

110TH CONGRESS
1ST SESSION

S. 752

To authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir.

IN THE SENATE OF THE UNITED STATES

MARCH 2, 2007

Mr. NELSON of Nebraska (for himself, Mr. ALLARD, Mr. SALAZAR, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the Secretary of the Interior to participate in the implementation of the Platte River Recovery Implementation Program for Endangered Species in the Central and Lower Platte River Basin and to modify the Pathfinder Dam and Reservoir.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Platte River Recovery Implementation Program and
6 Pathfinder Modification Authorization Act of 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Purposes.

TITLE I—PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM

Sec. 101. Definitions.
 Sec. 102. Implementation of Program.
 Sec. 103. Cost-sharing contributions.
 Sec. 104. Authority to modify Program.
 Sec. 105. Effect.
 Sec. 106. Authorization of appropriations.
 Sec. 107. Termination of authority.

TITLE II—PATHFINDER MODIFICATION PROJECT

Sec. 201. Authorization of project.
 Sec. 202. Authorized uses of pathfinder reservoir.

3 **SEC. 2. PURPOSES.**

4 The purposes of this Act are to authorize—

5 (1) the Secretary of the Interior, acting through
 6 the Commissioner of Reclamation and in partnership
 7 with the States, other Federal agencies, and other
 8 non-Federal entities, to continue the cooperative ef-
 9 fort among the Federal and non-Federal entities
 10 through the implementation of the Platte River Re-
 11 covery Implementation Program for threatened and
 12 endangered species in the Central and Lower Platte
 13 River Basin without creating Federal water rights or
 14 requiring the grant of water rights to Federal enti-
 15 ties; and

16 (2) the modification of the Pathfinder Dam and
 17 Reservoir.

1 **TITLE I—PLATTE RIVER RECOV-**
2 **ERY IMPLEMENTATION PRO-**
3 **GRAM**

4 **SEC. 101. DEFINITIONS.**

5 In this title:

6 (1) AGREEMENT.—The term “Agreement”
7 means the Platte River Recovery Implementation
8 Program Cooperative Agreement entered into by the
9 Governors of the States and the Secretary.

10 (2) FIRST INCREMENT.—The term “First In-
11 crement” means the first 13 years of the Program.

12 (3) GOVERNANCE COMMITTEE.—The term
13 “Governance Committee” means the governance
14 committee established under the Agreement and
15 composed of members from the States, the Federal
16 Government, environmental interests, and water
17 users.

18 (4) INTEREST IN LAND OR WATER.—The term
19 “interest in land or water” includes a fee title,
20 short- or long-term easement, lease, or other con-
21 tractual arrangement that is determined to be nec-
22 essary by the Secretary to implement the land and
23 water components of the Program.

1 (5) PROGRAM.—The term “Program” means
2 the Platte River Recovery Implementation Program
3 established under the Agreement.

4 (6) PROJECT OR ACTIVITY.—The term “project
5 or activity” means—

6 (A) the planning, design, permitting or
7 other compliance activity, preconstruction activ-
8 ity, construction, construction management, op-
9 eration, maintenance, and replacement of a fa-
10 cility;

11 (B) the acquisition of an interest in land
12 or water;

13 (C) habitat restoration;

14 (D) research and monitoring;

15 (E) program administration; and

16 (F) any other activity that is determined to
17 be necessary by the Secretary to carry out the
18 Program.

19 (7) SECRETARY.—The term “Secretary” means
20 the Secretary of the Interior, acting through the
21 Commissioner of Reclamation.

22 (8) STATES.—The term “States” means the
23 States of Nebraska, Wyoming, and Colorado.

1 **SEC. 102. IMPLEMENTATION OF PROGRAM.**

2 (a) IN GENERAL.—The Secretary, in cooperation
3 with the Governance Committee, may—

4 (1) participate in the Program; and

5 (2) carry out any projects and activities that
6 are designated for implementation during the First
7 Increment.

8 (b) AUTHORITY OF SECRETARY.—For purposes of
9 carrying out this title, the Secretary, in cooperation with
10 the Governance Committee, may—

11 (1) enter into agreements and contracts with
12 Federal and non-Federal entities;

13 (2) acquire interests in land, water, and facili-
14 ties from willing sellers without the use of eminent
15 domain;

16 (3) subsequently transfer any interests acquired
17 under paragraph (2); and

18 (4) accept or provide grants.

19 **SEC. 103. COST-SHARING CONTRIBUTIONS.**

20 (a) IN GENERAL.—The States shall contribute not
21 less than 50 percent of the total contributions necessary
22 to carry out the Program.

