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PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM AND PATHFINDER MODIFICATION AUTHORIZATION ACT

APRIL 10, 2008.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 1462]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1462) 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, having considered the same, reports favorably thereon with amendments and recommends that the Act, as amended, do pass.

The amendments are as follows:

1. On page 3, strike line 4 and insert the following: Reservoir, in accordance with the requirements described in title II.

2. On page 5, line 9, strike “title” and insert “Act”.

3. On page 5, line 21, strike “participating”.

4. On page 7, line 15, strike “title” and insert “Act”.

5. On page 9, line 8, strike “The approximately” and insert “Provided that all of the conditions described in section 203 are first met, the approximately”.

6. At the end, add the following:

“SEC. 203. CONDITIONS PRECEDENT.

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

“(1) Final approval from the Wyoming legislature for the export of Project water to the State of Nebraska under the laws (including regulations) of the State of Wyoming.

“(2) Final approval in a change of water use proceeding under the laws (including regulations) of the State of Wyoming for all new uses planned for Project water. Final approval, as used in this paragraph, includes exhaustion of any available review under State law of any administrative action authorizing the change of the Pathfinder Reservoir water right”.

PURPOSE OF THE MEASURE

The purpose of H.R. 1462 is 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.

BACKGROUND AND NEED

The Central Platte River in Nebraska is critical habitat for the endangered whooping crane, interior least tern, and pallid sturgeon, as well as the threatened piping plover. In the early 1990s, it became apparent that the critical habitat for these endangered and threatened species was affected by water use not only in Nebraska, but also in the upstream states of Wyoming and Colorado. Rather than let the U.S. Fish and Wildlife Service unilaterally establish a water supply goal for the critical habitat and limit existing depletions of water, Wyoming, Nebraska, and Colorado became interested in developing a program to ensure compliance with the Endangered Species Act while maintaining water uses in those states.

On July 1, 1997, the Governors of Nebraska, Wyoming, and Colorado, and the Secretary of the Interior signed the “Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitat along the Central Platte River, Nebraska.” Thereafter, a Governance Committee made up of representatives from the three states, the federal government, environmental organizations, and water users formulated the details of a proposed Platte River Recovery Implementation Program (Program). In 2006, the U.S. Bureau of Reclamation released a Final Programmatic Environmental Impact Statement and the U.S. Fish and Wildlife Service issued a Final Biological Opinion. The Secretary of the Interior then signed the Record of Decision supporting implementation of the Program. Following, in late 2006, each of the three Governors and the Secretary signed a Cooperative Agreement wherein they agreed to implement the Program. The Program, which is contingent upon the authorization associated with H.R. 1462, and funding by Congress and by the states, officially commenced on January 1, 2007.

LEGISLATIVE HISTORY

H.R. 1462 was introduced by Rep. Mark Udall on March 9, 2007, and referred to the Committee on Natural Resources. Representatives Barbara Cubin, Diana DeGette, Jeff Fortenberry, Ed Perlmutter, John Salazar, Adrian Smith, and Lee Terry are cosponsors. Under suspension of the rules, H.R. 1462 passed the House of Representatives on October 22, 2007 and was referred to the Committee on Energy and Natural Resources.

A companion measure, S. 752, was introduced by Senator Ben Nelson for himself and Senators Allard, Hagel, and Salazar. The Subcommittee on Water & Power held a hearing on S. 752 on April 25, 2007. (S. Hrg. 110–86.) At its business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered H.R. 1462 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by voice vote of a quorum present, recommends that the Senate pass H.R. 1462, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of H.R. 1462, the Committee adopted several amendments to improve the bill. The most significant amendment makes clear that the authorization to modify Pathfinder Dam and Reservoir in Wyoming is dependent on conditions precedent that are set forth in a new section 203 of the bill. Another amendment clarifies that the Secretary is authorized to carry out a broad range of actions to carry out the Act. The final amendment clarifies that a disclaimer regarding the existence of Federal water rights applies to the entire Act.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title and table of contents of the Act.

