

ENDANGERED FISH RECOVERY PROGRAMS EXTENSION
ACT OF 2017

FEBRUARY 16, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 4465]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4465) to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023, to require a report on the implementation of those programs, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4465 is to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023, and to require a report on the implementation of those programs.

BACKGROUND AND NEED FOR LEGISLATION

The Upper Colorado and San Juan River Basins provide key sources of water in the western United States. The Bureau of Reclamation has constructed numerous water and power projects to store and use the water for irrigation, drinking water, hydropower and flood control purposes, and to benefit recreation and fish and wildlife in the western United States. Projects include the Colorado River Storage Project's (CRSP) Flaming Gorge Unit, which can store over 3.5 million acre feet of water (one acre foot is 325,851 gallons) and can generate over 150 megawatts of power (one mega-

watt can supply up to 1,000 homes).¹ The three dams that make up the Aspinall Unit, also in the CRSP system, store more than 1 million acre feet of water² and can generate more than 275 megawatts of power.³ While Flaming Gorge, the Aspinall Unit, and other CRSP projects and non-federal projects played a core role in western settlement, they continue to be economically important and financially self-sustaining today and into the future.

The Endangered Species Act of 1973 (ESA, 16 U.S.C. 1531 et seq.) has significant impacts on the CRSP and other Reclamation and non-federal water projects. The Colorado and San Juan Rivers are home to 14 native fish species. Four of these species—the Colorado pikeminnow, razorback sucker, humpback chub and bonytail—are listed as “endangered” under the ESA. Those designations led to the threat of water and power-use restrictions. As a result, the States of Colorado, New Mexico, Utah and Wyoming signed cooperative agreements with the federal government in 1988 and 1992 to help achieve the dual goals of recovering endangered fish populations while continuing water and power facility development and operations.⁴ Other partners include water and power users, tribes and environmental organizations.

These cooperative agreements led to the creation of the Upper Colorado and San Juan Recovery Implementation Programs (Programs) to help provide ESA compliance for over 2,300 water and power projects⁵ that withdraw more than 3 million acre feet of water.⁶ The Programs’ goals are to recover the humpback chub, razorback sucker, bonytail and the Colorado pikeminnow while continuing facility operations to meet current and future human needs, with the ultimate goals of species delisting. Furthermore, genetically diverse, hatchery-based fish are raised at federal, State and tribal hatcheries. These hatchery-raised fish help establish sustainable species populations since the hatchery-produced fish are counted as part of the recovery criteria under the ESA once they reach adult status.⁷

Federal participation and non-federal cost-sharing for the Programs were authorized in 2000 with the enactment of Public Law 106–392. Under this law, a cost share between the impacted States, water and power users and the federal government was established. To date, the States and water and power users have paid

¹United States Bureau of Reclamation, CRSP Flaming Gorge Unit Operations, <http://www.usbr.gov/uc/rm/crsp/fg/fgOps.html>, November 25, 2008.

²United States Bureau of Reclamation, CRSP Aspinall Unit Operations, <http://www.usbr.gov/uc/rm/crsp/aspinall/index.html>, September 29, 2008.

³Leslie James, Executive Director, Colorado River Energy Distributors Association, Testimony Before the House of Representatives Water and Power Subcommittee, <http://naturalresources.house.gov/UploadedFiles/JamesTestimony09.22.09.pdf> September 22, 2009.

⁴<http://www.coloradoriverrecovery.org/general-information/about.html>.

⁵Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, *Implementing Innovative Solutions to Manage Water and Hydro-power Resources While Recovering Endangered Species, Highlights 2011–2012*, <http://www.coloradoriverrecovery.org/general-information/general-publications/briefingbook/2012BriefingBook.pdf>, July 5, 2012.

⁶United States Department of the Interior, *Utilization of Power Revenues for Annual Base Funding of the Upper Colorado River and San Juan River Basin Recovery Implementation Programs. A Report to Congress*, <http://www.usbr.gov/uc/envdocs/reports/UCSJRIP/UCSJRIP-ReptoCongress.pdf>, February 2010.

⁷Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, *Implementing Innovative Solutions to Manage Water and Hydro-power Resources While Recovering Endangered Species, Highlights 2011–2012*, <http://www.coloradoriverrecovery.org/general-information/general-publications/briefingbook/2012BriefingBook.pdf>, July 5, 2012.

a majority of capital costs (approximately 57 percent).⁸ CRSP power users/beneficiaries also agreed to pay for some non-capital program functions. These costs are largely absorbed by electricity ratepayers. In 2012, Congress enacted the Endangered Fish Recovery Programs Extension Act of 2012 (Public Law 112–270), which reauthorized the use of CRSP hydropower revenues to support funding for “fish monitoring, research and program management” through 2019. The bill also included provisions to limit overhead costs and increase accountability for official travel relating to carrying out the Programs.

H.R. 4465 extends the use of power user payments by authorizing funds for the Programs through 2023. This bipartisan bill also requires a report covering the Programs’ effectiveness in fish recovery, the costs and how revenue streams are utilized to operate the Programs.