23 (b) NON-FEDERAL CONTRIBUTIONS.—The following
24 contributions shall constitute the States' share of the Pro-
25 gram:

1 (1) \$30,000,000 in non-Federal funds, with the
2 balance of funds remaining to be contributed to be
3 adjusted for inflation on October 1 of the year after
4 the date of enactment of this Act and each October
5 1 thereafter.

6 (2) Credit for contributions of water or land for
7 the purposes of implementing the Program, as deter-
8 mined to be appropriate by the Secretary.

9 (c) IN-KIND CONTRIBUTIONS.—The Secretary or the
10 States may elect to provide a portion of the Federal share
11 or non-Federal share, respectively, in the form of in-kind
12 goods or services, if the contribution of goods or services
13 is approved by the Governance Committee, as provided in
14 Attachment 1 of the Agreement.

15 **SEC. 104. AUTHORITY TO MODIFY PROGRAM.**

16 The Program may be modified or amended before the
17 completion of the First Increment if the Secretary and the
18 States determines that the modifications are consistent
19 with the purposes of the Program.

20 **SEC. 105. EFFECT.**

21 (a) EFFECT ON RECLAMATION LAWS.—No action
22 carried out under this title shall, with respect to the acre-
23 age limitation provisions of the reclamation laws—

24 (1) be considered in determining whether a dis-
25 trict (as the term is defined in section 202 of the

1 Reclamation Reform Act of 1982 (43 U.S.C.
2 390bb)) has discharged the obligation of the district
3 to repay the construction cost of project facilities
4 used to make irrigation water available for delivery
5 to land in the district;

6 (2) serve as the basis for reinstating acreage
7 limitation provisions in a district that has completed
8 payment of the construction obligations of the dis-
9 trict; or

10 (3) serve as the basis for increasing the con-
11 struction repayment obligation of the district, which
12 would extend the period during which the acreage
13 limitation provisions would apply.

14 (b) EFFECT ON WATER RIGHTS.—Nothing in this
15 title —

16 (1) creates Federal water rights; or

17 (2) requires the grant of water rights to Fed-
18 eral entities.

19 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) IN GENERAL.—There is authorized to be appro-
21 priated to carry out projects and activities under this title
22 \$157,140,000, as adjusted under subsection (c).

23 (b) NONREIMBURSABLE FEDERAL EXPENDI-
24 TURES.—Any amounts expended under subsection (a)

1 shall be considered to be nonreimbursable Federal expend-
2 itures.

3 (c) ADJUSTMENT.—The balance of funds remaining
4 to be appropriated shall be adjusted for inflation on Octo-
5 ber 1 of the year after the enactment of this Act and each
6 October 1 thereafter.

7 (d) AVAILABILITY OF FUNDS.—At the end of each
8 fiscal year, any unexpended funds for projects and activi-
9 ties made available under subsection (a) shall be retained
10 for use in future fiscal years to implement projects and
11 activities under the Program.

12 **SEC. 107. TERMINATION OF AUTHORITY.**

13 The authority for the Secretary to implement the
14 First Increment shall terminate on September 30, 2020.

15 **TITLE II—PATHFINDER**
16 **MODIFICATION PROJECT**

17 **SEC. 201. AUTHORIZATION OF PROJECT.**

18 (a) IN GENERAL.—The Secretary of the Interior, act-
19 ing through the Commissioner of Reclamation (referred to
20 in this title as the “Secretary”), may—

21 (1) modify the Pathfinder Dam and Reservoir;

22 and

23 (2) enter into 1 or more agreements with the
24 State of Wyoming to implement the Pathfinder
25 Modification Project (referred to in this title as the

1 “Project”), as described in Appendix F to the Final
2 Settlement Stipulation in *Nebraska v. Wyoming*, 534
3 U.S. 40 (2001).

4 (b) FEDERAL APPROPRIATIONS.—No Federal appro-
5 priations are required to modify the Pathfinder Dam
6 under this section.

7 **SEC. 202. AUTHORIZED USES OF PATHFINDER RESERVOIR.**

8 The approximately 54,000 acre-feet capacity of Path-
9 finder Reservoir, which has been lost to sediment but will
10 be recaptured by the Project, may be used for municipal,
11 environmental, and other purposes, as described in Appen-
12 dix F to the Final Settlement Stipulation in *Nebraska v.*
13 *Wyoming*, 534 U.S. 40 (2001).

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