

105TH CONGRESS
2D SESSION

S. 1749

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 1998

Mr. ALLARD (by request) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To authorize the Secretary of the Interior to provide funding for the implementation of 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. SHORT TITLE.**

4 This Act may be cited as the “Upper Colorado River
5 and San Juan River Endangered Fish Recovery Act of
6 1998”.

1 **SEC. 2. PURPOSE.**

2 The purpose of the “Upper Colorado River and the
3 San Juan River Endangered Fish Recovery Act of 1998”
4 is to authorize and provide funding for the Secretary, act-
5 ing through the Bureau of Reclamation and the Bureau
6 of Indian Affairs, to continue implementation of the en-
7 dangered fish recovery implementation programs for the
8 Upper Colorado and San Juan River Basins in order to
9 accomplish the objectives of these programs within a cur-
10 rently established time schedule.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act—

13 (1) the term “Recovery Implementation Pro-
14 grams” means the intergovernmental programs es-
15 tablished pursuant to the 1988 Cooperative Agree-
16 ment to implement the Recovery Implementation
17 Program for the Endangered Fish Species in the
18 Upper Colorado River dated September 29, 1987,
19 and the 1992 Cooperative Agreement to implement
20 the San Juan River Recovery Implementation Pro-
21 gram dated October 21, 1992, and as they may be
22 amended by the parties thereto;

23 (2) the term “Secretary” means the Secretary
24 of the Interior;

1 (3) the term “Upper Division States” means
2 the States of Colorado, New Mexico, Utah, and Wy-
3 oming;

4 (4) the term “Endangered Species Act” means
5 the Endangered Species Act of 1973 (16 U.S.C.
6 1531 et seq.) and any Federal regulation implement-
7 ing the Endangered Species Act;

8 (5) the term “Reclamation” means the U.S.
9 Bureau of Reclamation;

10 (6) the term “Service” means the U.S. Fish
11 and Wildlife Service;

12 (7) the term “Indian Affairs” means the U.S.
13 Bureau of Indian Affairs;

14 (8) the term “Bureau” means the U.S. Bureau
15 of Land Management;

16 (9) the term “capital projects” means planning,
17 design, permitting or other compliance, construction,
18 construction management, and replacement of facili-
19 ties, and the acquisition of interests in land or
20 water, as necessary to carry out the Recovery Imple-
21 mentation Programs;

22 (10) the term “facilities” includes facilities for
23 the genetic conservation or propagation of the en-
24 dangered fishes, those for the restoration of flood-
25 plain habitat or fish passage, those for regulation or

1 supply of instream flows, and those for the removal
2 or translocation of nonnative fishes;

3 (11) the term “interests in land and water” in-
4 cludes long-term leases and easements, and long-
5 term enforcement or other agreements protecting
6 instream flows;

7 (12) the term “base funding” means funding
8 for operation and maintenance of capital projects,
9 implementation of recovery actions other than cap-
10 ital projects, monitoring and research to evaluate the
11 need for or effectiveness of any recovery action, and
12 program management, as necessary to carry out the
13 Recovery Implementation Programs. Base funding
14 also includes annual funding provided under the
15 terms of the 1988 Cooperative Agreement and the
16 1992 Cooperative Agreement; and

17 (13) the term “recovery actions other than cap-
18 ital projects” includes short-term leases and agree-
19 ments for interests in land, water, and facilities; the
20 reintroduction or augmentation of endangered fish
21 stocks; and the removal, translocation, or other con-
22 trol of nonnative fishes.

1 **SEC. 4. AUTHORIZATION TO FUND RECOVERY PROGRAMS.**

2 (a) **COST OF CAPITAL PROJECTS.**—The costs of the
3 capital projects undertaken for the Recovery Implementa-
4 tion Programs shall not exceed \$100,000,000.

5 (1) For the Recovery Implementation Program
6 for Endangered Fish Species in the Upper Colorado
7 River Basin through the year 2003, such costs shall
8 not exceed \$82,000,000.

9 (2) For the San Juan River Recovery Imple-
10 mentation Program through the year 2007, such
11 costs shall not exceed \$18,000,000.

12 (3) These costs will be adjusted for inflation.

13 (b) **AUTHORIZATION FOR APPROPRIATIONS FOR FED-**
14 **ERAL PARTICIPATION IN CAPITAL PROJECTS.**—There is
15 hereby authorized to be appropriated to the Secretary, act-
16 ing through Reclamation, \$46,000,000 to undertake cap-
17 ital projects pursuant to this Act. Such funds shall be con-
18 sidered a nonreimbursable Federal expenditure.

19 (1) The authority of the Secretary to request
20 appropriations to implement capital projects for the
21 Recovery Implementation Program for Endangered
22 Fish Species in the Upper Colorado River Basin
23 shall expire in the year 2003 unless reauthorized by
24 an Act of Congress.

