

# STATE OF COLORADO

## OFFICE OF THE EXECUTIVE DIRECTOR

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Roy Romer  
Governor  
Wade Buchanan  
Executive Director  
Ron Cattany  
Deputy Director

January 8, 1999

Honorable Members  
Sixty-Second Colorado General Assembly  
First Regular Session  
State Capitol  
Denver, Colorado 80203

Ladies and Gentlemen:

I am pleased to submit for your consideration the first annual request for approval of expenditures from the Native Species Conservation Trust Fund, which the General Assembly created last year through House Bill 98-1006.

By creating this fund, Colorado took a first critical step to get ahead of the federal government on endangered species issues. While we take the endangered species act seriously, we also hope to retain control of recovery efforts at the state and local levels. More important, we hope to take prudent actions to preserve critical habitat and species before they ever are considered for listing at the federal level. That was the whole purpose behind HB 98-1006.

HB 98-1006 requires the Executive Director of the Department of Natural Resources (DNR), after consulting within the department with interested boards and commissions, to submit to the General Assembly for approval a list of projects to be funded out of the Native Species Conservation Trust Fund. Since HB 98-1006 appropriated \$10 million to the conservation fund, no additional appropriation is necessary. However, our reading of the law is that annual legislative approval is required of the proposed project list.

The attached list contains only those projects upon which there was a consensus for funding within the department. These include projects to aid in the recovery of native fish in the Upper Colorado and San Juan river basins; projects to aid in the recovery of endangered birds in the Platte River Basin; projects to prevent the Preble's Meadow Jumping Mouse from becoming an endangered species; projects to protect other native aquatic species at specific risk of being listed as endangered; and projects to help preserve Colorado's prairie grasslands, upon which a number of at-risk species depend.

These expenditures from the trust fund total \$1.1 million. This level of expenditure is consistent with the department's goal of treating the \$10 million fund as an annuity, with the principle and interest being paid out over 15 years, as contemplated in HB 98-1006.

The increasing number of at-risk, threatened or endangered species in Colorado will present a great challenge to the state in the coming years. As growth continues, the problem of decreasing habitat will only get worse. HB 98-1006 is a good first response and a valuable tool to address this challenge. Our goal should be to retain Colorado's ability to control its own destiny with regard to native species.

It is in that spirit that I commend to you the attached project list for funding.

Finally, I would like to reiterate the department's firm belief that more funding is needed for the Native Species Conservation Trust Fund. The \$10 million appropriated in 1998 was less than half the amount DNR estimated was necessary simply to meet the state's obligations under existing interstate native species programs. It is far from what is needed to address the decline of yet-unlisted species.

Therefore, if the state is to stay in control of endangered species issues and avoid federal preemption of state and local control, the General Assembly should appropriate additional funds to augment those already appropriated under HB 98-1006. There is much more work to be done, and none of it will be easy. It will, however, be important and essential.

Sincerely,



Wade Buchanan  
Acting Executive Director

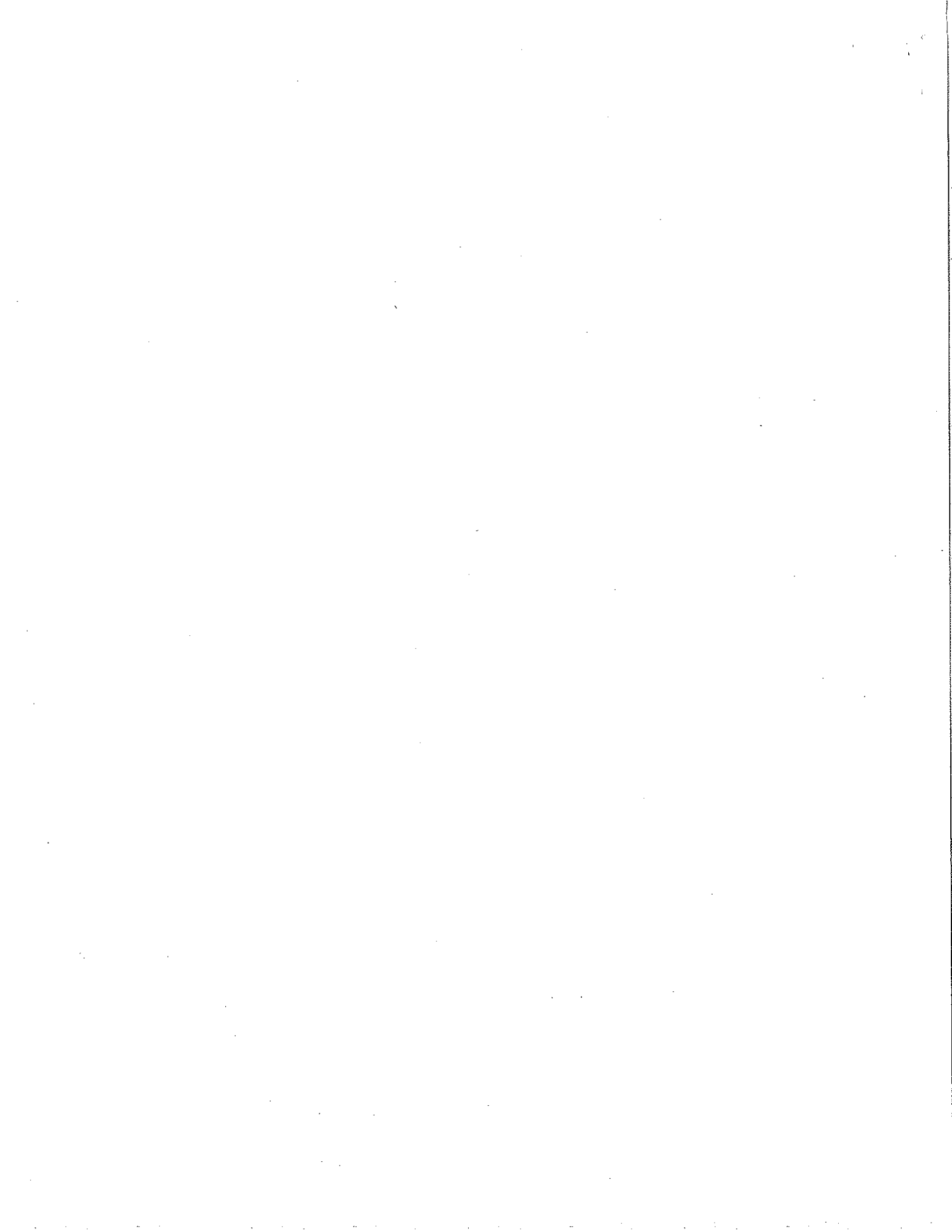
cc: Greg Walcher, Executive Director-designee, DNR

