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SENATE

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UPPER COLORADO AND SAN JUAN RIVER BASINS RECOVERY ACT

SEPTEMBER 28, 2022.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 5001]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Natural Resources, to which was referred the Bill (H.R. 5001), to authorize the Secretary of the Interior to continue to implement endangered fish recovery programs for the Upper Colorado and San Juan River Basins, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 5001 is to authorize the Secretary of the Interior to continue to implement endangered fish recovery programs for the Upper Colorado and San Juan River Basins.

BACKGROUND AND NEED

The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program are two fish recovery programs focused on working to recover four endangered species while providing Endangered Species Act (ESA) compliance for water-related activities in the states of Colorado, New Mexico, Wyoming, and Utah. More than 2,500 water-related projects in the Upper Colorado River Basin rely on these programs for their ESA compliance. The recovery programs are currently authorized through the end of fiscal year (FY) 2023.

The Upper Colorado River Endangered Fish Recovery Program was established in 1988 to assist in the recovery of Colorado

pikeminnow, humpback chub, razorback sucker, and bonytail chub. The San Juan River Basin Recovery Implementation Program was established in 1992 to recover the Colorado pikeminnow and razorback sucker on the San Juan River. Both programs are administered through collaborative partnerships that include the Bureau of Reclamation, the U.S. Fish and Wildlife Service, and other federal agencies, as well as tribes, state agencies, hydropower customers, conservation groups, and water users working collaboratively to promote species recovery. Program funding is provided through a combination of federal appropriations, contributions from tribes, states, and water users, and revenues from hydropower generated at dams in the Upper Colorado River Basin.

The fish recovery program is successfully working to down-list the four species that are endemic to the Colorado River Basin. Despite nonnative fish predators and wide-spread drought throughout the basin, the U.S. Fish and Wildlife Service ruled in October 2021 that the humpback cub is down-listed from endangered to threatened under the ESA. The razorback sucker is under consideration for down-listing from endangered to threatened, as well. H.R. 5001, as ordered reported, extends the authorization of the two fish recovery programs that are set to expire.

LEGISLATIVE HISTORY

H.R. 5001 was introduced by Representative Neguse on August 10, 2021. The House Committee on Natural Resources reported the bill on March 9, 2022 (H. Rept. 117–263). H.R. 5001 passed the House of Representatives on March 15, 2022, by a vote of 397–27. A similar bill, S. 3693, was introduced by Senator Hickenlooper on February 17, 2022. The subcommittee on Water and Power held a hearing on both bills on May 25, 2022. At its business meeting on July 21, 2022, the Committee on Energy and Natural Resources ordered H.R. 5001 favorably reported without amendment.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on July 21, 2022, by a voice vote of a quorum present, recommends that the Senate pass H.R. 5001.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the Act as “Upper Colorado and San Juan River Basins Recovery Act”

Sec. 2. Extension of authorizations related to fish recovery programs

Section 2 extends the authority of the Department of the Interior to implement capital projects for the endangered fish recovery programs for the Upper Colorado and San Juan River basins through FY2024; raises the ceiling on costs for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin to \$184,000,000 and lowers the ceiling on costs for the San Juan River Recovery Implementation Program to \$30,000,000; and extends the deadline for the submission of the report on the

recovery implementation programs long-term management plan through FY2022.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of H.R. 5001, as ordered reported by the House Committee on Natural Resources on November 17, 2021, has been provided by the Congressional Budget Office.

H.R. 5001, Upper Colorado and San Juan River Basins Recovery Act As ordered reported by the House Committee on Natural Resources on November 17, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	10	10
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 5001 would authorize the appropriation of \$10 million in 2024 for the Bureau of Reclamation to participate in fish recovery programs, including population monitoring and removal of non-native fish, in the Upper Colorado River and San Juan River Basins. In recent years, annual spending for the program has totaled \$9 million. Based on historical spending patterns, CBO estimates that implementing the bill would cost \$10 million over the 2022–2026 period, assuming the appropriation of specified amounts.

The bill also would decrease the maximum authorized amount for fish recovery projects on the San Juan River by \$10 million, adjusted for inflation, and increase the maximum for the Upper Colorado River by the same amount. That reallocation would have no net effect on discretionary costs over the 2022–2026 period.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of 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. 5001.

The Act 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. 5001, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

H.R. 5001, as ordered reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the May 25, 2022, hearing on H.R. 5001 follows:

STATEMENT OF CAMILLE CALIMLIM TOUTON, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

S. 3693 extends authority for the Upper Colorado River and San Juan River Basin endangered fish recovery implementation programs from 2023 to 2024. The Administration supports the reauthorization of these important, and demonstrably successful, fish recovery programs.

The Upper Colorado River Endangered Fish Recovery Program and the San Juan River Basin Recovery Implementation Program (the 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 (ESA), 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 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 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 2,500 federal and non-federal water projects depleting approximately 3.7 million acre-feet per year in the Upper Colorado River and San Juan River Basins.

These two important recovery programs are intended to recover four species of endangered fish while allowing the states and Tribes to develop their full water entitlement and maintain compliance with interstate compacts and associated laws. Work focuses on four major areas:

1. Habitat management including providing and protecting instream flows;

2. Habitat development and maintenance, including fish ladders, fish screens, levee removal, and flooded bottomland restoration;

3. Augmentation and conservation of genetic integrity, development and operation of propagation facilities, and fish stocking; and

4. Management of non-native fish;

As evidence of the success of these Programs, the Fish and Wildlife Service recently reclassified the humpback chub from endangered to threatened on October 15, 2021 and proposed a similar reclassification for razorback sucker in July of 2021.

The Upper Colorado and San Juan River Basins Recovery Act would authorize continued implementation of endangered fish recovery programs for the Upper Colorado and San Juan River Basins through 2024 to protect and recover endangered fishes while water development proceeds in compliance with all applicable federal and state laws. The Upper Colorado and San Juan River Basins Recovery Act would also extend the deadline for the Report to Congress. The new legislation extends this reporting deadline to September 30, 2022. The report will detail, among other things, activities to be carried out after FY 2023 and the cost of such activities.

We look forward to working with the Committee to further these important recovery programs.

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 H.R. 5001, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 106–392

AN ACT 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.

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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, \$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]** 2024 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]** 2024 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]** \$184,000,000 for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin through fiscal year **[2023]** 2024; and

(2) costs shall not exceed **[\$30,000,000]** \$25,000,000 for the San Juan River Recovery Implementation Program through fiscal year **[2023]** 2024.

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 Woford 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) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There is authorized to be appropriated to the Secretary to be used by the Bureau of Reclamation to make the annual base funding contributions to the Recovery Implementation Programs \$10,000,000 for each of fiscal years 2020 through ~~2023~~ 2024.

(B) NONREIMBURSABLE FUNDS.—The funds contributed to the Recovery Implementation Programs under subparagraph (A) shall be considered a nonreimbursable Federal expenditure.

(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. 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(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] 2022, 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] 2024, the projected listing status under that 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] 2022; and

(II) projected expenditures by the Recovery Implementation Programs during the period beginning on October 1, [2021] 2022, and ending on September 30, [2023] 2024; and

(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】** 2024; 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).

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