

Proposed 2008 Amendments Regarding Authorization of Construction of Capital Projects To 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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SUMMARY: P.L.106-392 authorizes the Bureau of Reclamation to provide cost sharing for capital construction and annual operations to the endangered fish recovery programs in the Upper Colorado and San Juan River basins. The law recognizes significant specific cost sharing contributions by other program participants, including the States of Colorado, Wyoming, Utah, and New Mexico, power customers and water users. The proposed 2008 amendments address current and foreseeable capital construction needs not presently authorized for the two programs. Current authority for construction has been largely expended and ceases after FY 2010.

Additional authority will allow Reclamation to replace, repair and rehabilitate, as needed, approximately \$100 million in capital facilities (fish passages, fish screens, flooded bottomlands habitat and hatcheries, and a reservoir) constructed by the programs. These facilities, located on or adjacent to major rivers in the Upper Colorado River basin, are subject to damage from flooding and debris. Additional Upper Colorado Program authority is also needed to complete the Tusher Wash fish screen on the Green River and additional time is needed to complete construction projects in the San Juan basin. In addition to these needs, unstable rock formations adjacent to designated critical habitat for the endangered fish caused two major landslides near Farmington, New Mexico. The U.S. Fish and Wildlife Service determined that the unstable cliffs are a threat to critical habitat in the San Juan River. Authority is needed to eliminate this threat.

The proposed amendments would authorize an additional \$12 million in federal expenditures for the San Juan Recovery Program, an additional \$15 million in federal expenditures for the Upper Colorado River Program, and recognize additional non-federal contributions of \$56 million.

Proposed 2008 Amendments Regarding Additional Authorization of Construction of Capital Projects To Public Law 106-392

UPPER COLORADO AND SAN JUAN RIVER BASIN RECOVERY PROGRAMS:

These two programs recover four federally listed endangered fish species in the Upper Colorado River basin while water development and management activities proceed in compliance with state laws, interstate compacts, and the federal Endangered Species Act. Activities of the programs provide Endangered Species Act compliance for more than 1,600 water projects depleting approximately three million acre-feet per year in the Upper Colorado River basin. No lawsuits have been filed as a result of ESA compliance. Both programs have substantial grass roots support among participants, including the four Upper Basin states, American Indian tribes, water users, power customers and environmental organizations. Four federal agencies (U.S. Fish and Wildlife Service, U.S. Bureau of Reclamation, National Park Service, and Western Area Power Administration) participate in the programs. The Upper Basin and San Juan recovery programs have operated since 1988 and 1992 respectively.

P.L. 106-392: P.L.106-392 was signed into law on October 30, 2000. The law authorizes the Bureau of Reclamation to provide cost sharing of capital construction and annual operations for the endangered fish recovery programs for the Upper Colorado and San Juan River basins. The law recognizes significant and specific cost sharing contributions to the recovery programs by the States of Colorado, Wyoming, Utah, and New Mexico, power customers, and water users for these purposes. Capital projects include fish passages, fish screens, hatcheries, flood plain and instream habitat, and a reservoir to provide flow augmentation.

P.L. 106-392 has been amended twice. P.L.107-375 extended the period for capital construction to 2008 for both programs. P.L.109-183 extended the period for construction of capital projects for both programs through FY 2010, authorized an additional \$15 million in capital expenditures for the Upper Colorado River Recovery Program, and recognized an additional \$11 million in non-federal cost share contributions.

NEED FOR 2008 AMENDMENTS: By 2010, these two programs will have constructed approximately \$100 million in facilities (fish passages, fish screens, flooded bottomlands habitat, hatcheries, and a reservoir that augments flows for endangered fish). These facilities are on, or adjacent to, major rivers in the Upper Colorado and San Juan River basins. These complex facilities will require rehabilitation, repair or replacement. Many of the facilities are susceptible to damage by floods and debris associated with the major rivers on which they are located (Green, Colorado, Gunnison and San Juan). Additional authority is needed to complete the Tusher Wash fish screen on the Green River, and additional time is needed to complete capital projects in the San Juan basin.

Authorization for capital construction expires on September 30, 2010. There is no funding authority for Reclamation to repair, rehabilitate or replace these facilities after that date or to complete the Tusher Wash fish screen and San Juan basin projects. Existing funding authority will have been expended. The proposed amendments would provide an additional \$20 million in authorization for repairs, rehabilitation and replacement of these facilities through 2023. Appropriations will only be requested as needed.