Section 2 provides the purposes of the Act.

Section 101 defines the terms used in Title I of the bill.

Section 102(a) authorizes the Secretary to participate in the Platte River Recovery Implementation Program and carry out projects and activities designated for implementation.

Section 102(b) authorizes the Secretary to enter into agreements and contracts, acquire property interests from willing sellers, transfer any acquired interests, and accept or provide grants in carrying out the Act.

Section 103(a) provides that the States shall contribute not less than 50 percent of the overall cost of the Program.

Section 103(b) defines the contributions that will constitute the States' share required under the Program.

Section 103(c) authorizes the use of in-kind contributions under specific conditions.

Section 104 authorizes the Program to be amended under specific conditions.

Section 105(a) limits the application of the Reclamation Reform Act as a result of Program implementation.

Section 105(b) provides that the Act does not create Federal water rights, nor requires the grant of water rights to Federal entities.

Section 106(a) authorizes \$157,140,000 in appropriations (subject to adjustment) to carry out Title I.

Section 106(b) declares that expenditure of the authorized appropriations shall be on a nonreimbursable basis.

Section 106(c) specifies the formula for adjusting authorized appropriations on an annual basis.

Section 106(d) states that any unexpended funds remaining at the end of each fiscal year, shall carry over for Program implementation activities.

Section 107 terminates the authority for the Program on September 30, 2020.

Section 201(a) authorizes the Secretary of the Interior to modify Pathfinder Dam and Reservoir and enter into agreements with the State of Wyoming as described.

Section 201(c) specifies that no Federal appropriations are needed to modify Pathfinder Dam.

Section 202 provides for the authorized uses of recaptured water from the modified Pathfinder Reservoir.

Section 203 describes the conditions precedent to modifying Pathfinder Dam and Reservoir and using the recaptured water.

COST AND BUDGETARY CONSIDERATIONS

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

H.R. 1462—Platte River Recovery Implementation Program and Pathfinder Modification Authorization Act

Summary: H.R. 1462 would authorize the Secretary of the Interior to implement a program to aid in the recovery of certain species in the Platte River basin that are listed as either threatened or endangered under the Endangered Species Act (ESA). The act also would authorize the Secretary to modify the Pathfinder Dam and Reservoir in Wyoming.

CBO estimates that implementing H.R. 1462 would cost \$66 million over the 2009–2013 period, assuming appropriation of the necessary amounts. Enacting the legislation would not affect direct spending or revenues.

H.R. 1462 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.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1462 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—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	12	15	16	16	16
Estimated Outlays	7	12	15	16	16

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted before the end of 2008 and that the necessary amounts will be appropriated near the start of each subsequent fiscal year. Estimates of outlays are based on historical spending patterns for similar activities.

In 1997, the Department of the Interior (DOI) signed a cooperative agreement with Colorado, Wyoming, and Nebraska to develop a program for wildlife protection along the Platte River. In late 2006, the Secretary and the governor of each state signed the Platte River Recovery Implementation Program. The program aims

to restore and conserve the habitat of four threatened and endangered species in the Platte River basin. The program will be carried out in incremental stages.

Title I would authorize the Secretary to participate in the first increment of the program in cooperation with Nebraska, Wyoming, and Colorado. Based on information provided by the Bureau of Reclamation, CBO estimates that implementing the recovery program in title I would cost \$66 million over the 2009–2013 period and an additional \$108 million thereafter. DOI would use the appropriations to acquire land and water interests and undertake habitat restoration and other activities deemed necessary by the Secretary.

Title II of the act would authorize the Secretary to modify the Pathfinder Dam and Reservoir in Wyoming. The Secretary would be authorized to enter into agreements with the state of Wyoming to implement those modifications. The state would be responsible for all costs of the modifications. Hence, CBO estimates that the federal government would incur no significant costs to implement title II.

Intergovernmental and private-sector impact: H.R. 1462 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Any costs to states to match federal assistance authorized by the act would be incurred voluntarily.