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**Species Conservation Trust Fund (HB 98-1006)  
1<sup>st</sup> Annual Report to the  
Colorado General Assembly**

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**January 6, 1999  
by the Colorado Department of Natural Resources**



## Executive Summary

In 1998, the General Assembly passed HB 98-1006 that establishes a Native Species Conservation Trust Fund (hereinafter, "the Fund"). The statute is attached as Appendix A.

Expenditures from the Fund are intended to promote the conservation of native wildlife species whose populations are declining. The General Assembly initially appropriated \$10 million into the Fund from several sources.

HB 98-1006 directs the Executive Director of the Colorado Department of Natural Resources (DNR) to annually prepare a Species Conservation Eligibility List describing programs eligible to receive funding from the Fund. This list is prepared after consulting with the Colorado Water Conservation Board and its director and the Colorado Wildlife Commission and the director of the Division of Wildlife. This List is attached as appendix B.

HB 98-1006 also directs the Executive Director to annually provide a report to the General Assembly on the progress and status of activities undertaken to recover Colorado's native species, as well as activities that may be required in the future. This report is provided to fulfill this reporting obligation.

This report is organized into two sections reflecting the major purposes for which expenditures from the Fund are authorized:

- HB 98-1006 authorizes the DNR to make expenditures from the Fund for purposes of implementing cooperative agreements, recovery programs, and other programs designed to meet obligations arising under the federal Endangered Species Act and to provide a stable and predictable regulatory environment for Colorado's citizens.
- HB 98-1006 authorizes the DNR to make expenditures from the Fund for studies and programs designed to: conserve species currently listed as threatened and endangered species under state law; recover or protect candidate species in order to avoid the need one day to list these species under federal law; and improve scientific understanding related to any of the factors in state and federal law that govern decisions on adding or removing species from either the state or federal endangered species lists.<sup>1</sup>

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<sup>1</sup> Both state and federal law contain endangered species statutes. The federal Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., is a complex federal statute that has been the focus of considerable public debate and judicial interpretation almost since its adoption by Congress twenty five years ago. It often is referred to as the most powerful environmental law in the world due to the extraordinary regulatory authorities it confers upon the U.S. Fish and Wildlife Service for protection of species and habitats thought to be in danger of going extinct. By contrast, the State of Colorado's endangered species protection law, 33-2-105, C.R.S., is limited to creating a special management status for rare or declining species, but confers no habitat protection regulatory authority upon agencies of the State of Colorado, though it does affirm the Colorado Division of Wildlife's authority to regulate the killing, or "taking," of state-listed species.

The Executive Director has reviewed the five species conservation programs that are discussed in this report and has consulted with many interested parties about the appropriateness of providing funding for them. The Executive Director believes that expenditures from the Fund are warranted to support them. Accordingly, the Executive Director recommends the General Assembly adopt a joint resolution approving expenditures from the Species Conservation Trust Fund as described in this report and the accompanying Species Eligibility List.

The following table summarizes the Executive Director's recommendations. The table also summarizes estimated contributions from other sources as an indication of the extent to which expenditures from the Fund will leverage other expenditures. Finally, it summarizes the projected long-term costs for each of the species protection efforts for which HB 98-1006 funding is sought, as well as the Colorado's anticipated share of those costs.

### Recommendations Summary

Cooperative Program/ Species Protection Effort	Recommended by 99 Expenditures from HB 98-1006 fund	Estimated by 99 Contributions from other sources	Colorado's estimated share of total long-term costs	Estimated contribution term costs
San Juan / Upper Colorado Endangered Fish Recovery Programs	\$222,000	\$837,000	\$9,000,000	\$91,000,000
Platte River Basin Cooperative Species Program	\$300,000	\$1,118,170	\$15,000,000 - \$18,000,000	\$78,000,000 - 80,000,000
Preble's meadow jumping mouse Conservation Plan	\$250,000	\$750,000	Estimates not yet available	Estimates not yet available
Conservation of Aquatic Species of Special Concern/Species at Risk	\$304,000	Estimates not yet available	Estimates not yet available	Estimates not yet available
Prairie Grassland Species	\$75,000	\$75,000	Estimates not yet available	Estimates not yet available
<b>TOTALS</b>	<b>\$1,151,000</b>	<b>\$3,169,170</b>	Estimates not yet available	Estimates not yet available

## I. INTRODUCTION

**COLORADO IS A GROWING, DYNAMIC STATE.** Colorado's strong economy, excellent business opportunities, and natural environment attract new residents and development activities in large numbers every year. Between 1990 and 1997, the state grew by 18.2 percent, from 3.29 million to 3.93 million residents. Such growth established Colorado as the fifth fastest growing state in the nation this decade. Moreover, this trend shows no immediate signs of significantly slowing. The Colorado State Demographers Office projects that, by the year 2010, 4.89 million people will call Colorado home. This represents an increase of *almost a million new residents* over the state's 1997 population.

**GROWTH STRAINS NATIVE SPECIES.** Growth is placing new stresses on some of the natural features that help to make Colorado so attractive. Many native plant and animal species are particularly sensitive to the effects of growth. As the state's land and water resources are tapped to provide for the needs of Coloradans, plant and wildlife species and their habitats are showing increasing signs of strain. Researchers at Colorado State University estimate that, while populations of most Colorado wildlife species are relatively secure, 47 (6.4 percent of the animals that occur in Colorado) are considered vulnerable. One hundred and forty-one plant species (4.7 percent of the 3,000 plant species that occur in Colorado) are also considered vulnerable.

