

**Calendar No. 1005**

110TH CONGRESS  
2D SESSION

**S. 3189**

To amend Public Law 106–392 to require the Administrator of the Western Area Power Administration and the Commissioner of Reclamation to maintain sufficient revenues in the Upper Colorado River Basin Fund, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 25, 2008

Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

SEPTEMBER 16, 2008

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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**A BILL**

To amend Public Law 106–392 to require the Administrator of the Western Area Power Administration and the Commissioner of Reclamation to maintain sufficient revenues in the Upper Colorado River Basin Fund, and for other purposes.

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.**

2 This Act may be cited as the “Endangered Fish Re-  
3 covery Programs Improvement Act of 2008”.

4 **SEC. 2. ENDANGERED FISH RECOVERY PROGRAMS.**

5 (a) **DEFINITIONS.**—Section 2 of Public Law 106–392  
6 (114 Stat. 1602) is amended—

7 (1) in paragraph (5), by inserting “, rehabilita-  
8 tion, and repair” after “and replacement”; and

9 (2) in paragraph (6), by inserting “those for  
10 protection of critical habitat through stabilization of  
11 adjacent stream banks and adjacent impacted infra-  
12 structure, those for preventing entrainment of fish  
13 in water diversions,” after “instream flows,”.

14 (b) **AUTHORIZATION TO FUND RECOVERY PRO-**  
15 **GRAMS.**—Section 3 of Public Law 106–392 (114 Stat.  
16 1603; 120 Stat. 290) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (1), by striking  
19 “\$61,000,000” and inserting “\$88,000,000”;

20 (B) in paragraph (2), by striking “2010”  
21 and inserting “2023”; and

22 (C) in paragraph (3), by striking “2010”  
23 and inserting “2023”;

24 (2) in subsection (b)—

1 (A) in the matter preceding paragraph (1),  
 2 by striking “\$126,000,000” and inserting  
 3 “\$209,000,000”;

4 (B) in paragraph (1)—

5 (i) by striking “\$108,000,000” and  
 6 inserting “\$179,000,000”; and

7 (ii) by striking “2010” and inserting  
 8 “2023”; and

9 (C) in paragraph (2)—

10 (i) by striking “\$18,000,000” and in-  
 11 serting “\$30,000,000”; and

12 (ii) by striking “2010” and inserting  
 13 “2023”;

14 (3) in subsection (c)(4), by striking  
 15 “\$31,000,000” and inserting “\$87,000,000”; and

16 (4) in subsection (d)—

17 (A) in paragraph (2)—

18 (i) in the fourth sentence, by striking  
 19 “2011” and inserting “2023”;

20 (ii) in the fifth sentence, by striking  
 21 “2008” and inserting “2020”; and

22 (iii) in the sixth sentence, by striking  
 23 “2011” and inserting “2023”;

24 (B) by striking paragraph (3) and insert-  
 25 ing the following:

1           ~~“(3) DUTY OF WESTERN AREA POWER ADMIN-~~  
 2           ~~ISTRATION AND BUREAU OF RECLAMATION.—~~

3           ~~“(A) DEFINITIONS.—In this paragraph:~~

4                   ~~“(i) ADMINISTRATOR.—The term ‘Ad-~~  
 5                   ~~ministrator’ means the Administrator of~~  
 6                   ~~the Western Area Power Administration.~~

7                   ~~“(ii) COMMISSIONER.—The term~~  
 8                   ~~‘Commissioner’ means the Commissioner of~~  
 9                   ~~Reclamation.~~

10                   ~~“(iii) UPPER COLORADO RIVER BASIN~~  
 11                   ~~FUND.—The term ‘Upper Colorado River~~  
 12                   ~~Basin Fund’ means the fund established~~  
 13                   ~~under section 5(a) of the Act of April 11,~~  
 14                   ~~1956 (commonly known as the ‘Colorado~~  
 15                   ~~River Storage Project Act’) (43 U.S.C.~~  
 16                   ~~620d(a)).~~

