

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

December 8, 2017

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: **H.R. 4465 (Rep. John Curtis, R-UT)**, To maintain annual base funding for the Upper Colorado and San Juan Fish Recovery Programs through fiscal year 2023, to require a report on the implementation of those programs, and for other purposes. *“Endangered Fish Recovery Programs Extension Act of 2017”*
December 12-13, 2017; 1324 Longworth HOB

H.R. 4465 (Rep. John Curtis), *“Endangered Fish Recovery Programs Extension Act of 2017”*

Summary of the Bill

In order to promote the dual goals of delisting certain Endangered Species Act (ESA)-listed species, while at the same time ensuring the continued reliability of water and power operations in the Upper Colorado and San Juan River Basins, H.R. 4465 extends part of P.L. 106-392's authorization to ensure the continued use of annual power user fees for these efforts. The bipartisan bill, introduced by Congressman John Curtis (R-UT), also requires a report to Congress on the efficacy and cost effectiveness of the Upper Colorado and San Juan Fish Recovery Programs.

Cosponsors

Reps. Rob Bishop (R-UT), Ken Buck (R-CO), Liz Cheney (R-WY), Diana DeGette (D-CO), Paul Gosar (R-AZ), Doug Lamborn (R-CO), Stevan Pearce (R-NM), Ed Perlmutter (D-CO), Jared Polis (D-CO), Chris Stewart (R-UT) and Scott Tipton (R-CO).

Background

The Upper Colorado and San Juan River Basins (see Figure 1) provide key sources of water in the western United States. The Bureau of Reclamation (Reclamation) constructed numerous water and power projects to store and use the water for irrigation, drinking water, hydropower and flood control purposes, and to benefit recreation and fish and wildlife. Projects include the Colorado River Storage Project's (CRSP) Flaming Gorge Unit, which can store over 3.5 million acre feet of water (one acre foot is 325,851 gallons) and can generate over 150 megawatts of power¹ (one megawatt can supply up to 1,000 homes). The three dams that make up the Aspinall Unit, also in the CRSP system, store more than 1 million acre feet of water² and can generate more than 275 megawatts of power.³ While Flaming Gorge, the Aspinall Unit, and other CRSP projects and non-federal projects played a core role in western settlement, they continue to be economically important and financially self-sustaining today and into the future.



Figure 1: Upper Colorado and San Juan River Basins

The ESA has significant impacts on the CRSP and other Reclamation and non-federal projects. The Colorado and San Juan Rivers are home to fourteen native fish species. Four of these species – the Colorado pikeminnow, razorback sucker, humpback chub and bonytail – are listed as “endangered” under the ESA. Those designations led to the threat of water and power use restrictions. As a result, the States of Colorado, New Mexico, Utah and Wyoming signed cooperative agreements with the federal government in 1988 and 1992 to help achieve the dual goals of recovering endangered fish populations while continuing water and power facility development and operations.⁴ Other partners include water and power users, tribes and environmental organizations.

¹ United States Bureau of Reclamation, CRSP Flaming Gorge Unit Operations, <http://www.usbr.gov/uc/rm/crsp/fg/fgOps.html> , November 25, 2008

² United States Bureau of Reclamation, CRSP Aspinall Unit Operations, <http://www.usbr.gov/uc/rm/crsp/aspinall/index.html> , September 29, 2008

³ Leslie James, Executive Director Colorado River Energy Distributors Association, Testimony Before the House of Representatives Water and Power Subcommittee, <http://naturalresources.house.gov/UploadedFiles/JamesTestimony09.22.09.pdf> September 22, 2009

⁴ <http://www.coloradoriverrecovery.org/general-information/about.html>

These cooperative agreements led to the creation of the Upper Colorado and San Juan Recovery Implementation Programs (Programs) to help provide ESA compliance for over 2,300 water and power projects⁵ that withdraw more than 3 million acre feet of water.⁶ The Programs' goals are to recover the humpback chub, razorback sucker, bonytail and the Colorado pikeminnow – while continuing facility operations to meet current and future human needs, with the ultimate goals of species delisting. Furthermore, genetically diverse, hatchery-based fish are raised at federal, State and tribal hatcheries (See Figure 2). These hatchery-raised fish help establish sustainable species populations since the hatchery produced fish are counted as part of the recovery criteria under the ESA once they reach adult status.⁷



Figure 2: USFWS Ouray National Fish Hatchery (Left), Navajo Nation Razorback Sucker Stock Ponds (Right)

Federal participation and non-federal cost-sharing for the Programs were authorized in 2000 with the enactment of P.L. 106-392. Under this law, a cost share between the impacted States, water and power users and the federal government was established. To date, the States and water and power users have paid a majority of capital costs (approximately 57 percent).⁸ CRSP power users/beneficiaries also agreed to pay for some non-capital program functions. These costs are largely absorbed by electricity ratepayers. In 2012, Congress enacted the *Endangered Fish Recovery Programs Extension Act of 2012* (P.L. 112-270), which reauthorized

⁵ Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, *Implementing Innovative Solutions to Manage Water and Hydropower Resources While Recovering Endangered Species, Highlights 2011-2012*, <http://www.coloradoriverrecovery.org/general-information/general-publications/briefingbook/2012BriefingBook.pdf> , July 5, 2012

