

UPPER COLORADO AND SAN JUAN RIVER BASINS  
RECOVERY ACT

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MARCH 9, 2022.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. GRIJALVA, from the Committee on 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 Natural Resources, to whom 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 with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Upper Colorado and San Juan River Basins Recovery Act”.

**SEC. 2. EXTENSION OF AUTHORIZATIONS RELATED TO FISH RECOVERY PROGRAMS.**

Section 3 of Public Law 106–392 (114 Stat. 1603 et seq.) is amended—

- (1) by striking “2023” each place it appears and inserting “2024”;
- (2) in subsection (b)(1), by striking “\$179,000,000” and inserting “\$184,000,000”;
- (3) in subsection (b)(2) by striking “\$30,000,000” and inserting “\$25,000,000”;
- (4) in subsection (h), by striking “, at least 1 year prior to such expiration,”; and
- (5) in subsection (j), by striking “2021” each place it appears and inserting “2022”.

PURPOSE OF THE BILL

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 FOR LEGISLATION

Four fish species endemic to the Colorado River Basin—the Colorado pikeminnow, humpback chub, razorback sucker, and bonytail chub—are listed as endangered or threatened under the Endangered Species Act (ESA).<sup>1</sup> The species face challenges from predatory non-native fish, as well as changes in water temperature and flow associated with human-induced factors such as large upstream dams.<sup>2</sup> Two fish recovery programs focusing on the Upper Colorado River and a major Colorado River tributary, the San Juan River, are working to recover the four fish species while providing ESA compliance for water-related activities in the states of Colorado, New Mexico, Wyoming, and Utah.<sup>3</sup> More than 2,500 water-related projects in the Upper Colorado River Basin rely on these recovery programs for their ESA compliance.<sup>4</sup>

The Upper Colorado River Endangered Fish Recovery Program (Upper Colorado Recovery Program) was established in 1988 to assist in the recovery of all four of the endangered and threatened species in the Upper Colorado River Basin.<sup>5</sup> The San Juan River Basin Recovery Implementation Program (San Juan Recovery Program) was established in 1992 to recover the Colorado pikeminnow and the razorback sucker, which are both found in the San Juan River Basin.<sup>6</sup> Both programs are administered through collaborative partnerships that include the Bureau of Reclamation, the U.S. Fish and Wildlife Service (FWS), and other federal agencies, as well as tribes, state agencies, hydropower customers, conservation groups, and water users working to promote species recovery.

In 2021, FWS reclassified the humpback chub by downlisting it from endangered to threatened under the ESA, partially due to the conservation and management actions undertaken by the Upper Colorado Recovery Program partners.<sup>7</sup> The razorback sucker is under consideration for downlisting to threatened, as well.<sup>8</sup> In the face of prolonged climate change—induced drought in the Colorado River Basin, the recovery programs provide ongoing support for species recovery, including by coordinating reservoir releases to ensure water flows through habitat at key times.<sup>9</sup>

The recovery programs are currently authorized through the end of fiscal year (FY) 2023.<sup>10</sup> H.R. 5001 will reauthorize the programs

<sup>1</sup>UPPER COLO. RIVER ENDANGERED FISH RECOVERY PROGRAM & SAN JUAN RIVER BASIN RECOVERY IMPLEMENTATION PROGRAM, BRIEFING SUMMARY, 2020–2021 HIGHLIGHTS 3, 8–10 (2021) [hereinafter 2020–2021 RECOVERY PROGRAMS BRIEFING SUMMARY], <https://coloradoriverrecovery.org/uc/wp-content/uploads/sites/2/2021/11/BriefingMaterials-2020-2021-508.pdf>.

<sup>2</sup>*Id.* at 9 and 10; SAN JUAN RIVER BASIN RECOVERY IMPLEMENTATION PROGRAM, FINAL PROGRAM DOCUMENT 9 (2018).

<sup>3</sup>2020–2021 RECOVERY PROGRAMS BRIEFING SUMMARY, *supra* note 1, at 3–4.

<sup>4</sup>*Id.* at 3.

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*

<sup>7</sup>Endangered and Threatened Wildlife and Plants; Reclassification of the Humpback Chub From Endangered to Threatened With a Section 4(d) Rule, 86 Fed. Reg. 57,588, 57588, 57591 (Oct. 18, 2021) (to be codified at 50 C.F.R. pt. 17), <https://www.govinfo.gov/content/pkg/FR-2021-10-18/pdf/2021-20964.pdf>.

<sup>8</sup>Endangered and Threatened Wildlife and Plants; Reclassification of the Razorback Sucker From Endangered to Threatened With a Section 4(d) Rule, 86 Fed. Reg. 35,708 (proposed July 7, 2021) (to be codified at 50 C.F.R. pt. 17), <https://www.govinfo.gov/content/pkg/FR-2021-07-07/pdf/2021-14335.pdf>.

<sup>9</sup>2020–2021 RECOVERY PROGRAMS BRIEFING SUMMARY, *supra* note 1, at 8; Bradley Udall & Jonathan Overpeck, *The Twenty-First Century Colorado River Hot Drought and Implications for the Future*, 53 WATER RES. RSCH. 2404 (2017), available at <https://doi.org/10.1002/2016WR019638>.

<sup>10</sup>P.L. 106–392, as amended.

through FY2024 and provide additional time for reporting deadlines and finalization of implementing agreements that were delayed due to the COVID–19 pandemic.

Additionally, H.R. 5001 will amend the authorizing statute to lower the San Juan Recovery Program’s existing funding authorization by \$5 million and increase the funding authorization for the Upper Colorado Recovery Program by \$5 million, subject to pre-existing inflation adjustments. This reallocation of funds was requested by stakeholders associated with both recovery programs to allow certain shovel-ready projects for the Upper Colorado Recovery Program to be implemented in FY2023.

#### COMMITTEE ACTION

H.R. 5001 was introduced on August 10, 2021, by Representative Joe Neguse (D–CO). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On November 5, 2021, the Subcommittee held a hearing on the bill. On November 17, 2022, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Rep. Neguse offered an amendment designated Neguse #1 revised. The amendment was agreed to by unanimous consent. No additional amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

#### HEARINGS

For the purposes of clause 3(c)(6) of House Rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Water, Oceans, and Wildlife held on November 5, 2021.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, February 3, 2022.

Hon. RAÚL M. GRIJALVA,  
Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5001, the Upper Colorado and San Juan River Basins Recovery Act.

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

Sincerely,

PHILLIP L. SWAGEL,  
Director.

Enclosure.

<b>H.R. 5001, Upper Colorado and San Juan River Basins Recovery Act</b>			
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	<b>Mandate Effects</b>	
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 (BOR) to participate in fish recovery programs, including population monitoring and removal of nonnative 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.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to authorize the Secretary of the Interior to

continue to implement endangered fish recovery programs for the Upper Colorado and San Juan River Basins.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, this bill contains no unfunded mandates as defined by the Unfunded Mandates Reform Act.

#### EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139. The most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. § 6104 does not identify other programs as related to the Upper Colorado and San Juan River Recovery Implementation Program (CFDA No. 15.529) reauthorized by this bill.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### **SECTION 3 OF PUBLIC LAW 106-392**

#### **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 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) 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).

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

