

106TH CONGRESS
1ST SESSION

S. 1544

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.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1999

Mr. ALLARD introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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 Woford 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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