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UPPER COLORADO AND SAN JUAN RIVER BASIN ENDAN- GERED FISH RECOVERY PROGRAMS REAUTHORIZATION ACT OF 2005

DECEMBER 8, 2005.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1578]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1578) to reauthorize the Upper Colorado and San Juan River Basin endangered fish recovery implementation programs, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF MEASURE

The purpose of S. 1578 is to extend authorization and increase the amounts authorized to be appropriated for the Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs.

BACKGROUND AND NEED

The Upper Colorado River Endangered Species Recovery Program was established in 1988 and the San Juan River Basin Recovery Implementation Program was established in 1992. The goal of both programs is to recover endangered fish in the respective basins. In 2000, the Upper Colorado and San Juan River Basins Endangered Fish Recovery Programs Act was enacted (Public Law 106–392). The Act authorized the Bureau of Reclamation (hereinafter “Bureau”) to provide cost sharing for the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins. Activities undertaken by the programs provide compliance with the Endangered Species Act as required for the operation of more than 800 Federal and non-Federal multi-purpose projects which provide more than 2.5 million acre-feet of water per

year. Due to increased construction and property acquisition costs, the amounts authorized to be appropriated for the program are no longer adequate to fulfill the program goals. The termination of authority for capital construction projects date is 2008. Program participants are concerned that, in its multi-year planning, the administration will not include the program in its budget request which would require a large increase in the Bureau's 2008 budget. Additionally, projects currently underway cannot be completed by the program termination date of 2008. For this reason, the program participants have sought an extension of authority through 2010.

During the consideration of Public Law 106-392, it was anticipated that the value of lost power revenues that would have gone to meet endangered fish needs was approximately \$15 million. Congress recognized this as a non-Federal cost share in Public Law 106-392. However, the original estimate has been exceeded. The estimated lost revenue to the Western Area Power Administration is \$22.1 million, \$7.1 million more than was originally estimated. Program participants have requested that \$7.1 million in lost power revenues be recognized as non-Federal cost share, as in the original authorizing legislation.

The planned enlargement of Elkhead Reservoir would provide an additional 5,000 acre-feet of water per annum for use by the program to provide flows for endangered species. According to program participants, the program plans to lease up to 2,000 acre-feet of water per year from the Colorado River Water Conservation District at a rate of \$50 per acre-foot per annum, paying only for the water actually leased in a given year. On average, the lease is expected to be 500 acre-feet of water per year at a cost of \$25,000. The amortized cost of providing 2,000 acre-feet of water per year of storage in Elkhead Reservoir is \$110 per acre-foot of water per year, or \$220,000 per year, resulting in a non-Federal cost share to the Program of \$195,000 per year for 20 years, for a total of \$3.9 million. This is in addition to the \$5.0 million that was recognized in Public Law 106-392 as a water user cost share as a result of releases from Wolford Mountain Reservoir.

LEGISLATIVE HISTORY

S. 1578 was introduced by Senator Allard for himself and Senators Bennett, Hatch and Salazar on July 29, 2005, and referred to the Committee on Energy and Natural Resources. Senator Bingaman is also a co-sponsor. The Subcommittee on Water and Power held a hearing on S. 1578 on October 6, 2005. S. Hrg. 109-105. At the business meeting on November 16, 2005, the Committee on Energy and Natural Resources ordered S. 1578 favorably reported.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business meeting on November 16, 2005, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 1578.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title, the “Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2005”.

