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HOUSE OF REPRESENTATIVES
REPORT
111–481

ENDANGERED FISH RECOVERY PROGRAMS IMPROVEMENT ACT OF 2010

MAY 18, 2010.—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

together with

ADDITIONAL VIEWS

[To accompany H.R. 2288]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2288) to amend Public Law 106–392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023, 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.

This Act may be cited as the "Endangered Fish Recovery Programs Improvement Act of 2010".

SEC. 2. REAUTHORIZATION OF FISH RECOVERY PROGRAMS.

Section 3(d)(2) of Public Law 106–392 (114 Stat. 1604 and 1605) is amended by inserting at the end the following: "For fiscal years 2012 through 2023, there are hereby authorized to be appropriated such sums as may be necessary to provide for the annual base funding for the Recovery Implementation Programs above and beyond the continued use of power revenues to fund the operation and maintenance of capital projects and monitoring.".

PURPOSE OF THE BILL

The purpose of H.R. 2288 is to amend Public Law 106–392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023.

BACKGROUND AND NEED FOR LEGISLATION

The Colorado River Basin is home to 14 native fish species. Eight of those species have seriously declined, and four—the Colorado pikeminnow, razorback sucker, humpback chub and bonytail chub—are listed as endangered under the federal Endangered Species Act. One of the reasons for the decline has been the negative impacts on the fish associated with development of the water resources in the river basin.

Two cooperative intergovernmental programs were established in 2000 in the Upper Colorado River Basin to allow water use and development to proceed while being in compliance with the federal Endangered Species Act. The Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin and the San Juan River Endangered Fish Recovery Implementation Program (recovery implementation programs) have been negotiated, legislated, and enacted to increase the certainty of available water to Upper Basin irrigation and other water users.

The programs involved provide Endangered Species Act compliance for more than 1,600 federal, tribal, and non-federal water projects depleting more than 3 million acre-feet of water per year in the Upper Colorado and San Juan Rivers and their tributaries.

Public Law 106–392 authorized the Bureau of Reclamation to allow cost sharing to augment base funding used for capital construction and the annual operations and maintenance for the recovery implementation programs through fiscal year 2011. The annual funding was established in the authorizing legislation at $6 million dollars, indexed for inflation. Funding for the programs comes from hydropower revenues generated from sales of hydroelectric energy and capacity from Colorado River Storage Project federal dams.

COMMITTEE ACTION

H.R. 2288 was introduced on May 6, 2009, by Rep. John Salazar (D–CO). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power on May 11, 2009. On September 22, 2009, the Subcommittee held a legislative hearing on the bill. At the hearing, representatives from the Department of the Interior, the State of Wyoming, the Nature Conservancy, and the Colorado River Electrical Distribution Association testified in favor of H.R. 2288.

On December 16, 2009, the Subcommittee was discharged from the further consideration of H.R. 2288 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Grace Napolitano (D–CA) offered an amendment in the nature of a substitute to provide that funding authorized under the legislation for the recovery implementation programs be subject to the availability of appropriations.

Rep. Tom McClintock (R–CA) offered an amendment to the amendment in the nature of a substitute that would deauthorize discretionary funding for the program if the Department of the In-

terior failed to submit a report on the program. That amendment was not adopted by a roll call vote of 17 yeas to 21 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
111th Congress

Date: 12/16/2009 Convened: Adjourned:

Meeting on: **HR 2288 - An amendment offered by Mr. McClintock was NOT AGREED TO by a roll call vote of 17 yeas and21 nays.**

Recorded Vote # 1

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Wittman, VA*	✔		
Mr. Hastings, WA	✔			Mr. Boren, OK	✔		
Mr. Miller, CA		✔		*Mr. Broun, GA*	✔		
Mr. Young, AK				Mr. Sablan, MP		✔	
Mr. Markey, MA				*Mr. Fleming, LA*	✔		
Mr. Gallegly, CA	✔			Mr. Heinrich, NM		✔	
Mr. Kildee, MI		✔		*Mr. Coffman, CO*	✔		
Mr. Duncan, TN	✔			Mr. Hinchey, NY		✔	
Mr. DeFazio, OR				*Mr. Chaffetz, UT*	✔		
Mr. Flake, AZ				Mrs. Christensen, VI		✔	
Mr. Faleomavaega, AS		✔		*Mrs. Lummis, WY*			
Mr. Brown, SC	✔			Ms. DeGette, CO			
Mr. Abercrombie, HI		✔		*Mr. McClintock, CA*	✔		
Mrs. McMorris Rodgers, WA				Mr. Kind, WI		✔	
Mr. Pallone, NJ				*Mr. Cassidy, LA*	✔		
Mr. Gohmert, TX	✔			Mrs. Capps, CA		✔	
Mrs. Napolitano, CA		✔		Mr. Inslee, WA		✔	
Mr. Bishop, UT				Mr. Baca, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mr. Shuster, PA				Mr. Sarbanes, MD		✔	
Mr. Grijalva, AZ		✔		Ms. Shea-Porter, NH		✔	
Mr. Lamborn, CO	✔			Ms. Tsongas, MA		✔	
Mrs. Bordallo, GU				Mr. Kratovil, Jr., MD	✔		
Mr. Smith, NE	✔			Mr. Pierluisi, PR		✔	
Mr. Costa, CA	✔						
				Total	17	21	

