

Public Law 106-392
106th Congress

An Act

Oct. 30, 2000
[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.

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.

Expiration date.

(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 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 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 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

Contracts.
Deadline.

Effective date.

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.

Deadline.
Reports.

(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.

SEC. 4. EFFECT ON RECLAMATION LAW.

Specifically with regard to the acreage limitation provisions of Federal reclamation law, any action taken pursuant to or in furtherance of this title will not—

(1) be considered in determining whether a district as defined in section 202(2) of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb) has discharged its obligation to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district;

(2) serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligations; or

(3) serve as the basis for increasing the construction repayment obligation of the district and thereby extending the period during which the acreage limitation provisions will apply.

Approved October 30, 2000.

LEGISLATIVE HISTORY—H.R. 2348 (S. 2239):

HOUSE REPORTS: No. 106-791 (Comm. on Resources).

SENATE REPORTS: No. 106-403 accompanying S. 2239 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 146 (2000):

July 25, considered and passed House.

Oct. 13, considered and passed Senate.