Section 2 increases the authorization of appropriations for capital projects from \$46 million to \$61 million, extends authorization for capital projects in both the Upper Colorado and San Juan River basins from 2008 to 2010, increases the total cost ceiling for both Recovery Implementation Programs from \$100 million to \$126 million by increasing the total cost ceiling for Upper Colorado River Basin fish recovery from \$82 million to \$108 million, allows the capital cost of water from the enlargement of Elkhead Reservoir to be considered a non-Federal contribution, and increases the non-Federal cost-share cap from \$20 million to \$31 million.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

DECEMBER 2, 2005.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1578, the Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1578—Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2005

Summary: S. 1578 would extend the authorization period and increase the amounts authorized to be appropriated for the fish recovery programs in the Upper Colorado and San Juan River Basins. Under current law, \$46 million is authorized to be appropriated through 2008 for the construction of capital projects in both basins. Enacting S. 1578 would extend the authorization for both programs through 2010 and increase the authorization of appropriations to \$61 million for construction projects. CBO estimates that implementing S. 1578 would cost \$12 million over the 2008–2010 period, assuming appropriation of the authorized amount.

S. 1578 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The funds authorized in the bill would benefit states participating in programs that assist with recovering fish habitats. Any cost they may incur would result from complying with conditions for receiving federal assistance.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1578 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION					
Fish Recovery Spending Under Current Law:					
Estimated Authorization level ¹	2	4	0	0	0
Estimated Outlays	3	4	1	1	0
Proposed Changes:					
Estimated Authorization Level	0	0	5	5	5
Estimated Outlays	0	0	3	4	5
Fish Recovery Spending Under S. 1578:					
Estimated Authorization Level ¹	2	4	5	5	5
Estimated Outlays	3	4	4	5	5

¹ The 2006 level is the amount appropriated for that year to carry out the fish recovery programs in the Upper Colorado and San Juan River Basins. The 2007 level reflects the current balance of authorized funding for the Bureau of Reclamation to carry out these fish recovery programs. For this estimate, CBO assumes that the remaining \$4 million authorized to be appropriated for these programs will be provided in 2007.

Basis of estimate: For this estimate, CBO assumes that his legislation will be enacted in 2006 and that the estimated amounts necessary to implement the bill will be appropriated for 2008 through 2010.

Under current law, \$46 million is authorized to be appropriated to the Bureau of Reclamation to implement the fish recovery programs for the Upper Colorado and San Juan River Basins. To date, the bureau has been appropriated \$42 million for these programs, and CBO assumes that the balance of funds remaining from the current authorization (that is, \$4 million) will be appropriated in fiscal year 2007. Enacting this legislation would increase the authorization of appropriation from \$46 million to \$61 million. CBO assumes that the additional \$15 million authorized to be appropriated for the fish recovery programs would be provided over the 2008–2010 period in equal increments. Assuming appropriation of the authorized amount, CBO estimates that implementing this bill would cost \$12 million over the 2008–2010 period.

Intergovernmental and private-sector impact: S. 1578 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The funds authorized in the bill would benefit states participating in programs that assist with recovering fish habitats. Any cost they may incur would result from complying with conditions for receiving federal assistance.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, local, and tribal governments: Lisa Ramirez-Branum; Impact on the Private Sector: Fatimot Ladipo.

Estimated approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1578. The bill is not a regulatory measure in the sense of impos-

ing Government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1578.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau at the Subcommittee hearing on S. 1578 in the 109th Congress follows:

STATEMENT OF WILLIAM E. RINNE, DEPUTY COMMISSIONER OF THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Madam Chairman and members of the Committee. Thank you for the opportunity to appear today on behalf of the Administration in support of S. 1578, a bill to reauthorize the Upper Colorado River and San Juan River Basin endangered fish recovery implementation programs. The Administration commends Senator Wayne Allard for introducing the bill and Senators Bennett, Hatch, and Salazar for cosponsoring this measure.

The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Programs were established in 1988 and 1992, respectively. The goals of the programs are to recover four endangered fish species in a manner consistent with state and tribal laws, interstate compacts, the Endangered Species Act, other federal laws, and Indian trust responsibilities while water development proceeds. Participants in these two programs include the States of Colorado, New Mexico, Utah, and Wyoming; federal agencies, including the Bureau of Reclamation, Fish and Wildlife Service, Western Area Power Administration, National Park Service, Bureau of Land Management, and Bureau of Indian Affairs; American Indian tribes including the Navajo Nation, Jicarilla Apache Nation, Southern Ute Tribe, and Ute Mountain Ute Tribe; water users; power users; and environmental organizations.