**THE FEDERAL ENDANGERED SPECIES ACT IN COLORADO.** Some of Colorado's native species have declined to the point where they could become extinct. As a result, they have been added to the list of federally protected threatened and endangered species pursuant to the federal Endangered Species Act (ESA). The ESA is frequently characterized as the most powerful environmental protection law in the world due to the extensive regulatory authority it confers upon the U. S. Fish and Wildlife Service to alter or deny activities that may negatively affect a "listed" species or its habitat. Use of this authority has generated considerable controversy around the United States, due to concerns that federal-level decisions would take private property without just compensation or unacceptably limit state and local land use and natural resource management rights and prerogatives.

To ensure that such controversies are kept to a minimum in Colorado, Governor Roy Romer initiated a Memorandum of Agreement Concerning Management of Colorado's Declining Native Species (MOA) in 1995 with Interior Secretary Bruce Babbitt, attached as Appendix C. This MOA commits federal and state agencies to collaborate with local governments, private citizens, businesses, and community groups to protect wildlife and plant species before ESA listing may be required. The MOA also creates a policy framework to address listed species. This policy framework places a premium on collaboration, voluntary action, and constructive partnerships to address the conservation needs of listed species in a manner that minimizes or in some cases eliminates the need to invoke the ESA's substantial regulatory authorities. The MOA emphasizes the use of market-based and other incentive approaches designed to respect private property interests. The intent and promise behind this framework is to avoid the controversy, conflict, and often expensive and time-consuming litigation that have attended ESA-related issues in

other regions of the country, while getting on with protecting the state's wildlife and plant resources.

***COLORADO'S TRADITION OF PRAGMATIC, EFFECTIVE SOLUTIONS TO NATIVE SPECIES CONSERVATION CHALLENGES.*** The MOA builds upon a decade of hard work in Colorado to develop innovative solutions to ESA implementation problems that protect species and their habitats while rendering the regulatory effects of the ESA as unobtrusive as possible. Cooperative species recovery and habitat protection programs are in place to address the effects of water development in the Upper Colorado, San Juan and Platte River Basins while allowing water management and development activities to proceed under state law. A broad-based conservation planning effort is also taking shape for the Preble's meadow jumping mouse, a species only recently added to the federal ESA list. The goals of this effort – protect the mouse and its habitat while reducing or removing burdensome regulations under the ESA – are similar to those of the basin-wide cooperative recovery programs.

Colorado also has a growing tradition of early action aimed at keeping species from having to be listed. In recent years, the Colorado Division of Wildlife has initiated efforts or entered into partnerships to conserve the boreal toad, several fish species native to the South Platte and Arkansas Rivers, the Colorado River cutthroat trout, the lesser prairie chicken, the plains sharp-tail grouse, the Gunnison sage grouse, the mountain plover, the Rio Grande sucker, the wood frog, the Rio Grande cutthroat trout, the Canadian lynx, and the wolverine. The activities of innumerable private land trusts, ranchers and farmers, water districts, and others also have aided in protecting species and their habitats.

***THE SPECIES CONSERVATION TRUST FUND MUST BE ADEQUATELY CAPITALIZED IF COLORADO'S COORDINATED EFFORT TO PROTECT NATIVE SPECIES IS TO BE SUCCESSFUL.*** The General Assembly's initial appropriation of \$10 million into the Species Conservation Trust Fund will contribute in a significant and meaningful way to addressing the needs of several species while minimizing the regulatory burdens Coloradans otherwise would face. This report, and the accompanying Species Eligibility List, is intended to provide a blueprint for making expenditures from the Fund in FY 1999-2000.

However, a fund capitalization of \$10 million is insufficient to address all the demands for an effective, coordinated approach in Colorado to native species conservation over the long-term. Even if the Fund were treated as an annuity, where the Fund balance is reduced progressively to zero over a 15 year time frame, the total value of all expenditures from the Fund would be approximately \$14.69 million. This is well short of the State of Colorado's \$28-30 million share over the next 15 years of the costs for the Upper Colorado, San Juan, and Platte River Basin programs alone, not to mention costs that may be associated with other species protection and recovery efforts.

To properly address the full range of protection and recovery efforts for both listed and unlisted species, the Department of Natural Resources estimates the Fund should be capitalized at a total value of \$24.5 million. Assuming the Fund is managed as an annuity



over a 15-year time period, returns a nominal rate of 6 percent per year,<sup>2</sup> and is effectively leveraged against other public and private sources of revenue, the Department estimates that a capitalization of \$24.5 million is necessary.

## **II. Cooperative Agreements, Recovery Programs, and Other Programs Designed to Meet Obligations Arising Under the Endangered Species Act**

Colorado is currently involved in three river basin-oriented endangered species and habitat recovery programs: the San Juan River Recovery Program, the Upper Colorado River Recovery Program, and the recently executed Cooperative Endangered Species Agreement for the Platte River Basin.

These programs are designed to protect species and habitat currently listed under the federal Endangered Species Act, while allowing water use and development to proceed under state law and interstate compacts (see Appendices D, E, and G for copies of the Cooperative Agreements).

In addition, Colorado is coordinating the first Habitat Conservation Planning process to be conducted in Colorado for the Preble's meadow jumping mouse. When completed in May of 1999, the Preble's meadow jumping mouse Conservation Plan and implementing agreements will protect the mouse and its habitat and provide the regulatory compliance mechanism that assures a broad range of human activities along the rapidly growing Front Range can continue without unnecessary federal regulation.

1. After years of hard work and study, the **San Juan and Upper Colorado River Endangered Fish Recovery Programs** are beginning to yield positive results. Operating under Cooperative Agreements in place since 1988 (Upper Colorado Program) and 1992 (San Juan Program), these Programs are designed to protect four endangered fish species occurring in the Colorado River Basin while allowing water development to continue in accordance with the State of Colorado's entitlements under the Colorado River Compact. In addition to Colorado, the states of Utah, Wyoming, and New Mexico, the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, water users, and the environmental community are engaged in this effort.

