IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 2007

Received; read twice and referred to the Committee on Energy and Natural Resources

APRIL 10, 2008

Reported by Mr. BINGAMAN, with amendments

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

AN ACT

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.

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. SHORT TITLE; TABLE OF CONTENTS.
2 (a) SHORT TITLE.—This Act may be cited as the
3 “Platte River Recovery Implementation Program and
4 Pathfinder Modification Authorization Act”.
5 (b) TABLE OF CONTENTS.—The table of contents of
6 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.

7 SEC. 2. PURPOSES.

8 The purposes of this Act are to authorize—

9 (1) the Secretary of the Interior, acting through
10 the Commissioner of Reclamation and in partnership
11 with the States, other Federal agencies, and other
12 non-Federal entities, to continue the cooperative ef-
13 fort among the Federal and non-Federal entities
14 through the implementation of the Platte River Re-
15 covery Implementation Program for threatened and
16 endangered species in the Central and Lower Platte
17 River Basin without creating Federal water rights or
requiring the grant of water rights to Federal enti-
ties; and

(2) the modification of the Pathfinder Dam and
Reservoir, in accordance with the require-
ments described in title II.

TITLE I—PLATTE RIVER RECOVERY IMPLEMENTATION PRO-
GRAM

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 In-
crement” 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 con-
tractual 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 Act, 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 Act—

(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).

SEC. 203. CONDITIONS PRECEDENT.

The actions and water uses authorized in sections 201(a)(1) and 202 shall not occur until each of the following actions have been completed:
(1) Final approval from the Wyoming legislature for the export of Project water to the State of Nebraska under the laws (including regulations) of the State of Wyoming.

(2) Final approval in a change of water use proceeding under the laws (including regulations) of the State of Wyoming for all new uses planned for Project water. Final approval, as used in this paragraph, includes exhaustion of any available review under State law of any administrative action authorizing the change of the Pathfinder Reservoir water right.
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