One such unanticipated need for capital expenditures occurred in 2007. Unstable rock formations adjacent to designated critical habitat for the endangered razorback sucker and Colorado pikeminnow in the San Juan River caused a major landslide near Farmington, New Mexico. A second slide occurred in August, 2007 in the same area. U.S. Fish and Wildlife Service determined that the unstable cliffs are a threat to critical habitat in the San Juan River. The estimated cost of stabilizing the rock formation is \$7 million. Presently, authority for this type of activity does not exist in P.L. 106-392. The proposed amendments would add authorized funding to protect critical habitat.

Specifically, the proposed 2008 amendments would achieve the following:

- Authorize an additional \$12 million in federal expenditures for capital projects for the San Juan Program for the purposes of a) protecting critical habitat of endangered fish species and related infrastructure from rock slides in the area west of Farmington (\$7 million), and b) repair, rehabilitation and replacement of constructed capital facilities (fish passages, fish screens, habitat, hatcheries) as needed through 2023 (\$5 million).
- Authorize an additional \$15 million in federal expenditures for capital projects for the Upper Colorado Program for the purposes of a) constructing a fish screen on Tusher Wash in critical habitat on the Green River, Utah in light of significantly increased construction material costs, and b) for repairs, rehabilitation and replacement of constructed capital facilities (fish screens, fish passages, habitat, hatcheries) as needed through 2023.
- Recognize additional non-federal cost sharing of \$56 million through 2023.

IMPACT ON COST SHARING: The proposed amendments would increase the total capital projects authorizations from \$126 million to \$209 million. However, authorization for federal appropriations would only increase from \$61 million to \$88 million through 2023, an increase of \$27 million over the 13 fiscal year period. The remaining \$56 million is provided by non-federal contributions recognized by Congress in P.L. 106-392. This additional non-federal contribution from power replacement costs due to reoperation of Flaming Gorge Dam to benefit the endangered fish is conservatively estimated at \$56 million above the current estimate of \$22.1 million. Non-federal cost sharing also includes \$8.9 million from water users previously recognized by Congress.

A comparison of cost sharing under the proposed 2008 amendments with the present law is provided below.

Table 1 – Currently Authorized Capital Projects Authorization And Proposed Funding Authorization to Accomplish Needed 2008 Amendments

<i>Item</i>	<i>Currently Authorized (millions \$)</i>	<i>Proposed (millions \$)</i>
Capital Expenditure Completion Deadline	2010	2023
<u>Total Capital Projects Authorization</u>	\$126	\$209
Federal share	(48%) \$61	(42%) \$88
Non-federal share	(52%) \$65	(58%) \$121
<u>Funding Sources</u>		
Federal appropriations	\$61	\$88
Non-federal Cost Share		
○ Power revenues	\$17	\$17
○ Upper Basin States	\$17	\$17
○ Recognized non-federal water and power contributions	\$31	\$87
	\$126	\$209
<u>Funding Distribution</u>		
▪ San Juan Program capital projects	\$18	\$30
▪ Upper Colorado Program capital projects	\$77	\$92
▪ Recognized non-federal water and power contributions	\$31	\$87
	\$126	\$209

PROPOSED SPECIFIC AMENDMENTS TO P.L. 106-392, AS AMENDED: The specific amendments proposed to P.L. 106-392 are listed below:

- Sec. XXX. Upper Colorado and San Juan River Basins.- Public Law 106-392 is amended by:
- (a) inserting in Sec. 2(5) after "and replacement", "rehabilitation and repair";
 - (b) inserting in Sec. 2(6) after "instream flows,", " those for protection of critical habitat through stabilization of adjacent stream banks and adjacent impacted infrastructure, those for preventing entrainment of fish in water diversions,";
 - (c) replace in Sec. 3(a)(1) "\$61,000,000" with "\$88,000,000";
 - (d) replace in Sec. 3(a)(2) "\$2010" with "2023";
 - (e) replace in Sec. 3(a)(3) "2010" with "2023";
 - (f) replace in Sec. 3(b) "\$126,000,000" with "\$209,000,000";
 - (g) replace in Sec. 3(b)(1) "\$108,000,000" with "\$179,000,000" and "2010" with "2023";
 - (h) replace in Sec. 3(b)(2) "\$18,000,000" with "\$30,000,000" and "2010" with "2023"; and
 - (i) replace in Sec. 3(c)(4) "\$31,000,000" with "\$87,000,000".