As of August 30, 1998, more than 200 water development projects in the Upper Colorado River Basin have received required clearances under the federal Endangered Species Act. (See Appendices F and H.) Populations of two of the four target species – the Colorado River squawfish and the humpback chub – are stable or increasing in response to habitat management actions throughout the Upper Colorado River Basin. The razorback sucker is responding less well, and the bonytail chub remains rare throughout the basin. As of September 1998, work has progressed on the provision and protection of flows required to sustain the fish, the development and maintenance of

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<sup>2</sup> The nominal rate of return is not adjusted for inflation.

habitat, the stocking of native fish, control of non-native competitors, and additional research and monitoring.

Key Issues: Work continues on developing a programmatic mechanism to ensure that all historic depletions and some level of future depletions from the Colorado River above the 15 Mile Reach near Grand Junction can proceed in compliance with the ESA. This programmatic mechanism, called a *programmatic biological opinion*, will become a defining feature of the Upper Colorado River Recovery Program. Work also is proceeding on the development of basin-wide water management plan for the Yampa River basin. This plan will articulate how water will continue to be provided for human consumptive uses and address low-flow conditions that may prevail in the lower Yampa River during the later summer months that can negatively affect the endangered fish. This emerging Yampa Plan, which is an important component of the more comprehensive Upper Colorado River Recovery Program, is a collaborative effort involving elected officials and residents in the Yampa basin. It is expected to be complete by the end of 2000.

The San Juan Program continues to provide the regulatory compliance mechanism – called the reasonable and prudent alternative – that ensures the ESA is not an insurmountable hurdle for the development of some version of the Animas – La Plata water supply project near Durango. Specifically, the U.S. Fish and Wildlife Service has determined that up to 57,100 acre-feet of annual depletions from the Animas River are permissible under the ESA as long as the San Juan Recovery Program continues to make progress toward recovering the listed fish species in the San Juan River Basin.

Finally, Senator Wayne Allard and Congressman Scott McInnis, working with a diverse group of water users, electric power suppliers, environmentalists, and state and federal agencies, have introduced bills in Congress to provide for the federal government's share of funding for the San Juan and Upper Colorado River Programs. (See Appendix I.) The bills also identify cost sharing by the states of Colorado, Wyoming, Utah, and New Mexico, and recognize contributions that are being made by consumers of electricity generated by federal hydropower projects.

Anticipated Long-term Costs: The San Juan and Upper Colorado River Programs' capital projects could cost as much as \$100 million during the remaining seven to nine years of their anticipated duration. Under the proposed cost-share in the recently introduced federal funding legislation, Colorado's share for completion of the San Juan and Upper Colorado Programs is projected to be about \$9 million. The balance – about \$91 million – will be paid for by our funding partners: the U.S. Bureau of Reclamation, and the states of Wyoming, Utah, and New Mexico, and electric power customers.

Recommended Expenditures from the HB 98-1006 Fund in FY 1999-2000: The DNR recommends allocating \$222,000 from the Fund to the San Juan and Upper

Colorado River Programs in FY 1999-2000. These funds would pay for actions by the Colorado Division of Wildlife to ensure that non-native fish do not continue to compete with the native endangered fish. Actions include removing non-native fish from floodplain ponds, providing incentives for landowners to manage ponds on private property for native species, and screening outlet works or building berms to ensure that warm-water non-natives left in ponds do not escape to the river system to compete with the native species.

2. On July 1, 1997, Governor Romer, Governor Ben Nelson (NB), Governor Jim Geringer (WY), and Secretary of the Interior Babbitt signed the **Platte River Basin Cooperative Endangered Species Agreement**. The Cooperative Agreement describes a long-term habitat restoration program and commits the parties to a series of activities that provide the foundation from which to launch the program. These activities include a three-year evaluation of the proposed program as required by the National Environmental Policy Act (NEPA). The Cooperative Agreement also provides a predictable ESA compliance mechanism for water facilities in the Platte River basin while NEPA compliance on the long-term program proceeds. Once NEPA compliance is complete, the Cooperative Agreement would be replaced by a subsequent agreement to implement the actions described in the Cooperative Agreement. These actions include buying and protecting land in Nebraska to provide habitat for the target species – the whooping crane, piping plover, interior least tern, and pallid sturgeon. They also include regulating Platte River flows to reduce flow shortages at Grand Island Nebraska by an average of 130,000 to 150,000 acre-feet per year. Water users, environmentalists, the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, and the states of Nebraska, Wyoming and Colorado are engaged in this effort.

Key Issues: The Cooperative Agreement identifies many of the actions the parties will take to offset the effects to endangered species habitat in Nebraska of existing and new water development in the Platte River Basin. However, some actions have not yet been fully defined. For example, the parties have agreed to protect 10,000 acres of land to provide habitat for the target species over a 13 to 16 year period. But, the parties have not agreed on which lands to buy or whether the willing-seller transactions will be in fee or less than fee, and on how the lands will be managed. The parties have also agreed to develop projects capable of re-regulating an annual average of 130,000 to 150,00 acre-feet of Platte River flows from times when they are less biologically beneficial to times when they are more helpful to the target species. However, the Cooperative Agreement only lists projects capable of re-regulating 70,000 acre-feet on average each year, leaving the parties with the need to identify water conservation and water supply projects capable of re-regulating an additional 60,000 – 80,000 acre-feet of flows per year. Work is on-going to resolve these issues so capital expenditures can begin upon the completion of the NEPA process in 2000.

Anticipated Long-term Costs: The Platte River Basin effort is expected to cost about \$75 million in 1997 dollars over a 13 to 16 year period to address the impacts

of existing depletions. Of this amount, Colorado's share would be \$15 million. Colorado is also responsible for an additional \$3 to \$5 million for actions necessary to offset the effects of future water development in the South Platte and North Platte Basin in Colorado, for a total Colorado obligation of \$18 to 20 million over a 13 to 16 period. The balance will be the obligation of our partners, the federal government, and the states of Wyoming and Nebraska.

Recommended Expenditures from the HB 98-1006 Fund in FY 1999-2000: The Department recommends allocating \$300,000 from the Fund toward Colorado's obligations to the Platte River Basin Cooperative Agreement in FY 1999-2000. These funds would address Colorado's share of on-going planning costs necessary to make capital expenditures related to land and water conservation upon inception of the Program.

