

**AUTHORIZING BUREAU OF RECLAMATION TO PROVIDE COST SHARING FOR ENDANGERED FISH RECOVERY IMPLEMENTATION PROGRAMS FOR UPPER COLORADO AND SAN JUAN RIVER BASINS**

Mr. HANSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2348) 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, as amended.

The Clerk read as follows:

H.R. 2348

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. PURPOSE.**

The purpose of this Act is to authorize and provide funding for the Bureau of Reclamation to continue the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins in order to accomplish the objectives of these programs within a currently established time schedule.

**SEC. 2. DEFINITIONS.**

As used in this Act:

(1) The term "Recovery Implementation Programs" means the intergovernmental programs established pursuant to the 1988 Cooperative Agreement to implement the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River dated September 29, 1987, and the 1992 Cooperative Agreement to implement the San Juan River Recovery Implementation Program dated October 21, 1992, and as they may be amended by the parties thereto.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Upper Division States" means the States of Colorado, New Mexico, Utah, and Wyoming.

(4) The term "Colorado River Storage Project" or "storage project" means those dams, reservoirs, power plants, and other appurtenant project facilities and features authorized by and constructed in accordance with the Colorado River Storage Project Act (43 U.S.C. 620 et seq.).

(5) The term "capital projects" means planning, design, permitting or other compliance, pre-construction activities, construction, construction management, and replacement of facilities, and the acquisition of interests in land or water, as necessary to carry out the Recovery Implementation Programs.

(6) The term "facilities" includes facilities for the genetic conservation or propagation of the endangered fishes, those for the restoration of floodplain habitat or fish passage, those for control or supply of instream flows, and those for the removal or translocation of nonnative fishes.

(7) The term "interests in land and water" includes, but is not limited to, long-term leases and easements, and long-term enforcement, or other agreements protecting instream flows.

(8) The term "base funding" means funding for operation and maintenance of capital projects, implementation of recovery actions other than capital projects, monitoring and research to evaluate the need for or effectiveness of any recovery action, and program management, as necessary to carry out the Recovery Implementation Programs. Base funding also includes annual funding provided under the terms of the 1988 Cooperative Agreement and the 1992 Cooperative Agreement.

(9) The term "recovery actions other than capital projects" includes short-term leases and agreements for interests in land, water, and facilities; the reintroduction or augmentation of

endangered fish stocks; and the removal, translocation, or other control of nonnative fishes.

(10) The term "depletion charge" means a one-time contribution in dollars per acre-foot to be paid to the United States Fish and Wildlife Service based on the average annual new depletion by each project.

**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, \$46,000,000 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 2005 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 2007 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 \$100,000,000 of which—

(1) costs shall not exceed \$82,000,000 for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin through fiscal year 2005; and

(2) costs shall not exceed \$18,000,000 for the San Juan River Recovery Implementation Program through fiscal year 2007.

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 with 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 two 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 Wofford Mountain Reservoir in Colorado. Such costs shall be considered as non-Federal contributions, not to exceed \$20,000,000.

(d) **BASE FUNDING.**—(1) Beginning in the first fiscal year commencing after the date of 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 non-reimbursable 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 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.

(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(l) unless, at least one year prior to such expiration, the time period for the respective Cooperative Agreement is extended to conform with this Act.

#### SEC. 4. EFFECT ON RECLAMATION LAW.

No provision of this Act nor any action taken pursuant thereto or in furtherance thereof shall constitute a new or supplemental benefit under the Act of June 17, 1902 (chapter 1093; 32 Stat. 388), and Acts supplemental thereto and amendatory thereof (43 U.S.C. 371 et seq.).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Utah (Mr. HANSEN) and the gentleman from California (Mr. GEORGE MILLER) each will control 20 minutes.

The Chair recognizes the gentleman from Utah (Mr. HANSEN).

Mr. HANSEN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HANSEN asked and was given permission to revise and extend his remarks.)

Mr. HANSEN. Mr. Speaker, I rise in strong support of H.R. 2348.

Mr. Speaker, for the last decade, I and many of my colleagues have been wrestling with how to address the problems we are facing with the implementation of the Endangered Species Act and the Colorado River. I personally believe that the current interpretation of the Endangered Species Act has strayed from its original intent. There is little doubt in my mind that the authors of the bill never envisioned the taking of a person's property rights because of a fly, fish, or misplaced tortoise. I can remember when I was a young man, the same fish we are trying to save, we were unable to get rid of. However, I also believe that if we are ever to move forward on this very emotional issue, we must be willing to find the things we agree on and reach a compromise. This bill is a product of just that sort of compromise. It does not amend the federal Endangered Species Act, nor does it tear down any dams, it is a compromise that allows the water to flow and the fish to swim free.

