

106TH CONGRESS  
1ST SESSION

# 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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1999

Mr. HANSEN (for himself, Mr. COOK, Mr. CANNON, Mr. UDALL of Colorado, Mr. MCINNIS, Mr. SCHAFFER, Mr. TANCREDO, and Mrs. CUBIN) introduced the following bill; which was referred to the Committee on Resources

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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 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 and San Juan

1 River Basins in order to accomplish the objectives of these  
2 programs within a currently established time schedule.

3 **SEC. 2. DEFINITIONS.**

4 As used in this Act:

5 (1) The term “Recovery Implementation Pro-  
6 grams” means the intergovernmental programs es-  
7 tablished pursuant to the 1988 Cooperative Agree-  
8 ment to implement the Recovery Implementation  
9 Program for the Endangered Fish Species in the  
10 Upper Colorado River dated September 29, 1987,  
11 and the 1992 Cooperative Agreement to implement  
12 the San Juan River Recovery Implementation Pro-  
13 gram dated October 21, 1992, and as they may be  
14 amended by the parties thereto.

15 (2) The term “Secretary” means the Secretary  
16 of the Interior.

17 (3) The term “Upper Division States” means  
18 the States of Colorado, New Mexico, Utah, and Wy-  
19 oming.

20 (4) The term “Colorado River Storage Project”  
21 or “storage project” means those dams, reservoirs,  
22 power plants, and other appurtenant project facili-  
23 ties and features authorized by and constructed in  
24 accordance with the Colorado River Storage Project  
25 Act (43 U.S.C. 620 et seq.).

1           (5) The term “capital projects” means plan-  
2           ning, design, permitting or other compliance, pre-  
3           construction activities, construction, construction  
4           management, and replacement of facilities, and the  
5           acquisition of interests in land or water, as nec-  
6           essary to carry out the Recovery Implementation  
7           Programs.

8           (6) The term “facilities” includes facilities for  
9           the genetic conservation or propagation of the en-  
10          dangered fishes, those for the restoration of flood-  
11          plain habitat or fish passage, those for control or  
12          supply of instream flows, and those for the removal  
13          or translocation of nonnative fishes.

14          (7) The term “interests in land and water” in-  
15          cludes, but is not limited to, long-term leases and  
16          easements, and long-term enforcement, or other  
17          agreements protecting instream flows.

18          (8) The term “base funding” means funding for  
19          operation and maintenance of capital projects, im-  
20          plementation of recovery actions other than capital  
21          projects, monitoring and research to evaluate the  
22          need for or effectiveness of any recovery action, and  
23          program management, as necessary to carry out the  
24          Recovery Implementation Programs. Base funding  
25          also includes annual funding provided under the

1 terms of the 1988 Cooperative Agreement and the  
2 1992 Cooperative Agreement.

3 (9) The term “recovery actions other than cap-  
4 ital projects” includes short-term leases and agree-  
5 ments for interests in land, water, and facilities; the  
6 reintroduction or augmentation of endangered fish  
7 stocks; and the removal, translocation, or other con-  
8 trol of nonnative fishes.

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

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

14 (a) **AUTHORIZATION OF APPROPRIATIONS FOR FED-**  
15 **ERAL PARTICIPATION IN CAPITAL PROJECTS.**—(1) There  
16 is hereby authorized to be appropriated to the Secretary,  
17 \$46,000,000 to undertake capital projects to carry out the  
18 purposes of this Act. Such funds shall be considered a  
19 nonreimbursable Federal expenditure.

20 (2) The authority of the Secretary, acting through  
21 the Bureau of Reclamation, under this or any other provi-  
22 sion of law to implement capital projects for the Recovery  
23 Implementation Program for Endangered Fish Species in  
24 the Upper Colorado River Basin shall expire in fiscal year  
25 2005 unless reauthorized by an Act of Congress.

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

5           (b) COST OF CAPITAL PROJECTS.—The total costs  
6 of the capital projects undertaken for the Recovery Imple-  
7 mentation Programs receiving assistance under this Act  
8 shall not exceed \$100,000,000 of which—

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

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

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

19           (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL  
20 PROJECTS.—(1) The Secretary, acting through the Bu-  
21 reau of Reclamation, may accept contributed funds from  
22 the Upper Division States, or political subdivisions or or-  
23 ganizations with the Upper Division States, pursuant to  
24 agreements that provide for the contributions to be used  
25 for capital projects costs. Such funds may be expended

1 as if appropriated for such purposes. Such non-Federal  
2 contributions shall not exceed \$17,000,000.

3 (2) In addition to the contribution described in para-  
4 graph (1), the Secretary of Energy, acting through the  
5 Western Area Power Administration, and the Secretary of  
6 the Interior, acting through the Bureau of Reclamation,  
7 may utilize power revenues collected pursuant to the Colo-  
8 rado River Storage Project Act to carry out the purposes  
9 of section 3(c) of this Act. Such funds shall be treated  
10 as reimbursable costs assigned to power for repayment  
11 under section 5 of the Colorado River Storage Project Act.  
12 This additional contribution shall not exceed \$17,000,000.  
13 Such funds shall be considered a non-Federal contribution  
14 for the purposes of this Act.