3. The **Preble's meadow jumping mouse (PMJM)** is another species that has been the focus of a large-scale protection effort that reduces or eliminates the regulatory compliance burdens imposed by the federal ESA. The PMJM occupies riparian habitats from the Colorado Springs area to northern Larimer County in Colorado, and riparian areas in the foothills and plains in and around Cheyenne, Wyoming. PMJM populations apparently have declined extensively throughout the species' range in Colorado and Wyoming possibly due to habitat conversion and degradation. On May 12, 1998, the U.S. Fish and Wildlife Service (Service) listed the PMJM as a "threatened" species under the federal Endangered Species Act (ESA). In its decision to list the PMJM, the Service identified residential and commercial development, flood control and water projects, mining, highway and bridge construction, and livestock grazing as possible causes of the species' decline. Under the framework established by the 1995 Declining Species MOA, the DNR, working with numerous local government and private sector partners, is coordinating a collaborative planning process to address conservation of the PMJM. This effort is designed to reduce or eliminate the need for federal regulation of the numerous activities along the Front Range that could affect the PMJM or its habitat.

Key Issues: The collaborative PMJM planning effort is scheduled to be completed by May 1999. The result is likely to be at least five separate but complementary protection plans for the Preble's mouse, or one each for the planning sub-areas of El Paso County, Douglas and Elbert counties, Jefferson County, Boulder County, and Larimer and Weld Counties. These plans will be accompanied by appropriate implementing agreements.

The planning effort is currently focused on determining whether local programs that protect riparian habitats (e.g. local floodplain ordinances, open space purchase programs, density development bonuses, transferable development rights, etc.) can substitute for direct federal regulation of numerous land use activities that may affect the mouse and its habitat. If so, federal permits will be written to allow activities such as trail construction, gravel mining, highway and home construction

to proceed in compliance with the ESA, as long as they fit within the planning and regulatory priorities of local governments.

Anticipated Long-term Costs: The long-term costs of this effort, as well as a full range of sources to fund these costs, will be developed through the planning process.

Anticipated Expenditures from the HB 98-1006 Fund in FY 1999-2000: The collaborative planning effort is expected to be complete by May 1999. Land protection through the acquisition of fee interests or conservation easements from willing sellers is expected to figure prominently in the final plans and implementing agreements for each of the planning sub-areas. To support land protection in each of the planning sub-areas, the DNR is seeking to allocate \$50,000 to each of the five planning sub-areas or \$250,000 in total from the Fund.

### III. Other Declining, As Yet Unlisted Species

In addition to the species that are the focal point of the cooperative, programmatic efforts described above, there are a number of species in Colorado that are declining to the point that listing under the Endangered Species Act is either imminent or contemplated in the future. These species are often referred to as "candidate species," in that they are candidates for listing.

These species are not yet under federal jurisdiction. The state, in cooperation with local governments and private landowners, has initiated some programs to help protect some of these species, to manage them to a point at which listing may not be necessary. If listing does occur, these programs are designed to give landowners, water users and others a degree of regulatory certainty, and a framework or work plan for the eventual delisting of the species.

4. The **Conservation of Aquatic Species** program is directed primarily toward developing and implementing conservation plans and agreements for aquatic species that are not currently listed as threatened or endangered under the federal Endangered Species Act, but which may be listed if no action is taken. The species that will benefit from these activities include the South Platte and Arkansas basins plains fishes; the Rio Grande basin native fish; and the Colorado River cutthroat trout.

Anticipated Long term Costs: Anticipated Long-term Costs: The long-term costs of this effort, as well as a full range of sources to fund these costs, will be developed through a cooperative planning process.

Recommended expenditures from the HB 98-1006 Fund in FY 1999-2000: The DNR is recommending that \$304,000 be allocated from the Fund for this program. The funds will be used to establish aquatic habitat at the Tamarack State Wildlife Area; establish brood fish lakes; and acquire easements for Arkansas Darter habitat.

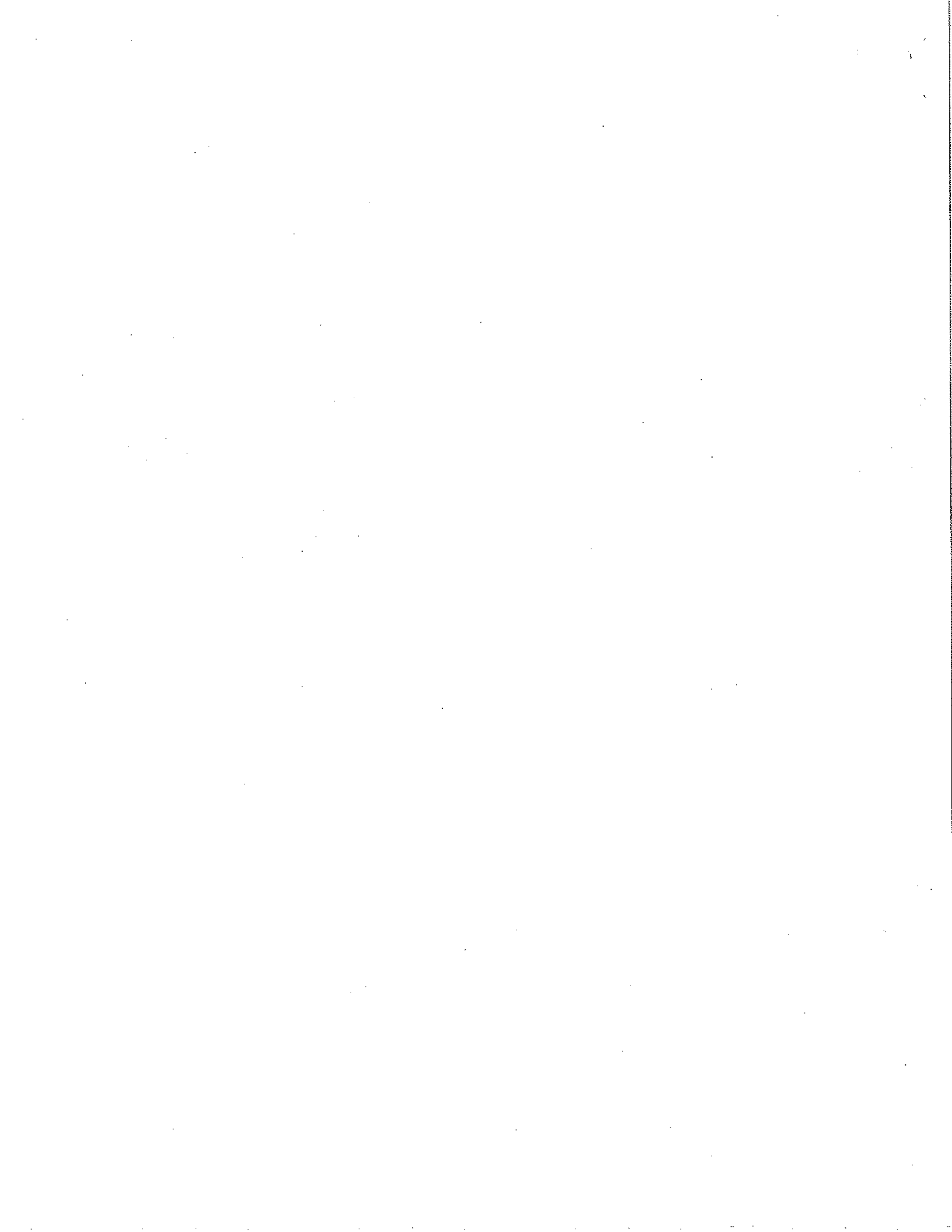
5. The **Prairie Grasslands Species** program is directed toward developing conservation plans and agreements for prairie grassland species not currently listed under the federal Endangered Species Act, but that may be listed if no action is taken.