In the past, request for funding the recovery programs have received support from Congress because they served as a dispute resolution mechanism and provided a means to solve a very complex set of problems in the Upper Colorado River and San Juan River Basins. Since 1998, these programs have relied primarily on the good will of Congressional ap-

propriators and the Department of the Interior for adequate funding. While the U.S. Fish and Wildlife Service has clear authority to undertake capital projects under the federal Endangered Species Act, no such clear authority exists for the U.S. Bureau of Reclamation, the Bureau of Indian Affairs, or the Bureau of Land Management.

With capital construction projects finally underway and the amount of funding required increasing, program participants need to have clear statutory authority to help ensure that needed funds continue to be appropriated by Congress. H.R. 2348 would do this by authorizing the appropriation of \$46 million to the Bureau of Reclamation and the Bureau of Indian Affairs for capital projects under the Upper Colorado Endangered Fish Recovery Program and the San Juan Recovery Implementation Program. The Bureau of Reclamation has been funding most of the capital cost to the projects to implement the Upper Colorado River program, like building fish ladders and acquiring flooded bottom lands where the fish thrive. Due to the heavy impact on Indian water development and Indian trust lands, the Bureau of Indian Affairs has shared the funding of the recovery efforts in the San Juan River Basin and would likely have responsibility for much of the construction of capital projects in the future.

By enacting this bill, non-federal participants like the states and those who purchase power from federal hydroelectric projects, will also help pay for capital projects. This cost sharing will be in cash, the value of water dedicated from a reservoir in Colorado, and the costs associated with reoperating the Flaming Gorge Dam. The cost sharing ratio amongst the non-federal participants shall be a true partnership, with the states and those who purchase power from federal hydroelectric projects equally dividing their cost.

Mr. Speaker, in conclusion I would like to thank Resources Chairman DON YOUNG and Ranking Member, GEORGE MILLER, for their leadership, and I urge my colleagues to support this bill.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

(Mr. GEORGE MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, I rise in strong support of H.R. 2348.

This legislation authorizes funding for the Bureau of Reclamation to continue the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins on a cost-shared basis with non-federal participants.

Through these recovery programs, government agencies, Indian tribes and private organizations are working to achieve recovery of endangered fish while balancing the continuing demands for water in the arid West. The participants are equal partners in the recovery programs and decisions are made by consensus. The recovery programs work within state laws and support water development under interstate water compacts.

The recovery programs are succeeding because all participants in the programs recognize that failure to recover the endangered species could result in limitations on current and future water diversions and use in the

Upper Basin states. H.R. 2348 provides Congress and the Upper Basin stakeholders with finite limits on the construction costs anticipated by these recovery programs. H.R. 2348 authorizes the use of significant non-federal funding contributions.

Since 1988, the recovery programs have been relied primarily on the good will of congressional appropriators and the Department of the Interior for adequate funding. With the passage of H.R. 2348, funding authorities for the recovery programs will be crystal clear.

This is one of the most successful and broadly supported interagency cooperative programs in the history of fish management in this country. We seldom have an opportunity to pass legislation that enjoys such broad support. Years of cooperative work which brought this legislation before the committee, and I commend the many people both inside and outside government who have contributed to this program and the passage of this legislation.

I strongly urge my colleagues to support H.R. 2348.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HANSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Utah (Mr. HANSEN) that the House suspend the rules and pass the bill, H.R. 2348, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### SHIVWITS BAND OF THE PAIUTE INDIAN TRIBE OF UTAH WATER RIGHTS SETTLEMENT ACT

Mr. HANSEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3291) to provide for the settlement of the water rights claims of the Shivwits Band of the Paiute Indian Tribe of Utah, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3291

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act".

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) It is the official policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle the water rights claims of Indian tribes to avoid lengthy and costly litigation.

(2) Any meaningful policy of Indian self-determination and economic self-sufficiency requires the development of viable Indian reservation economies.

(3) The quantification of water rights and the development of water use facilities is essential to the development of viable Indian reservation economies, particularly in the arid Western States.