15 (3) The additional funding provided pursuant to  
16 paragraph (2) may be provided through loans from the  
17 Colorado Water Conservation Board Construction Fund  
18 (37–60–121 C.R.S.) to the Western Area Power Adminis-  
19 tration in lieu of funds which would otherwise be collected  
20 from power revenues and used for storage project repay-  
21 ments. The Western Area Power Administration is author-  
22 ized to repay such loan or loans from power revenues col-  
23 lected beginning in fiscal year 2012, subject to an agree-  
24 ment between the Colorado Water Conservation Board,  
25 the Western Area Power Administration, and the Bureau

1 of Reclamation. The agreement and any future loan con-  
2 tracts that may be entered into by the Colorado Water  
3 Conservation Board, the Western Area Power Administra-  
4 tion, and the Bureau of Reclamation shall be negotiated  
5 in consultation with Salt Lake City Area Integrated  
6 Projects Firm Power Contractors. The agreement and  
7 loan contracts shall include provisions designed to mini-  
8 mize impacts on electrical power rates and shall ensure  
9 that loan repayment to the Colorado Water Conservation  
10 Board, including principal and interest, is completed no  
11 later than September 30, 2057. The Western Area Power  
12 Administration is authorized to include in power rates  
13 such sums as are necessary to carry out this paragraph  
14 and paragraph (2).

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

22 (d) BASE FUNDING.—(1) Beginning in the first fiscal  
23 year commencing after the date of enactment of this Act,  
24 the Secretary may utilize power revenues collected pursu-  
25 ant to the Colorado River Storage Project Act for the an-

1 nual base funding contributions to the Recovery Imple-  
2 mentation Programs by the Bureau of Reclamation. Such  
3 funding shall be treated as nonreimbursable and as having  
4 been repaid and returned to the general fund of the Treas-  
5 ury as costs assigned to power for repayment under sec-  
6 tion 5 of the Colorado River Storage Project Act.

7 (2) For the Recovery Implementation Program for  
8 the Endangered Fish Species in the Upper Colorado River  
9 Basin, the contributions to base funding referred to in  
10 paragraph (1) shall not exceed \$4,000,000 per year. For  
11 the San Juan River Recovery Implementation Program,  
12 such contributions shall not exceed \$2,000,000 per year.  
13 The Secretary shall adjust such amounts for inflation in  
14 fiscal years commencing after the enactment of this Act.  
15 The utilization of power revenues for annual base funding  
16 shall cease after the fiscal year 2011, unless reauthorized  
17 by Congress; except that power revenues may continue to  
18 be utilized to fund the operation and maintenance of cap-  
19 ital projects and monitoring. No later than the end of fis-  
20 cal year 2008, the Secretary shall submit a report on the  
21 utilization of power revenues to the appropriate Commit-  
22 tees of the United States Senate and the House of Rep-  
23 resentatives. The Secretary shall also make a rec-  
24 ommendation in such report regarding the need for contin-  
25 ued funding after fiscal year 2011 that may be required

1 to fulfill the goals of the Recovery Implementation Pro-  
2 grams. The Western Area Power Administration and the  
3 Bureau of Reclamation shall maintain sufficient revenues  
4 in the Colorado River Basin Fund to meet their obligation  
5 to provide base funding in accordance with this provision.  
6 If the Western Area Power Administration and the Bu-  
7 reau of Reclamation determine that the funds in the Colo-  
8 rado River Basin Fund will not be sufficient to meet the  
9 obligations of section 5(c)(1) of the Colorado River Stor-  
10 age Project Act for a 3-year period, the Western Area  
11 Power Administration and the Bureau of Reclamation  
12 shall request appropriations to meet base funding obliga-  
13 tions. Nothing in this Act shall otherwise modify or amend  
14 existing agreements among participants regarding base  
15 funding and depletion charges for the Recovery Implemen-  
16 tation Programs.

17 (e) AUTHORITY TO RETAIN APPROPRIATED  
18 FUNDS.—At the end of each fiscal year any unexpended  
19 appropriated funds for capital projects under this Act  
20 shall be retained for use in future fiscal years. Unex-  
21 pended funds under this Act that are carried over shall  
22 continue to be used to implement the capital projects need-  
23 ed for the Recovery Implementation Programs.

24 (f) ADDITIONAL AUTHORITY.—The Secretary may  
25 enter into agreements and contracts with Federal and

1 non-Federal entities, acquire and transfer interests in  
2 land, water, and facilities, and accept or give grants in  
3 order to carry out the purposes of this Act.

4 (g) INDIAN TRUST ASSETS.—The Congress finds  
5 that much of the potential water development in the San  
6 Juan River Basin is for the benefit of Indian tribes and  
7 most of the federally designated critical habitat for the  
8 endangered fish species in the Basin is on Indian trust  
9 lands. Nothing in this Act shall be construed to restrict  
10 the Secretary, acting through the Bureau of Reclamation  
11 and the Bureau of Indian Affairs, from funding activities  
12 or capital projects in accordance with the Federal Govern-  
13 ment’s Indian trust responsibility.

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

15 Construction of facilities and acquisition of land and  
16 water interests under this Act shall not render these facili-  
17 ties or land and water interests or associated processes  
18 and procedures subject to the Reclamation Act of 1902  
19 and Acts supplementary thereto and amendatory thereof.

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