

Calendar No. 673

110TH CONGRESS
2D SESSION**H. R. 1462****[Report No. 110–321]**

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

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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

1 requiring the grant of water rights to Federal enti-
 2 ties; and

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

6 **TITLE I—PLATTE RIVER RECOV-** 7 **ERY IMPLEMENTATION PRO-** 8 **GRAM**

9 **SEC. 101. DEFINITIONS.**

10 In this title:

11 (1) AGREEMENT.—The term “Agreement”
 12 means the Platte River Recovery Implementation
 13 Program Cooperative Agreement entered into by the
 14 Governors of the States and the Secretary.

15 (2) FIRST INCREMENT.—The term “First In-
 16 crement” means the first 13 years of the Program.

17 (3) GOVERNANCE COMMITTEE.—The term
 18 “Governance Committee” means the governance
 19 committee established under the Agreement and
 20 composed of members from the States, the Federal
 21 Government, environmental interests, and water
 22 users.

23 (4) INTEREST IN LAND OR WATER.—The term
 24 “interest in land or water” includes a fee title,
 25 short- or long-term easement, lease, or other con-

1 tractual arrangement that is determined to be nec-
2 essary by the Secretary to implement the land and
3 water components of the Program.

4 (5) PROGRAM.—The term “Program” means
5 the Platte River Recovery Implementation Program
6 established under the Agreement.

7 (6) PROJECT OR ACTIVITY.—The term “project
8 or activity” means—

9 (A) the planning, design, permitting or
10 other compliance activity, preconstruction activ-
11 ity, construction, construction management, op-
12 eration, maintenance, and replacement of a fa-
13 cility;

14 (B) the acquisition of an interest in land
15 or water;

16 (C) habitat restoration;

17 (D) research and monitoring;

18 (E) program administration; and

19 (F) any other activity that is determined to
20 be necessary by the Secretary to carry out the
21 Program.

22 (7) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior, acting through the
24 Commissioner of Reclamation.

1 (8) STATES.—The term “States” means the
2 States of Nebraska, Wyoming, and Colorado.

3 **SEC. 102. IMPLEMENTATION OF PROGRAM.**

4 (a) IN GENERAL.—The Secretary, in cooperation
5 with the Governance Committee, may—

6 (1) participate in the Program; and

7 (2) carry out any projects and activities that
8 are designated for implementation during the First
9 Increment.

10 (b) AUTHORITY OF SECRETARY.—For purposes of
11 carrying out this ~~title~~ *Act*, the Secretary, in cooperation
12 with the Governance Committee, may—

13 (1) enter into agreements and contracts with
14 Federal and non-Federal entities;

15 (2) acquire interests in land, water, and facili-
16 ties from willing sellers without the use of eminent
17 domain;

18 (3) subsequently transfer any interests acquired
19 under paragraph (2); and

20 (4) accept or provide grants.

21 **SEC. 103. COST-SHARING CONTRIBUTIONS.**

22 (a) IN GENERAL.—As provided in the Agreement, the
23 ~~participating~~ States shall contribute not less than 50 per-
24 cent of the total contributions necessary to carry out the
25 Program.

1 (b) NON-FEDERAL CONTRIBUTIONS.—The following
2 contributions shall constitute the States’ share of the Pro-
3 gram:

4 (1) \$30,000,000 in non-Federal funds, with the
5 balance of funds remaining to be contributed to be
6 adjusted for inflation on October 1 of the year after
7 the date of enactment of this Act and each October
8 1 thereafter.

9 (2) Credit for contributions of water or land for
10 the purposes of implementing the Program, as deter-
11 mined to be appropriate by the Secretary.

12 (c) IN-KIND CONTRIBUTIONS.—The Secretary or the
13 States may elect to provide a portion of the Federal share
14 or non-Federal share, respectively, in the form of in-kind
15 goods or services, if the contribution of goods or services
16 is approved by the Governance Committee, as provided in
17 Attachment 1 of the Agreement.

18 **SEC. 104. AUTHORITY TO MODIFY PROGRAM.**

19 The Program may be modified or amended before the
20 completion of the First Increment if the Secretary and the
21 States determine that the modifications are consistent
22 with the purposes of the Program.