17           ~~“(B) DUTY OF ADMINISTRATOR AND COM-~~  
 18           ~~MISSIONER.—The Administrator and the Com-~~  
 19           ~~missioner shall maintain sufficient revenues in~~  
 20           ~~the Upper Colorado River Basin Fund to meet~~  
 21           ~~the obligation of the Administrator and Com-~~  
 22           ~~missioner to provide base funding in accordance~~  
 23           ~~with paragraph (2).~~

24           ~~“(C) INSUFFICIENT FUNDS.—If the Ad-~~  
 25           ~~ministrator and the Commissioner jointly deter-~~

mine that the amount of funds in the Upper Colorado River Basin Fund may not be sufficient to meet the obligations of section 5(e)(1) of the Act of April 11, 1956 (commonly known as the ‘Colorado River Storage Project Act’) (43 U.S.C. 620d(e)(1)) and paragraph (2); base funding may be provided through loans to the Administrator from the Colorado Water Conservation Board Construction Fund (Col. Rev. Stat. 37-60-121 (2008)) in lieu of funds that would otherwise be collected from power revenues and used for storage project repayments.

“(D) REPAYMENT.—

“(i) AGREEMENT.—Subject to an agreement entered into among the Colorado Water Conservation Board, the Administrator, and the Commissioner, the Administrator may repay any loan provided under subparagraph (C) from power revenues collected after September 30, 2019.

“(ii) NEGOTIATION OF LOANS AND FUTURE CONTRACTS.—The agreement described in clause (i), and any loan contract that may be entered into among the Colo-

1           rado Water Conservation Board, the Ad-  
 2           ministrators, and the Commissioner, shall  
 3           be negotiated in consultation with Salt  
 4           Lake City Area Integrated Projects Firm  
 5           Power Contractors.

6           “(iii) ~~REQUIRED PROVISIONS.~~—The  
 7           agreement described in clause (i) and each  
 8           loan contract described in clause (ii) shall  
 9           include provisions that are designed—

10           “(I) to minimize impacts on elec-  
 11           trical power rates; and

12           “(II) to ensure that loan repay-  
 13           ment to the Colorado Water Con-  
 14           servation Board (including principal  
 15           and interest) is treated as non-  
 16           reimbursable and as having been re-  
 17           paid and returned to the general fund  
 18           of the Treasury as costs assigned to  
 19           power for repayment under section 5  
 20           of the Act of April 11, 1956 (com-  
 21           monly known as the ‘Colorado River  
 22           Storage Project Act’) (43 U.S.C.  
 23           620d).

24           “(III) ~~REPAYMENT DEADLINE.~~—

25           The repayment of a loan provided

1 under subparagraph (C) shall be com-  
 2 pleted not later than September 30,  
 3 2057.”; and

4 (C) by adding at the end the following:

5 “(4) FAILURE TO OBTAIN LOAN.—

6 “(A) REPORT.—If the Administrator of  
 7 the Western Area Power Administration is un-  
 8 able to obtain a loan from the Colorado Water  
 9 Conservation Board under paragraph (3)(C),  
 10 the Administrator and the Commissioner of  
 11 Reclamation shall submit to the appropriate  
 12 committees of Congress a report describing the  
 13 projected base funding shortfall with respect to  
 14 the Colorado River Basin Fund established  
 15 under section 5(a) of the Act of April 11, 1956  
 16 (commonly known as the ‘Colorado River Stor-  
 17 age Project Act’) (43 U.S.C. 620d(a)).

18 “(B) AUTHORIZATION OF APPROPRIA-  
 19 TIONS.—There are authorized to be appro-  
 20 priated to the Secretary such sums as are nec-  
 21 essary to eliminate the base funding shortfall  
 22 described in subparagraph (A).”.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Endangered Fish Recov-*  
 25 *ery Programs Improvement Act of 2008”.*

1 **SEC. 2. ENDANGERED FISH RECOVERY PROGRAMS.**

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8 trainment of fish in water diversions,” after  
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26 serting “\$179,000,000”; and



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2                   “2023”; and  
3                   (C) in paragraph (2)—  
4                   (i) by striking “\$18,000,000” and in-  
5                   serting “\$30,000,000”; and  
6                   (ii) by striking “2010” and inserting  
7                   “2023”; and  
8                   (3) in subsection (c)(4), by striking  
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