⁶ United States Department of the Interior, *Utilization of Power Revenues for Annual Base Funding of the Upper Colorado River and San Juan River Basin Recovery Implementation Programs, A Report to Congress*, <http://www.usbr.gov/uc/envdocs/reports/UCSJRIP/UCSJRIP-ReptoCongress.pdf> , February 2010

⁷ Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, *Implementing Innovative Solutions to Manage Water and Hydropower Resources While Recovering Endangered Species, Highlights 2011-2012*, <http://www.coloradoriverrecovery.org/general-information/general-publications/briefingbook/2012BriefingBook.pdf> , July 5, 2012

⁸ Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program, *Implementing Innovative Solutions to Manage Water and Hydropower Resources While Recovering Endangered Species, Highlights 2011-2012*, <http://www.coloradoriverrecovery.org/general-information/general-publications/briefingbook/2012BriefingBook.pdf> , July 5, 2012

the use of CRSP hydropower revenues to support funding for “fish monitoring, research and program management” through 2019. The bill also included provisions to limit overhead costs and increase accountability for official travel relating to carrying out the Programs.

H.R. 4465 extends the use of power user payments by authorizing funds for the Programs through 2023. This bipartisan bill also requires a report covering the Programs’ effectiveness in fish recovery and the costs and how revenue streams are utilized to operate the Programs. The previous reauthorization passed the House by voice vote and the Senate by unanimous consent in 2012.⁹

Major Provisions/Analysis of HR 4665

Section 2 amends P.L. 106-392 to allow for the continued use of hydropower revenues to fund the Programs through 2023.

Section 3 requires the Secretary of the Interior to issue a report describing the accomplishments of the Recovery Implementation Programs, and assessing progress and goals related to the listing status of several species. The report will also analyze revenues and expenditures related to the Programs.

Cost:

The Congressional Budget Office has yet to complete a cost estimate of this bill.

Administration Position

Unknown.

Anticipated Amendments

None.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 4465

[text to be added highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 3 of Public Law 106-392

SEC. 3. AUTHORIZATION TO FUND RECOVERY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL PARTICIPATION

⁹ <https://www.congress.gov/bill/112th-congress/house-bill/6060/actions>.

IN CAPITAL PROJECTS.—(1) There is hereby authorized to be appropriated to the Secretary, \$88,000,000 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 2023 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 2023 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 \$209,000,000 of which—

(1) costs shall not exceed \$179,000,000 for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin through fiscal year 2023; and

(2) costs shall not exceed \$30,000,000 for the San Juan River Recovery Implementation Program through fiscal year 2023.

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 within 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 and the

Elkhead Reservoir enlargement in Colorado. Such costs shall be considered as non-Federal contributions, not to exceed \$87,000,000.

(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 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 [2019] 2023, 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 2018, 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 2019 that may be required to fulfill the goals of the Recovery Implementation Programs. Such report shall also describe the Recovery Implementation Programs actions and accomplishments to date, the status of the endangered species of fish and projected dates for downlisting and delisting under the Endangered Species Act of 1973, and the utilization of power revenues for annual base funding.] 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 21/2 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.

(i) LIMITATION ON INDIRECT COST RECOVERY RATE.—The indirect cost recovery rate for any transfer of funds to the U.S. Fish and Wildlife Service from another Federal agency for the purpose of funding any activity associated with the Upper Colorado River Endangered Fish Recovery Program or the San Juan River Basin Recovery Implementation Program shall not exceed three percent of the funds transferred. In the case of a transfer of funds for the purpose of funding activities under both programs, the limitation shall be applied to the funding amount for each program and may not be allocated unequally to either program, even if the average aggregate indirect cost recovery rate would not exceed three percent.

(j) REPORT.—

(1) IN GENERAL.—Not later than September 30, 2021, the Secretary shall submit to the appropriate committees of Congress a report that—

(A) describes the accomplishments of the Recovery Implementation Programs;

(B) identifies—

(i) as of the date of the report, the listing status under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) of the Colorado pikeminnow, humpback chub, razorback sucker, and bonytail; and

(ii) as of September 30, 2023, the projected listing status under the Act of each of the species referred to in clause (i);

(C)(i) identifies—

(I) the total expenditures and the expenditures by categories of activities by the Recovery Implementation Programs during the period beginning on the date on which the

applicable Recovery Implementation Program was established and ending on September 30, 2021; and

(II) projected expenditures by the Recovery Implementation Programs during the period beginning on October 1, 2021, and ending on September 30, 2023;

(ii) for purposes of the expenditures identified under clause (i), includes a description of—

(I) any expenditures of appropriated funds;

(II) any power revenues;

(III) any contributions by the States, power customers, Tribes, water users, and environmental organizations; and

(IV) any other sources of funds for the Recovery Implementation Programs; and (D) describes—

(i) any activities to be carried out under the Recovery Implementation Program after September 30, 2023; and

(ii) the projected cost of the activities described under clause (i).

(2) CONSULTATION REQUIRED.—The Secretary shall consult with the participants in the Recovery Implementation Programs in preparing the report under paragraph (1).