1 **SEC. 105. EFFECT.**

2 (a) EFFECT ON RECLAMATION LAWS.—No action
3 carried out under this title shall, with respect to the acre-
4 age limitation provisions of the reclamation laws—

5 (1) be considered in determining whether a dis-
6 trict (as the term is defined in section 202 of the
7 Reclamation Reform Act of 1982 (43 U.S.C.
8 390bb)) has discharged the obligation of the district
9 to repay the construction cost of project facilities
10 used to make irrigation water available for delivery
11 to land in the district;

12 (2) serve as the basis for reinstating acreage
13 limitation provisions in a district that has completed
14 payment of the construction obligations of the dis-
15 trict; or

16 (3) serve as the basis for increasing the con-
17 struction repayment obligation of the district, which
18 would extend the period during which the acreage
19 limitation provisions would apply.

20 (b) EFFECT ON WATER RIGHTS.—Nothing in this
21 ~~title~~ *Act*—

22 (1) creates Federal water rights; or

23 (2) requires the grant of water rights to Fed-
24 eral entities.

1 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There is authorized to be appro-
 3 priated to carry out projects and activities under this title
 4 \$157,140,000, as adjusted under subsection (c).

5 (b) NONREIMBURSABLE FEDERAL EXPENDI-
 6 TURES.—Any amounts expended under subsection (a)
 7 shall be considered to be nonreimbursable Federal expend-
 8 itures.

9 (c) ADJUSTMENT.—The balance of funds remaining
 10 to be appropriated shall be adjusted for inflation on Octo-
 11 ber 1 of the year after the enactment of this Act and each
 12 October 1 thereafter.

13 (d) AVAILABILITY OF FUNDS.—At the end of each
 14 fiscal year, any unexpended funds for projects and activi-
 15 ties made available under subsection (a) shall be retained
 16 for use in future fiscal years to implement projects and
 17 activities under the Program.

18 **SEC. 107. TERMINATION OF AUTHORITY.**

19 The authority for the Secretary to implement the
 20 First Increment shall terminate on September 30, 2020.

21 **TITLE II—PATHFINDER**
 22 **MODIFICATION PROJECT**

23 **SEC. 201. AUTHORIZATION OF PROJECT.**

24 (a) IN GENERAL.—The Secretary of the Interior, act-
 25 ing through the Commissioner of Reclamation (referred to
 26 in this title as the “Secretary”), may—

1 (1) modify the Pathfinder Dam and Reservoir;
 2 and

3 (2) enter into 1 or more agreements with the
 4 State of Wyoming to implement the Pathfinder
 5 Modification Project (referred to in this title as the
 6 “Project”), as described in Appendix F to the Final
 7 Settlement Stipulation in Nebraska v. Wyoming, 534
 8 U.S. 40 (2001).

9 (b) FEDERAL APPROPRIATIONS.—No Federal appro-
 10 priations are required to modify the Pathfinder Dam
 11 under this section.

12 **SEC. 202. AUTHORIZED USES OF PATHFINDER RESERVOIR.**

13 ~~The approximately~~ *Provided that all of the conditions*
 14 *described in section 203 are first met, the approximately*
 15 54,000 acre-feet capacity of Pathfinder Reservoir, which
 16 has been lost to sediment but will be recaptured by the
 17 Project, may be used for municipal, environmental, and
 18 other purposes, as described in Appendix F to the Final
 19 Settlement Stipulation in Nebraska v. Wyoming, 534 U.S.
 20 40 (2001).

21 **SEC. 203. CONDITIONS PRECEDENT.**

22 *The actions and water uses authorized in sections*
 23 *201(a)(1) and 202 shall not occur until each of the following*
 24 *actions have been completed:*

1 (1) *Final approval from the Wyoming legislature*
2 *for the export of Project water to the State of Ne-*
3 *braska under the laws (including regulations) of the*
4 *State of Wyoming.*

5 (2) *Final approval in a change of water use pro-*
6 *ceeding under the laws (including regulations) of the*
7 *State of Wyoming for all new uses planned for Project*
8 *water. Final approval, as used in this paragraph, in-*
9 *cludes exhaustion of any available review under State*
10 *law of any administrative action authorizing the*
11 *change of the Pathfinder Reservoir water right.*

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