

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.

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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

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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,*

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.—

1           (A) UPPER COLORADO RIVER BASIN.—The  
2 authority of the Secretary under this Act or any  
3 other provision of law to implement capital  
4 projects for the Recovery Implementation Pro-  
5 gram under the 1988 Cooperative Agreement  
6 shall terminate on September 30, 2005.

7           (B) SAN JUAN RIVER BASIN.—The author-  
8 ity of the Secretary under this Act or any other  
9 provision of law to implement capital projects  
10 for the Recovery Implementation Program  
11 under the 1992 Cooperative Agreement shall  
12 terminate on September 30, 2007.

13 (b) COST OF CAPITAL PROJECTS.—

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

18           (A) costs for the Recovery Implementation  
19 Program under the 1988 Cooperative Agree-  
20 ment through fiscal year 2005 shall not exceed  
21 \$82,000,000; and

22           (B) costs for the Recovery Implementation  
23 Program under the 1992 Cooperative Agree-  
24 ment through fiscal year 2007 shall not exceed  
25 \$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.

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

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

10 (D) AVAILABILITY ON MATCHING BASIS.—  
11 Funding under this paragraph over any 2-fis-  
12 cal-year period shall be made available in  
13 amounts equal to the contributions for the same  
14 2-fiscal-year period made by the Upper Division  
15 States under paragraph (1).

16 (E) ALTERNATIVE FUNDING THROUGH  
17 LOANS.—

18 (i) IN GENERAL.—Funding under  
19 subparagraph (A) may be provided  
20 through loans from the Colorado Water  
21 Conservation Board Construction Fund es-  
22 tablished under section 37-60-121 of the  
23 Colorado Revised Statutes to the Western  
24 Area Power Administration in lieu of funds  
25 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.).

○