

**Statement of Greg Walcher,  
Executive Director,  
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**REGARDING S. 2239, 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.**

**United State Senate  
Committee on Energy and Natural Resources  
Subcommittee on Water & Power  
April 26, 2000**

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to appear today to discuss S. 2239, a bill that authorizes the Bureau of Reclamation to provide cost sharing for the Upper Colorado River and San Juan River recovery implementation programs. The State of Colorado strongly supports S. 2239 and we thank Senator Allard for introducing the bill, and for his leadership on this important issue.

In the arid West, a pitched battle has been fought over the needs of the states and the rights of our citizens to use and develop our compact entitlements, versus the protection and recovery of endangered fish in the Upper Colorado and San Juan River basins. But these recovery programs, along with the funding mechanisms secured in S.2239, allow us to reconcile these differences and strike a proper balance between our heritage, our rights and the needs of the species.

**Background**

This legislation and the Colorado and San Juan River recovery programs are of utmost importance to the State of Colorado. The Upper Colorado River Recovery Implementation Program began with a cooperative agreement signed in 1988 by the Governors of Colorado, Wyoming and Utah, and the Bureau of Reclamation, U. S. Fish and Wildlife Service and Western Area Power Administration, water users and environmental groups. The San Juan Recovery Implementation Program is a similar effort involving Colorado and New Mexico, as well as the Bureau of Reclamation, U. S. Fish and Wildlife Service, Bureau of Land Management, Bureau of Indian Affairs, tribes, water users and environmental interests.

The State of Colorado, as well as its water and power users and environmental interests, are active participants in these two programs. The fundamental goal is to recover and de-list the endangered fish. That must be done while water development in the Upper Basin and San Juan Basin proceeds in accordance with a complex array of state and federal laws, treaties, interstate compacts, Supreme Court decrees, and the Secretary of Interior's trust responsibilities, collectively referred to as the Law of the River.

None of the bills that have been introduced in recent years to amend that Endangered Species Act would change the need for these recovery programs. Indeed, most of the amendments put even greater emphasis on local efforts to protect threatened and endangered species. These recovery programs have effectively given a greater voice to state agencies, as well as water users and environmental interests, and have shifted the focus of our efforts from the regulatory approach to the development of solutions for important resource conflicts.

Both Recovery Implementation Programs have made significant progress toward recovering the endangered fish. The State of Colorado is leading the efforts toward recovery and expects the U.S. Fish and Wildlife Service to publish recovery goals this summer. Current data indicates populations of the Colorado pikeminnow are increasing to the point where de-listing, or at least down-listing, is a distinct possibility. Similar progress is being made with the humpback chub. Razorback suckers are also beginning to show signs of improvement, but we need additional emphasis on the bonytail chub.

As the Committee is aware, the historic Programmatic Biological Opinion for the "15 Mile Reach" of the Colorado River near Grand Junction was completed on December 20, 1999. As a result, ESA compliance was achieved for more than one million acre-feet of existing and 120,000 acre-feet of future water depletions on the main stem of the Colorado River. The opinion specifically highlights the importance of this pending legislation. High priority work on similar biological opinions is continuing in other basins as well.

The San Juan River Recovery Implementation Program is also making significant progress. The program supports tribal water development in the San Juan River Basin, including 122,000 acre-feet of new depletions in New Mexico for the Navajo Indian Irrigation Project and 57,100 acre-feet of depletions for the Animas-La Plata Project, a top priority for the State of Colorado.

## **S. 2239**

For roughly a decade, the Upper Colorado River and San Juan River recovery implementation programs have been funded through congressional appropriations to the Bureau of Reclamation, Bureau of Indian Affairs, Bureau of Land Management, and U.S. Fish and Wildlife Service. These appropriations are in addition to contributions by the Upper Basin states, and from water and power users. But all of this has been without direct authorization by Congress.

The Congress has been justifiably concerned about the amount of continued funding necessary for the program's capital construction projects. Meanwhile, the Clinton Administration has pressed upon the participants significant pressure for increased cost sharing by non-federal parties. It is time for Congress to make clear the federal responsibility for this program with this authorization.