The species that would be addressed through this program include the Mountain Plover (petitioned for federal listing), the burrowing owl (currently listed under state law as threatened), the long-billed curlew (species of special concern), the upland sandpiper (undetermined status), and the black-tailed prairie dog which has been petitioned for federal listing as a threatened species.

Anticipated Long term Costs: Anticipated Long-term Costs: The long-term costs of this effort, as well as a full range of sources to fund these costs, will be developed through a cooperative planning process.

Recommended expenditures from the HB 98-1006 Fund in FY 1999-2000: The DNR is recommending that \$75,000 be allocated from the Fund for this program. The activities eligible for funding are drawn from DOW plans and include the development of plans that will lead to the acquisition and protection of 5,000 acres of short grass prairie habitat. Systems to monitor prairie grassland species and their habitat will also be developed.

*Appendix A*  
*Native Species Conservation Trust Fund Statute*





## Native Species Conservation Trust Fund Statute

24-33-111. Conservation of native species - fund created. (1) Legislative declaration. The general assembly hereby recognizes the importance of conserving native species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species as determined by the United States fish and wildlife service. The general assembly hereby declares and determines that the Colorado department of natural resources and the division of wildlife are responsible for the development, implementation, or approval of appropriate programs to address the conservation of such species for complying with the "Federal Mandates Act", article 78 of this title, and for negotiating agreements with federal agencies and other states to avoid regulatory conflicts pursuant to section 24-33-103.

(2) Species conservation trust fund - creation. There is hereby created in the state treasury the species conservation trust fund, which shall be subject to annual authorization by the general assembly to carry out the purposes of this section. There is hereby created within the species conservation trust fund the operation and maintenance account and the capital account. The moneys in the operation and maintenance account shall be for administrative and noncapital expenditures necessary for the implementation of this section. The moneys in the capital account shall be used exclusively for capital expenditures including but not limited to property acquisition and project construction. All income derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. No investment earnings or other moneys in the species conservation trust fund shall be subject to any management fee imposed by law for the benefit of the general fund. To the maximum extent practical, only interest from the fund shall be expended for activities pursuant to this section.

(3) Species conservation eligibility list and annual report. (a) The executive director of the department of natural resources, after consultation with the Colorado water conservation board and its director, the wildlife commission, and the director of the division of wildlife, shall annually prepare a species conservation eligibility list describing programs and associated costs that are eligible to receive funding pursuant to this section. The species conservation eligibility list shall be subject to modification and adoption through passage of a joint resolution that is approved by a majority vote of both houses of the general assembly. At the same time as the species conservation eligibility list is submitted, the director of the department of natural resources, after consultation with the Colorado water conservation board and its director, the wildlife commission, and the director of the division of wildlife, shall also provide a detailed report to the general assembly on the progress and status of activities to date and their effectiveness in the recovery of the species and identify proposed future activities. The report shall include an assessment of habitat benefits, both public and private, attributable to such activities.

(b) Funding shall be distributed by the executive director of the department of natural resources among projects included in the species conservation eligibility list for the following purposes:

(I) Cooperative agreements, recovery programs, and other programs that are designed to meet obligations arising under the federal "Endangered Species Act of 1973", 16 U.S.C. 1531, et seq., and that provide regulatory certainty in accordance with subsection (4) of this section;

(II) Studies and programs established or approved by the division of wildlife and the executive director of the department of natural resources regarding:

(A) Species placed on the state endangered or threatened list in accordance with section 33-2-105, C.R.S.;

(B) Candidate species in order to assist in the recovery or protection of the species to avoid listing of the species;

(C) Scientific research relating to listing or delisting any species; or

(D) If a species that is not on the federal endangered or threatened species list is proposed to be added to the state endangered or threatened species list, the evaluation of the species pursuant to this subparagraph (B) shall include: Scientific evaluation of genetic data that proves the species is a separate and distinct species in the ecosystem; evaluation of the species habitat that encompasses the entire geographic area of the species habitat not just portions of such habitat; and the reliable scientific baseline data used to ascertain that the number of the species in the habitat is rapidly declining over time.