COMMITTEE ACTION

H.R. 4465 was introduced on November 28, 2017, by Congressman John R. Curtis (R–UT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On December 6, 2017, the Subcommittee held a hearing on the legislation. On December 12, 2017, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent on December 13, 2017.

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.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

⁸Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, *Implementing Innovative Solutions to Manage Water and Hydropower Resources While Recovering Endangered Species, Highlights 2011–2012*, <http://www.coloradoriverrecovery.org/general-information/general-publications/briefingbook/2012BriefingBook.pdf>, July 5, 2012.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 31, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4465, the Endangered Fish Recovery Programs Extension Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4465—Endangered Fish Recovery Programs Extension Act of 2017

H.R. 4465 would extend through 2023 the specific authority of the Bureau of Reclamation to spend, without further appropriation, certain proceeds collected from the sale of hydroelectric power by the Western Area Power Administration (WAPA) for fish recovery programs in the Upper Colorado and San Juan River Basin. The fish recovery activities include research, removal of nonnative fish, and program management activities. In recent years, annual spending for the bureau's fish recovery programs has totaled about \$12 million. About \$8 million of those funds were from WAPA's hydroelectricity sales and the remaining amounts were from appropriated funds.

Under current law, the specific authority to spend WAPA's proceeds for fish recovery programs expires at the end of fiscal year 2019. After 2019, the bureau may continue to use those funds for fish recovery and other programs under the agency's general authorities. However, all programs eligible to receive WAPA proceeds, including fish recovery programs, would compete for those funds, and spending of WAPA proceeds on fish recovery would probably be lower than in recent years. Enacting H.R. 4465 would extend the authority of the bureau to give fish recovery programs priority over others through 2023.

Enacting the bill would affect direct spending; therefore, pay-as-you-go procedures apply. However, the bureau can spend the funds under current law, and CBO expects that any change in the timing of outlays would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 4465 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4465 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. 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 maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2023, to require a report on the implementation of those programs.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

PUBLIC LAW 106-392

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SEC. 3. AUTHORIZATION TO FUND RECOVERY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL PARTICIPATION IN CAPITAL PROJECTS.—(1) There is hereby authorized to be appropriated to the Secretary, \$88,000,000 to undertake capital projects to carry out the purposes of this Act. Such funds shall be considered a nonreimbursable Federal expenditure.

(2) The authority of the Secretary, acting through the Bureau of Reclamation, under this or any other provision of law to implement capital projects for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin shall expire in fiscal year 2023 unless reauthorized by an Act of Congress.

(3) The authority of the Secretary to implement the capital projects for the San Juan River Basin Recovery Implementation

Program shall expire in fiscal year 2023 unless reauthorized by an Act of Congress.

(b) **COST OF CAPITAL PROJECTS.**—The total costs of the capital projects undertaken for the Recovery Implementation Programs receiving assistance under this Act shall not exceed \$209,000,000 of which—

(1) costs shall not exceed \$179,000,000 for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin through fiscal year 2023; and

(2) costs shall not exceed \$30,000,000 for the San Juan River Recovery Implementation Program through fiscal year 2023.

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

(c) **NON-FEDERAL CONTRIBUTIONS TO CAPITAL PROJECTS.**—(1) The Secretary, acting through the Bureau of Reclamation, may accept contributed funds from the Upper Division States, or political subdivisions or organizations within the Upper Division States, pursuant to agreements that provide for the contributions to be used for capital projects costs. Such non-Federal contributions shall not exceed \$17,000,000.

(2) In addition to the contribution described in paragraph (1), the Secretary of Energy, acting through the Western Area Power Administration, and the Secretary of the Interior, acting through the Bureau of Reclamation, may utilize power revenues collected pursuant to the Colorado River Storage Project Act to carry out the purposes of this subsection. Such funds shall be treated as reimbursable costs assigned to power for repayment under section 5 of the Colorado River Storage Project Act. This additional contribution shall not exceed \$17,000,000. Such funds shall be considered a non-Federal contribution for the purposes of this Act. The funding authorized by this paragraph over any 2-fiscal-year period shall be made available in amounts equal to the contributions for the same 2-fiscal-year period made by the Upper Division States pursuant to paragraph (1).

(3) The additional funding provided pursuant to paragraph (2) may be provided through loans from the Colorado Water Conservation Board Construction Fund (37-60-121 C.R.S.) to the Western Area Power Administration in lieu of funds which would otherwise be collected from power revenues and used for storage project repayments. The Western Area Power Administration is authorized to repay such loan or loans from power revenues collected beginning in fiscal year 2012, subject to an agreement between the Colorado Water Conservation Board, the Western Area Power Administration, and the Bureau of Reclamation. The agreement and any future loan contracts that may be entered into by the Colorado Water Conservation Board, the Western Area Power Administration, and the Bureau of Reclamation shall be negotiated in consultation with Salt Lake City Area Integrated Projects Firm Power Contractors. The agreement and loan contracts shall include provisions designed to minimize impacts on electrical power rates and shall ensure that loan repayment to the Colorado Water Conservation Board, including principal and interest, is completed no later than September 30, 2057. The Western Area Power Administration is authorized to

include in power rates such sums as are necessary to carry out this paragraph and paragraph (2).