S. 2239 is the result of five years of good faith negotiations among the States of Colorado, Wyoming, Utah, and New Mexico, as well as power users, water users, federal agencies and environmental organizations. This legislation would authorize funding for capital construction and for operations and maintenance. Projects include building fish ladders, acquiring water flows in accordance with state law, constructing hatcheries, and acquiring and restoring floodplain habitats.

These programs have relied upon Reclamation funding for 100% of all capital construction. To date, over \$20 million has been spent for capital projects to recover the endangered fish in the Upper Basin. But the participants in these recovery programs estimate the need for up to \$100 million in capital construction funds through fiscal year 2007.

S. 2239 would authorize \$46 million in federal funds for the Bureau of Reclamation. The remaining \$54 million would be generated from non-federal sources, including state contributions, not to exceed \$17 million. It would also generate reimbursable power user contributions up to \$17 million, and an additional \$20 million from the Flaming Gorge Dam in Utah and the Colorado Water Conservation District's Wolford Mountain Reservoir, at a capital cost of approximately \$5 million. Power users will experience substantial increased costs (an estimated \$15 million over the next few years) to replace lost peaking power due to reservoir re-operations for the endangered fish.

Annual funding costs for operations and research are provided by federal agencies, the States, and power users. These cost-sharing arrangements will likely continue. But the capital projects needed to recover the species will require continued operation and maintenance. This legislation specifies use of nonreimbursable power revenues for 100% of the base annual funding, up to \$4 million for the Upper Basin Program, and up to \$2 million for the San Juan Program.

To minimize the effects of rate increases, S. 2239 sanctions the agreement between the State of Colorado, the Western Area Power Administration, and the Bureau of Reclamation, to allow the Colorado Water Conservation Board to provide a low-interest loan to the power users. This legislation also provides funding certainty for power customers by ensuring that: (1) power revenues for capital projects match State funding levels on a rolling two-year basis; and (2) in the event state funding for ongoing operation and maintenance is terminated, so too shall power revenue contributions terminate.

This legislation will help protect the enormous capital investment Colorado is preparing to make for the recovery programs. In addition, the success of these recovery programs depends upon annual funding and implementation of recovery action plans, which, in turn, will help avoid federal Endangered Species Act confrontations. It is critical for Congress to be engaged as a partner in these efforts.

The State of Colorado is already prepared to uphold its responsibilities under the bill. To meet its obligations the Colorado General Assembly in 1997 created a Native Species Conservation Trust Fund to pay for its obligations under the Endangered Species Act and provided an initial contribution of \$10 million.

## **Conclusion**

In the final analysis, it must be recognized that the federal record on endangered species is not good. New species are added to the list regularly, but actual recovery has been extremely rare. Colorado is committed to devoting substantial resources to the recovery of listed species, including the fish species in the Colorado River Basin, but Congress has a responsibility, too. The spirit of the Endangered Species Act requires more than just adding threatened and endangered species to federal lists. It also requires that all of us, at the federal, state and local levels, make a serious effort toward full recovery. This legislation represents the federal government's part of that commitment with respect to these species.

This bill affirms the participants' commitment to provide for the operation and maintenance of capital improvements as well as monitoring and research to ensure recovery goals are met. The parties have made a significant financial investment in an effort to comply with the Endangered Species Act while continuing to use and develop water allocated under the Law of the River. These recovery programs present the only viable long-term solutions to complying with the Endangered Species Act and protecting the rights of our citizens.

Long-term funding support for the Upper Colorado River and San Juan Recovery Implementation Programs is vital to the State of Colorado as well as its water and power users and environmental interests. It is critical to the participants and to the continued recovery of the four listed species that these programs continue with the funding mechanism provided by S. 2239. Colorado urges the Subcommittee to report S. 2239 favorably to the full Senate. Again, thank you Mr. Chairman for your assistance on this important issue.