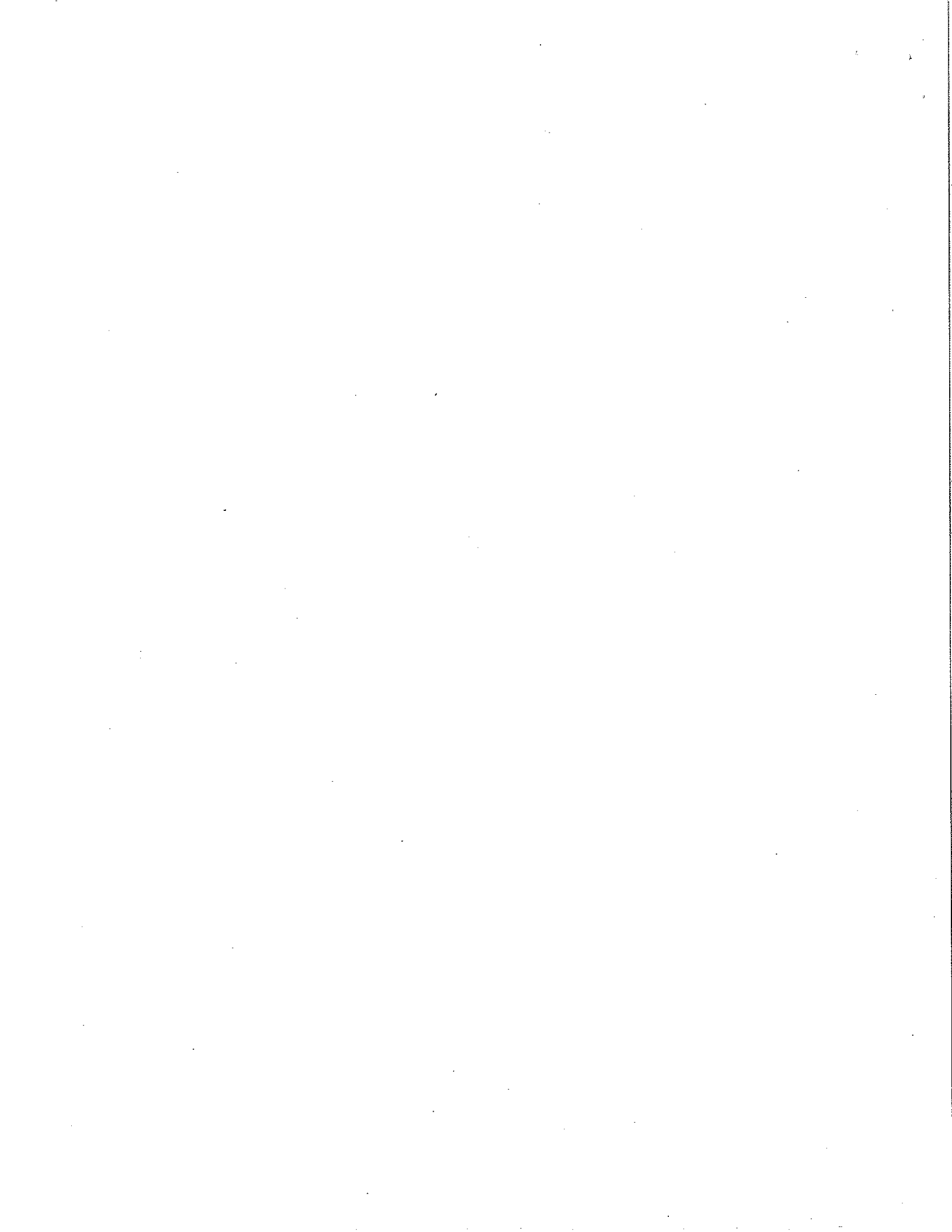
(c) In no event shall moneys from the species conservation trust fund, created in subsection (2) of this section, be used to acquire any property through the exercise of eminent domain.

(4) Agreement requirements. In order to be eligible for funding under subsection (3) of this section, agreements entered into by or on behalf of the state with any person, entity, organization, political subdivision, state, or the federal government relating to the conservation of native species that have been listed as threatened or endangered under federal or state law or that are candidate species or are likely to become candidate species, species at risk and species of special concern, or species the decline or extinction of which may affect the welfare of the citizens of the state, must be voluntary, shall protect private property rights, and shall assist in meeting the regulatory requirements that currently exist or that may become applicable in the future pertaining to the conservation of species. Funds allocated for the purpose of implementing such agreements through the species conservation list process shall be utilized, to the maximum extent possible, for the purchase or construction of capital assets that shall be owned by the state and that may be sold or utilized for other purposes in the event that the agreement is terminated unless the state elects not to own such assets and for the implementation of activities the division of wildlife has determined may eliminate the need to list a species as threatened or endangered or, in the case of previously listed species, may hasten delisting.

(5) Maximization of funds. The Colorado water conservation board and the wildlife commission shall maximize the species conservation trust fund by applying for available grants consistent with the purposes of the fund. Federal grants and voluntary contributions may be accepted and expended as provided in this section. Such grants and contributions shall, upon acceptance, be placed in the species conservation trust fund created in subsection (2) of this section. Nothing in this section shall be construed to limit the authority of the Colorado division of wildlife to manage or regulate game, nongame, or threatened or endangered species. No funding shall be accepted, approved, or used to initiate the listing of species as threatened or endangered under federal law. Nothing in this section is intended to be construed as a mechanism to substitute funding that would otherwise be available for expenditure by the division of wildlife or to replace or reduce the obligation of the division to carry out nongame programs under title 33, C.R.S.

Source: L. 98: Entire section added, p. 1000, § 1, effective May 27.

*Appendix B*  
*Native Species Conservation Trust Fund*  
*Eligibility List*



**HB 98-1006 Native Species Conservation Trust Fund  
Species Conservation Eligibility List  
Fiscal Year 1999-2000**

**Background and Introduction**

HB 98-1006 created a Native Species Conservation Trust Fund. Within the fund there is an operation and maintenance account and a capital account. The money in the operation and maintenance account must be used for administrative and non-capital expenditures. The money in the capital account must be used for capital expenditures including, but not limited to, property acquisition and project construction.

All income derived from the deposit and investment of moneys in the fund is credited to the fund. To the maximum extent practical, only interest from the fund shall be expended for activities pursuant to this section.

Each year the Executive Director of the Department of Natural Resources (DNR), after consulting with the Colorado Water Conservation Board (CWCB) and its director, the Wildlife Commission, and the director of the Division of Wildlife (DOW), must prepare a species conservation eligibility list. The list must describe programs and associated costs that are eligible to receive funding.