Markups - 1/3 to meet (16), 25 to report
December 17, 2009 (11:23am)

Rep. Paul Broun (R–GA) offered an amendment to the amendment in the nature of a substitute that would statutorily limit program overhead expenses to 11% of total funding. The amendment was not adopted by a roll call vote of 15 yeas to 24 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
111th Congress

Date: 12/16/2009 Convened: Adjourned:

Meeting on: **HR 2288 - An amendment offered by Mr. Broun was NOT AGREED TO by a roll call vote of 15 yeas and 24 nays.**

Recorded Vote # 2

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Wittman, VA*	✔		
Mr. Hastings, WA	✔			Mr. Boren, OK	✔		
Mr. Miller, CA		✔		*Mr. Broun, GA*	✔		
Mr. Young, AK				Mr. Sablan, MP		✔	
Mr. Markey, MA				*Mr. Fleming, LA*	✔		
Mr. Gallegly, CA	✔			Mr. Heinrich, NM		✔	
Mr. Kildee, MI		✔		*Mr. Coffman, CO*	✔		
Mr. Duncan, TN	✔			Mr. Hinchey, NY		✔	
Mr. DeFazio, OR				*Mr. Chaffetz, UT*	✔		
Mr. Flake, AZ				Mrs. Christensen, VI		✔	
Mr. Faleomavaega, AS		✔		*Mrs. Lummis, WY*			
Mr. Brown, SC	✔			Ms. DeGette, CO		✔	
Mr. Abercrombie, HI		✔		*Mr. McClintock, CA*	✔		
Mrs. McMorris Rodgers, WA				Mr. Kind, WI		✔	
Mr. Pallone, NJ				*Mr. Cassidy, LA*	✔		
Mr. Gohmert, TX	✔			Mrs. Capps, CA		✔	
Mrs. Napolitano, CA		✔		Mr. Inslee, WA		✔	
Mr. Bishop, UT				Mr. Baca, CA		✔	
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD		✔	
Mr. Shuster, PA				Mr. Sarbanes, MD		✔	
Mr. Grijalva, AZ		✔		Ms. Shea-Porter, NH		✔	
Mr. Lamborn, CO	✔			Ms. Tsongas, MA		✔	
Mrs. Bordallo, GU				Mr. Kratovil, Jr., MD		✔	
Mr. Smith, NE	✔			Mr. Pierluisi, PR		✔	
Mr. Costa, CA		✔					
				Total	15	24	

Markups - 1/3 to meet (16), 25 to report
December 17, 2009 (11:24am)

The amendment in the nature of a substitute was then agreed to by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that this Act may be cited as the "Endangered Fish Recovery Programs Improvement Act of 2010."

Section 2. Reauthorization of fish recovery programs

Section 2 would amend Section 3 of Public Law 106–392 to authorize appropriations for the purpose of funding Bureau of Reclamation endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins for fiscal years 2012 through 2023.

It is the intent of the Committee that the allocation of funding continue to address (1) habitat restoration and development, (2) nonnative fish management, (3) propagation and genetics management, (4) research and monitoring, (5) habitat management, (6) other recovery actions other than capital projects, (7) education and public involvement, and (8) program management. It is also the intent of the Committee that overhead charges should not exceed 13% in any given fiscal year.

P.L. 106–392 required that by the fiscal year 2008 the Secretary of the Interior provide a report on the utilization of power revenues to fund the operation and maintenance of capital projects and monitoring. The initial report submitted in 2008 was not adequate to address the concerns of Congress. On December 14, 2009 the Assistant Secretary for Water and Science submitted a letter to the Committee concurring with the need to complete the report in a prompt manner. On April 28, 2010 the Secretary of the Interior submitted a revised Report to Congress, Utilization of Power Revenues for Annual Base Funding of the Upper Colorado River and San Juan River Basin Recovery Implementation Programs.

The Committee appreciates receiving the revised report and expects the Fish and Wildlife Service will continue to provide annual updates of the status and population levels of the four endangered fish in relation to the specific recovery goals for each species.

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 car-

rying 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 amend Public Law 106–392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023.

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. 2288—Endangered Fish Recovery Programs Improvement Act of 2009

Summary: H.R. 2288 would authorize the appropriation of such sums as may be necessary over the 2012–2023 period to fund fish recovery programs in the Upper Colorado and San Juan River Basins. Under current law, the Secretary spends certain receipts collected by the Western Area Power Administration (WAPA) for those activities, without further appropriation. That authority expires at the end of fiscal year 2011.

CBO estimates that implementing H.R. 2288 would cost $12 million over the 2011–2015 period, subject to appropriation of the authorized amounts. (Additional costs of $3 million to $4 million a year would continue for 2016 through 2023, subject to appropriation action.) Enacting the legislation would not affect direct spending or revenues.