Actions taken by the Programs to recover the Colorado pikeminnow, humpback chub, razorback sucker, and bonytail meet Endangered Species Act (ESA) requirements for operation of federal multi-purpose projects, water projects benefiting the tribes, and non-federal water projects. Activities and accomplishments of these programs provide ESA compliance for more than 800 federal and non-federal water projects depleting approximately 2.5 million acre-feet per year in the Upper Colorado River and San Juan River Basins.

Recovery Implementation Program actions include providing water for endangered fish, managing nonnative fish species, restoring habitat, stocking endangered fish, and researching and monitoring fish populations and habitat. The Recovery Implementation Programs' construction ele-

ments include construction and operation of fish hatcheries and grow-out ponds, fish screens in water diversion canals, fish passage structures around migration barriers, and restoration and maintenance of floodplain habitats.

Congress authorized federal expenditures for these programs in Public Law 106–392, recognizing cost sharing provided by the states, power users, and water users. A total of \$100 million for construction was authorized for the two programs. Congressional appropriations are providing \$46 million; Western Area Power Administration is providing \$17 million from power sales revenue (this is considered a contribution by local power users); the states of Colorado, Utah, Wyoming and New Mexico are providing \$17 million; plus an additional \$20 million in benefits foregone from power users and water users.

With indexing for inflation, the authorized Federal amount for construction of projects in the Upper Colorado River Basin is now \$64.5 million. Current total estimated costs are \$77 million, indicating an estimated shortfall in authorization of approximately \$12.5 million.

The estimated additional costs and time to complete Upper Colorado River Basin construction elements result from:

- increasing construction costs, energy costs, and the world market demand for steel;
- delayed construction due to property acquisition issues; and
- additional components and design features as identified necessary from previous construction of fish passages and screens.

This bill would amend Public Law 106–392 (as amended by Public Law 107–375) by:

- increasing the Federal authorized ceiling by \$15 million for capital construction for the Upper Colorado River Recovery Program, for a total of \$61 million;
- recognizing an additional \$11 million in non-federal cost sharing from water users and power revenue losses over the original \$20 million from these sources, bringing the non-Federal share to \$65 million; and
- extending the construction authorization period of both Recovery Implementation Programs from 2008 to September 30, 2010.

Enactment of this bill will allow these Recovery Implementation Programs to complete construction projects critical to the recovery of the four endangered fishes and ensure continued successful water management for multiple uses. S. 1578 provides a unique opportunity to sustain a partnership combining federal and non-federal funding in an ongoing effort to recover endangered species while fully recognizing and meeting the water needs of local communities. We urge passage of S. 1578.

This concludes my testimony. I am happy to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1578, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in block brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**THE UPPER COLORADO AND SAN JUAN RIVER BASINS
ENDANGERED FISH RECOVERY PROGRAMS**

Public Law 106–392, As amended

SECTION 1. * * *

* * * * *

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~~] *\$61,000,000* 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 [~~2008~~] *2010* 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 [~~2008~~] *2010* 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~~] *\$126,000,000* of which—

(1) costs shall not exceed [~~\$82,000,000~~] *\$108,000,000* for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin through fiscal year [~~2008~~] *2010*; and

(2) costs shall not exceed \$18,000,000 for the San Juan River Recovery Implementation Program through fiscal year [~~2008~~] *2010*.

* * * * *

(c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL PROJECTS.—

(1) * * *

* * * * *

(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 and the *Elkhead Reservoir enlargement* in Colorado.

Such costs shall be considered as non-Federal contributions,
not to exceed ~~【\$20,000,000】~~ *\$31,000,000*.