(4) All contributions made pursuant to this subsection shall be in addition to the cost of replacement power purchased due to modifying the operation of the Colorado River Storage Project and the capital cost of water from Wolford Mountain Reservoir and the Elkhead Reservoir enlargement in Colorado. Such costs shall be considered as non-Federal contributions, not to exceed \$87,000,000.

(d) BASE FUNDING.—(1) Beginning in the first fiscal year commencing after the date of the enactment of this Act, the Secretary may utilize power revenues collected pursuant to the Colorado River Storage Project Act for the annual base funding contributions to the Recovery Implementation Programs by the Bureau of Reclamation. Such funding shall be treated as nonreimbursable and as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Colorado River Storage Project Act.

(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 ~~2019~~ 2023, 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 2018, 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 2019 that may be required to fulfill the goals of the Recovery Implementation Programs. Such report shall also describe the Recovery Implementation Programs actions and accomplishments to date, the status of the endangered species of fish and projected dates for downlisting and delisting under the Endangered Species Act of 1973, and the utilization of power revenues for annual base funding.] Nothing in this Act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the Recovery Implementation Programs.

(3) The Western Area Power Administration and the Bureau of Reclamation shall maintain sufficient revenues in the Colorado River Basin Fund to meet their obligation to provide base funding in accordance with paragraph (2). If the Western Area Power Administration and the Bureau of Reclamation determine that the funds in the Colorado River Basin Fund will not be sufficient to meet the obligations of section 5(c)(1) of the Colorado River Storage Project Act for a 3-year period, the Western Area Power Administration and the Bureau of Reclamation shall request appropriations to meet base funding obligations.

(e) AUTHORITY TO RETAIN APPROPRIATED FUNDS.—At the end of each fiscal year any unexpended appropriated funds for capital

projects under this Act shall be retained for use in future fiscal years. Unexpended funds under this Act that are carried over shall continue to be used to implement the capital projects needed for the Recovery Implementation Programs.

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

(g) **INDIAN TRUST ASSETS.**—The Congress finds that much of the potential water development in the San Juan River Basin and in the Duchesne River Basin (a subbasin of the Green River in the Upper Colorado River Basin) is for the benefit of Indian tribes and most of the federally designated critical habitat for the endangered fish species in the San Juan River Basin is on Indian trust lands, and 2½ miles of critical habitat on the Duchesne River is on Indian Trust Land. Nothing in this Act shall be construed to restrict the Secretary, acting through the Bureau of Reclamation and the Bureau of Indian Affairs, from funding activities or capital projects in accordance with the Federal Government's Indian trust responsibility.

(h) **TERMINATION OF AUTHORITY.**—All authorities provided by this section for the respective Recovery Implementation Program shall terminate upon expiration of the current time period for the respective Cooperative Agreement referenced in section 2(1) unless, at least 1 year prior to such expiration, the time period for the respective Cooperative Agreement is extended to conform with this Act.

(i) **LIMITATION ON INDIRECT COST RECOVERY RATE.**—The indirect cost recovery rate for any transfer of funds to the U.S. Fish and Wildlife Service from another Federal agency for the purpose of funding any activity associated with the Upper Colorado River Endangered Fish Recovery Program or the San Juan River Basin Recovery Implementation Program shall not exceed three percent of the funds transferred. In the case of a transfer of funds for the purpose of funding activities under both programs, the limitation shall be applied to the funding amount for each program and may not be allocated unequally to either program, even if the average aggregate indirect cost recovery rate would not exceed three percent.

(j) **REPORT.**—

(1) **IN GENERAL.**—Not later than September 30, 2021, the Secretary shall submit to the appropriate committees of Congress a report that—

(A) describes the accomplishments of the Recovery Implementation Programs;

(B) identifies—

(i) as of the date of the report, the listing status under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) of the Colorado pikeminnow, humpback chub, razorback sucker, and bonytail; and

(ii) as of September 30, 2023, the projected listing status under that Act of each of the species referred to in clause (i);

(C)(i) identifies—

(I) the total expenditures and the expenditures by categories of activities by the Recovery Implementation

Programs during the period beginning on the date on which the applicable Recovery Implementation Program was established and ending on September 30, 2021; and

(II) projected expenditures by the Recovery Implementation Programs during the period beginning on October 1, 2021, and ending on September 30, 2023;

(ii) for purposes of the expenditures identified under clause (i), includes a description of—

(I) any expenditures of appropriated funds;

(II) any power revenues;

(III) any contributions by the States, power customers, Tribes, water users, and environmental organizations; and

(IV) any other sources of funds for the Recovery Implementation Programs; and

(D) describes—

(i) any activities to be carried out under the Recovery Implementation Program after September 30, 2023; and

(ii) the projected cost of the activities described under clause (i).

(2) CONSULTATION REQUIRED.—The Secretary shall consult with the participants in the Recovery Implementation Programs in preparing the report under paragraph (1).

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