H.R. 2288 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2288 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—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	0	3	3	3	3	12
Estimated Outlays	0	3	3	3	3	12

Basis of estimate: For this estimate, CBO assumes that this legislation will be enacted in 2010 and that the estimated amounts to implement the bill will be appropriated for each fiscal year beginning in 2012.

H.R. 2288 would authorize the appropriation of whatever amounts are necessary to continue to fund fish recovery programs in the Upper Colorado and San Juan River Basins after the current authority expires. Based on information from the Bureau of Reclamation and WAPA, CBO estimates that those costs would be about $3 million a year over the 2012–2015 period, and $3 million to $4 million a year for 2016 through 2023.

Intergovernmental and private-sector impact: H.R. 2288 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On January 28, 2010, CBO transmitted a cost estimate for S. 1453, the Bureau of Reclamation Fish Recovery Programs Reauthorization Act of 2009, as ordered reported by the House Committee on Natural Resources on December 16, 2009. While H.R. 2288 would authorize appropriations for fish recovery programs in the Upper Colorado and San Juan River Basins, S. 1453 would extend the Secretary of the Interior's current authority to spend WAPA proceeds through 2023, without further appropriation, for those programs. CBO estimates that S. 1453 would increase direct spending by $30 million over the 2011–2020 period and by another $12 million through 2023.

Estimate prepared by: Federal Costs: Aurora Swanson, Impact on State, Local, and Tribal Governments: Melissa Merrell, 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. 2288 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 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 MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE ACT OF OCTOBER 30, 2000

(Public Law 106–392)

AN ACT 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.

SEC. 3. AUTHORIZATION TO FUND RECOVERY PROGRAMS.

(a) * * *

* * * * * * *

(d) BASE FUNDING.—(1) * * *

(2) For the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River Basin, the contributions to base funding referred to in paragraph (1) shall not exceed $4,000,000 per year. For the San Juan River Recovery Implementation Program, such contributions shall not exceed $2,000,000 per year. The Secretary shall adjust such amounts for inflation in fiscal years commencing after the enactment of this Act. The utilization of power revenues for annual base funding shall cease after the fiscal year 2011, unless reauthorized by Congress; except that power revenues may continue to be utilized to fund the operation and maintenance of capital projects and monitoring. No later than the end of fiscal year 2008, the Secretary shall submit a report on the utilization of power revenues for base funding to the appropriate Committees of the United States Senate and the House of Representatives. The Secretary shall also make a recommendation in such report regarding the need for continued base funding after fiscal year 2011 that may be required to fulfill the goals of the Recovery Implementation Programs. Nothing in this Act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the Recovery Implementation Programs. *For fiscal years 2012 through 2023, there are hereby authorized to be appropriated such sums as may be necessary to provide for the annual base funding for the Recovery Implementation Programs above and beyond the continued use of power revenues to fund the operation and maintenance of capital projects and monitoring.*

* * * * * * *

ADDITIONAL VIEWS

H.R. 2288 has been introduced as a response to the Endangered Species Act, an unreasonable law that has impoverished millions of people in our nation, devastated the agricultural sector of our economy and threatens us all with permanent water and power shortages and higher food costs.

This bill will spend $7 million per year through 2023 for research, management, operation and maintenance and other non-capital expenditures in order to keep Endangered Species Act litigation at bay in the Upper Colorado and San Juan River basins. The goal of avoiding litigation so that water and power projects continue to operate is commendable and worthy, but we still have fiscal concerns with the program that is being re-authorized in this bill.

Specifically, there is not enough transparency in this program, explicit goals are not forthcoming and overhead is outrageously high. During the Natural Resources Committee markup in December 2009, the Democrat Majority voted down a Republican amendment that would have required the Administration to comply with existing law by submitting a report to Congress on the achievements of the program to date. American taxpayers and water and power users should know what they are being asked to pay for before another $100 million was thrown into the program. Despite the Majority's intransigence at the time, the current Administration finally submitted the report in April 2010. The report answered some questions, but failed to answer one key question: what are the specific recovery goals for each of the endangered fish species? By defining this goal, Congress and the American public will have a better understanding of when this program will achieve ultimate success so that taxpayer and ratepayer expenditures will no longer be necessary.

The Democrat Majority also voted down a Republican amendment to reduce bureaucratic overhead from a current level of 22 percent in one program. Since taxpayer dollars will be spent on this program, more funds should be dedicated to actual on-the-ground fish recovery projects. An amendment aimed at cutting overhead in half was offered but failed to attract one Democrat vote in Committee. Undoubtedly, some overhead may be necessary in this program, but almost a quarter of every dollar being spent on overhead is unacceptable in these tight fiscal times.

In summary, we view this as a well-intentioned program aimed at keeping water and power projects operating, but we hope that key reforms can be made to improve the program and, therefore, limit American taxpayer expenditures.

TOM MCCLINTOCK.
PAUL C. BROUN.
DOUG LAMBORN.

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