25 (2) The authority of the Secretary to request
26 appropriations to implement the capital projects for

1 the San Juan River Basin Recovery Implementation
2 Program shall expire in the year 2007 unless reau-
3 thorized by an Act of Congress.

4 (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL
5 PROJECTS.—(1) The Secretary, acting through Reclama-
6 tion, may enter into agreements with the Upper Division
7 States, political subdivisions or organizations within the
8 Upper Division States which contribute to the payment
9 of capital project costs. Such non-Federal contributions
10 shall not exceed \$17,000,000.

11 (2) In addition to the contribution described in
12 4(c)(1), the Secretary may utilize power revenues collected
13 pursuant to the Colorado River Storage Project Act to
14 carry out the purposes of this Act. Such funds shall be
15 treated as reimbursable costs assigned to power for repay-
16 ment under section 5 of the Colorado River Storage
17 Project Act. This additional contribution shall not exceed
18 \$17,000,000. Such funds shall be considered a non-Fed-
19 eral contribution for the purposes of this Act. The addi-
20 tional funding provided pursuant to this provision may be
21 provided through a loan or loans from the Colorado Water
22 Conservation Board Construction Fund (37–60–121
23 C.R.S.) to the Secretary of Energy to replace revenues
24 which would otherwise be used for project repayments.
25 The Secretary is authorized to repay such loan or loans

1 from power revenues, subject to an agreement between the
2 Colorado Water Conservation Board and the Secretary of
3 Energy. The agreement shall include provisions designed
4 to minimize future increases in electrical power rates and
5 ensure that a lump-sum repayment, which includes prin-
6 cipal and interest, is paid to the Colorado Water Conserva-
7 tion Board no later than October 31, 2057.

8 (3) All contributions made pursuant to subsection
9 (c)(1) and (c)(2) shall be in addition to the cost of replace-
10 ment power purchased due to modifying the operation of
11 the Colorado River Storage Project and the capital value
12 of water from Woford Mountain Reservoir in Colorado.
13 Such contributions shall not exceed \$20,000,000.

14 (d) BASE FUNDING.—The Secretary may utilize
15 power revenues collected pursuant to the Colorado River
16 Storage Project Act for the annual base funding contribu-
17 tions to the Recovery Implementation Programs by Rec-
18 lamation. Such funding will be treated as being non-
19 reimbursable and as having been repaid and returned to
20 the general fund of the Treasury as costs assigned to
21 power for repayment under section 5 of the Colorado River
22 Storage Project Act.

23 (1) For the Recovery Implementation Program
24 for the Endangered Fish Species in the Upper Colo-

1 rado River Basin, such contributions shall not ex-
2 ceed \$4,000,000 per year.

3 (2) For the San Juan River Recovery Imple-
4 mentation Program, such contributions shall not ex-
5 ceed \$2,000,000 per year.

6 These limits on the annual contributions to base funding
7 will be adjusted for inflation. Any transfer of funds within
8 these limits to the Service shall not be subject to transfer
9 fees. No later than December 31, 2010, the Secretary
10 shall submit a report on the utilization of power revenues
11 to the Subcommittee on Energy and Water Development
12 for the Senate and House Committee on Appropriations.
13 The Secretary shall also make a recommendation regard-
14 ing the need for additional funding that may be required
15 to fulfill the goals of the Recovery Implementation Pro-
16 grams. Nothing in this Act shall otherwise modify or
17 amend existing agreements among participants regarding
18 base funding and depletion fees for the Recovery Imple-
19 mentation Programs. The Secretary of Energy and Rec-
20 lamation shall maintain sufficient revenues in the Colo-
21 rado River Basin Fund to meet their obligations to provide
22 base funding in accordance with this provision.

23 (e) AUTHORITY TO RETAIN APPROPRIATED
24 FUNDS.—At the end of each fiscal year any unexpended
25 appropriated funds for capital projects shall be retained

1 for use in future fiscal years. Unexpended funds which are
2 carried over shall continue to be used to implement the
3 capital projects needed for the Recovery Implementation
4 Programs.

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

10 (g) INDIAN TRUST ASSETS.—As much of the poten-
11 tial water development in the San Juan River Basin is
12 for the benefit of Indian tribes and most of the federally
13 designated critical habitat for the endangered fish species
14 in the basin is on Indian trust lands, nothing in this Act
15 shall be construed to restrict the Secretary from funding
16 activities or capital items in accordance with the Federal
17 Government's Indian trust responsibility.

18 **SEC. 5. EFFECT ON RECLAMATION LAW.**

19 Construction of facilities and acquisition of land and
20 water interests as contemplated herein shall not render
21 these facilities or land and water interests or associated
22 processes and procedures subject to the Reclamation Act
23 of 1902, as amended.

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