee, comprised of representatives of the states of Wyoming, Colorado, and Nebraska, the Department of the Interior, water users, and environmental groups, implements and monitors the recovery efforts.

In addition to restoring flows in the river, the Program would protect, restore, and maintain up to 29,000 acres of habitat lands along the central Platte River between Lincoln and Chapman, Nebraska. 10,000 acres in the project area are slated for restoration in the first 13 years of the program.

Water for this program will be provided by the three states and from a number of small water projects in the Basin.

Title II of H.R. 1462, as amended, authorizes the Pathfinder Modification Project. This project is required by a legal settlement and is the key part of Wyoming's share of water for the Platte River Recovery Implementation. The modification would increase the existing capacity of Pathfinder Reservoir by 53,493 acre-feet to recapture storage space lost to accumulated sediment. The increased capacity is accomplished by raising the elevation of the existing spillway 2.4 feet.

#### COMMITTEE ACTION

H.R. 1462 was introduced on March 9, 2007 by Rep. Mark Udall (D-CO). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On April 26, 2007, the Subcommittee held a hearing on the bill. On June 12, 2007, the Subcommittee met to mark up the bill. The bill was approved by unanimous consent and forwarded to the Full Committee on Natural Resources. On October 10, 2007, the Full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Grace Napolitano offered an amendment to clarify Sec. 103, at the request of the Administration. The bill, as amended, was agreed to by unanimous consent and was ordered favorably reported to the House of Representatives.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title; Table of contents*

Sec. 1 designates the short title of the bill as the "Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act".

*Section 2. Purposes*

The legislation authorizes Secretary of the Interior to continue the cooperative effort among the federal and non-federal entities in the Platte River Recovery Implementation Program for threatened and endangered species, and to make modification of Pathfinder Dam and Reservoir.

TITLE I—PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

*Section 101. Definitions*

*Section 102. Implementation of program*

Sec. 102 authorizes the Secretary of the Interior to participate in the Platte River Recovery Implementation Program and, in cooperation with the Governance Committee, to carry out any projects or activities that are designated for implementation during the Program's first 13 years (First Increment). The Secretary is also authorized in this section, in cooperation with the Governance Committee, to (1) enter into agreements with federal and non-federal groups; (2) acquire interests in land, water, and facilities from willing sellers; (3) transfer acquired interests; and (5) accept or provide grants.

The Committee is aware that the success of the Program is dependent on a number of factors, including a workable, results-oriented and efficient Adaptive Management Program and consistent communication with stakeholders. As such, the Committee expects the Governance Committee to work cooperatively with all relevant interests, including the affected local communities, as it relates to the how the Program's goals are being met and how activities may affect landowners. Since the States retain the ability to withdraw from the agreement at any time for any reason, the Committee strongly encourages the Governance Committee to hold public forums regularly to help stakeholders and the general public better understand the Program's objectives and impacts.

*Section 103. Cost-sharing contributions*

This section requires that the states of Wyoming, Colorado, and Nebraska will contribute at least half of the cost of the project, and sets forth details of the non-federal share, which will consist of non-federal funds, with credit towards the non-federal share given to contributed land and water. Provision is also made in this section for federal or non-federal in-kind contributions.

*Section 104. Authority to modify program*

Sec. 104 allows the Program to be modified before the completion of the First Increment if the Secretary and the states of Nebraska, Wyoming, and Colorado determine that the modifications are consistent with program purposes.

*Section 105. Effect*

Sec. 105 states that under Title I, no action will affect acreage limitations under reclamation law and will not create or grant federal water rights.

*Section 106. Authorization of appropriations*

Sec. 106 authorizes \$157,140,000 in nonreimbursable funds for Title I, to be adjusted annually for inflation.

*Section 107. Termination of authority*

This section terminates the Secretary's authority to implement the First Increment on September 30, 2020.

## TITLE II—PATHFINDER MODIFICATION PROJECT

*Section 201. Authorization of project*

Sec. 201 authorizes the Secretary of the Interior to modify Pathfinder Dam and Reservoir in agreement with the State of Wyoming, and states that no federal appropriations are required for the modification of Pathfinder Dam.

*Section 202. Authorized used of Pathfinder Reservoir*

Sec. 202 states that the 54,000 acre-feet of recaptured capacity of Pathfinder Reservoir may be used for municipal, environmental, and other purposes.

## 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 Natural 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 section 402 of the Congressional Budget Act of 1974.

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, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir.

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 received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 1462—Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act*

Summary: H.R. 1462 would authorize the Secretary of the Interior to implement a program to aid the recovery of certain species with habitats in the Platte River basin that are listed as either threatened or endangered under the Endangered Species Act (ESA). The bill also would authorize the Secretary to modify the Pathfinder Dam and Reservoir in Wyoming.

CBO estimates that implementing H.R. 1462 would cost \$66 million over the 2008–2012 period, assuming appropriation of the authorized amounts. Enacting the bill would not affect direct spending or revenues.

H.R. 1462 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), and any costs to states to match federal assistance authorized by the bill would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1462 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level .....	12	15	16	16	16
Estimated Outlays .....	7	12	15	16	16

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2008 and that the necessary amounts will be appropriated near the start of each fiscal year. Estimates of outlays are based on historical spending patterns for similar activities.

In 1997, the Department of the Interior signed a cooperative agreement with Colorado, Wyoming, and Nebraska to develop a program for wildlife protection along the Platte River. In late 2006, the Secretary and the governor of each state signed the Platte River Recovery Implementation Program. The program aims to restore and conserve the habitat of four threatened and endangered species in the Platte River basin. The program will be carried out in incremental stages.

Title I would authorize the Secretary to participate in the first increment of the program in cooperation with Nebraska, Wyoming, and Colorado. Based on information provided by the Bureau of Reclamation, CBO estimates that implementing the recovery program in title I would cost \$66 million over the 2008–2012 period and an additional \$108 million through 2020. The Department of the Interior would use the appropriations to acquire land and water interests and undertake habitat restoration and other activities deemed necessary by the Secretary.

Title II of the bill would authorize the Secretary to modify the Pathfinder Dam and Reservoir in Wyoming. The Secretary would



be authorized to enter into agreements with the state of Wyoming to implement the modifications. The state would be responsible for all costs of the modification. Hence CBO estimates that the federal government would incur no significant costs to implement title II.

Intergovernmental and private-sector impact: H.R. 1462 contains no intergovernmental or private-sector mandates as defined in UMRA, and any costs to states to match federal assistance authorized by the bill would be incurred voluntarily.

Estimate prepared by: Federal costs: Tyler Kruzich; Impact on state, local, and tribal governments: Leo Lex; Impact on the private-sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### EARMARK STATEMENT

H.R. 1462 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.