Previous CBO Estimate: On October 19, 2007, CBO transmitted a cost estimate for H.R. 1462 as ordered reported by the House Committee on Natural Resources on October 10, 2007. The total costs of the two versions of the legislation are identical.

Estimate prepared by: Federal Costs: Tyler Kruzich; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private-Sector: Amy Petz.

Estimate approved by: Theresa Gullo, 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 H.R. 1462. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic 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 H.R. 1462, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 1462, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined by rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Bureau of Reclamation at the Senate Committee on Energy and Natural Resources subcommittee hearing on companion measure, S. 752 follows:

STATEMENT OF ROBERT JOHNSON, COMMISSIONER, U.S.
BUREAU OF RECLAMATION

Mr. Chairman and members of the subcommittee, I am Robert Johnson, Commissioner of the Bureau of Reclamation. I appreciate the opportunity to appear before you today to discuss S. 752, the Platte River Recovery Implementation Program and the Pathfinder Modification Authorization Act. The Department supports passage of S. 752.

The Platte River originates in the mountains of Wyoming and Colorado and, as it flows through Nebraska, provides important habitat for the whooping crane, piping plover, interior least tern, and pallid sturgeon (target species) that are listed as threatened or endangered under the Endangered Species Act (ESA). In 1997, the States of Colorado, Nebraska, and Wyoming and the Department of the Interior signed a Cooperative Agreement to develop a basin-wide program that would provide measures to assist in the recovery of these four target species in the Platte River in Nebraska. In late 2006, the Platte River Recovery Implementation Program (Program) Agreement was signed by the Governors of the three States and the Secretary of the Interior, allowing for Program implementation to begin January 1, 2007. The Program assists in the conservation and recovery of the target species in the Platte River basin and implements aspects of the recovery plans for these species, thereby providing compliance under the Endangered Species Act (ESA) for existing water related activities and certain new water-related activities in the Platte River Basin in Colorado, Wyoming, and Nebraska.

Title I of S. 752 provides authorization for the Secretary of the Interior, through the Bureau of Reclamation, to fully implement the Program. It also provides Reclamation with authority to appropriate non-reimbursable funds for the Program. Reclamation, in cooperation with the Governance Committee, will implement the Program in incremental stages with the first increment being a period of 13 years. Pursuant to the Program Agreement, the Federal cost share for the first increment is \$157 million (2005 dollars), plus indexing. The State cost-share is the same amount, to be provided from the three State Parties to the Program Agreement.

Pre-implementation activities, such as forming the new Governance Committee, initiating the selection of the Executive Director, and various administrative functions have already begun. Federal activities up to this point have been authorized under existing law encouraging the Department of the Interior to work with States to promote habitat protection and the protection of species. Under the ESA, the Program can initiate monitoring and research activities; however, actual water and land acquisitions cannot be initiated using Federal funds prior to enactment of this legislation. Upon enactment of this authorizing legislation, Program land and water acquisitions will begin. It

is critical that acquisitions begin early in the Program to allow sufficient time to evaluate the biological response and effectiveness of the Program's recovery measures.

Title II authorizes the Secretary, through the Bureau of Reclamation, to modify Pathfinder Dam and Reservoir and enter into agreements with the State of Wyoming to implement this modification. No Federal funds are required for this activity.

In accordance with our commitment to cooperative conservation, the Department of the Interior seeks to encourage the efforts of States and local communities to play active roles in managing the resources they depend on for their livelihoods. The Platte River Recovery Implementation Program that would be authorized under this Act is an example of a partnership combining Federal and Non-Federal funding in an ongoing effort to recover endangered species while also meeting the water needs of local communities, irrigators, power generation, and the environment. Enactment of this legislation provides an opportunity not only to meet ESA requirements using a basin-wide, cooperative, and scientific approach, but to do so in a manner that protects existing water uses and allows for future water uses in the Platte River Basin. For these reasons, the Administration supports S. 752.

Mr. Chairman, this completes my statement. I am happy to answer any questions the Subcommittee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill H.R. 1462, as ordered reported.