The Species Conservation Eligibility List is then subject to modification and adoption through the passage of a joint resolution by the General Assembly.

When the species conservation eligibility list is submitted, the DNR Executive Director must also provide a detailed report about the status of certain native species and the progress that has been made toward the recovery of the species. The report must include an assessment of habitat benefits attributable to activities that have been undertaken to by the state and its partners.

**Funding Distribution**

The Act requires that funding be distributed for the following purposes:

- (i) Cooperative agreements, recovery programs, and other programs that are designed to meet obligations arising under the federal "Endangered Species Act of 1973" that provide regulatory certainty;
- (ii) Studies and programs established or approved by the DOW and the Executive Director of the DNR regarding:
  - (a) species placed on the state endangered or threatened list;
  - (b) candidate species, in order to assist in the recovery or protection of the species to avoid listing of the species; and,
  - (c) scientific research relating to listing or delisting any species.

(If a species that is not on the federal endangered or threatened species list is proposed to be added to the state endangered or threatened species list, the evaluation of the species must include: scientific

evaluation of genetic data that proves the species is a separate and distinct species in the ecosystem; evaluation of the species habitat that encompasses the entire geographic area of the species habitat not just portions of such habitat; and the reliable scientific baseline data used to ascertain that the number of the species in the habitat is rapidly declining over time.)

### Maximizing Funds

The Act directs the CWCB and the DOW to maximize the funding available through the fund by applying for grants.

In addition, the Act specifically states that its passage should not be construed as a mechanism to substitute funding that would otherwise be available for expenditure by the DOW or to replace or reduce the obligation of the DOW to carryout its non-game programs.

### Appropriated Funding

The following is a list of the funding sources contained in HB 98-1006:

- **Water and Power Authority -- \$2.4 million**
- **Colorado Water Conservation Board Construction Fund -- \$500,000 (...TRANSFER SUCH SUM TO THE CAPITAL ACCOUNT...)**
- **Reserved rights litigation fund -- \$1 million (...TRANSFER SUCH SUM TO THE CAPITAL ACCOUNT...)**
- **Fish and wildlife resources account -- \$1 million (...TRANSFER SUCH SUM TO THE OPERATION AND MAINTENANCE ACCOUNT...)**
- **Capital construction fund -- \$5.1 million (...transferred to the capital account...)**

### Recommended Programs

## Recovery Programs for the Endangered Fish of the Upper Colorado and San Juan River Basin

### FY 99-00 Funding Summary:

	Trust Fund Request	Contributions From Other Sources	Colorado's Estimated Share of Long Term Costs	Estimated Total Long Term Cost
		\$ 837,000	\$9,000,000 (capital projects)	\$91,000,000
Operating				
Capital	\$ 222,000			

This program is directed primarily toward the recovery of the Colorado squawfish, humpback chub, bonytail chub, and razorback sucker in the upper Colorado River and San Juan river basins while allowing water development activities to proceed in accordance with state law and inter-state compacts.

Recovery Program activities eligible for funding in FY 1999-2000 are drawn from the Recovery Program's Action Plan and state activities that are consistent with the Recovery Action Plan. These include:

- the removal of non-native fish from floodplain ponds;
- landowner incentives to manage ponds without warm-water species (such as through leases, short-term payments and trout stocking);
- and the screening and berming of ponds to prevent warm-water fish escapement.

Performance factors will include:

- an evaluation of the number of private ponds reclaimed, bermed, and/or screened;
- agreements with landowners;
- and the actual installation of screens on water outlets (such as at Highline and Elkhead reservoirs).

Funding from the Species Conservation Trust Fund would leverage additional funds available from the U.S. Bureau of Reclamation and the states of Wyoming and Utah.

### Platte River Basin Endangered Species Cooperative Agreement

#### FY 99-00 Funding Summary:

	Trust Fund Request	Contributions From Other Sources	Colorado's Estimated Share of Long Term Costs	Estimated Total Long Term Cost
		\$ 1,118,170	\$15,000,000- \$18,000,000	\$78,000,000- \$80,000,000
Operating				
Capital	\$ 300,000			

The goal of this program is to restore whooping crane, interior least tern, piping plover and pallid sturgeon habitat in the central Platte River Basin in Nebraska while water use and development activities continue throughout the basin in accordance with state law, interstate compacts and decrees. A preliminary agreement to restore habitat was reached in July 1997 between the states of Colorado, Wyoming and Nebraska. This agreement provides a framework within which more detailed habitat restoration measures are being identified and evaluated as required by the National Environmental Policy Act (NEPA).

Activities eligible for funding from the fund are drawn from the Platte River Basin Cooperative Agreement. These activities include:

- Further planning and development of Colorado's capacity to re-regulate the timing of flows in the lower reach of the South Platte River in accordance with the Tamarack managed groundwater recharge plan;
- Habitat protection in Nebraska through fee and easement acquisition; and,
- The completion of actions to meet federal law requirements pursuant to NEPA.

Funding from the Species Conservation Trust Fund would leverage additional funds available from the U.S. Bureau of Reclamation and the states of Wyoming and Nebraska.

### Preble's Meadow Jumping Mouse Collaborative Conservation Program

#### FY 99-00 Funding Summary:

	Trust Fund Request	Contributions From Other Sources	Colorado's Estimated Share of Long Term Costs	Estimated Total Long Term Cost
		\$750,000	Estimates not yet available	Estimates not yet available
Operating				
Capital	\$ 250,000			

Preble's meadow jumping mouse (PMJM) was federally listed as a threatened species in May 1998. A range-wide collaborative conservation planning process is underway and will be completed by May 1999. This planning process will identify important PMJM habitat that requires protection. The process will provide the regulatory compliance mechanism for a full range of activities that, in the absence of the planning effort, would likely be regulated separately and directly by the U.S. Fish and Wildlife Service.

Activities eligible to receive funding are drawn from the pending range-wide conservation agreement and from state activities that are consistent with the agreement. These include:

- development of management agreements with landowners;
- the acquisition of fee and less-than-fee interests in PMJM habitat in partnership with local governments and private property owners.

Performance factors include:

- partnerships with local governments and landowners leading to the protection of up to five parcels containing PMJM habitat.

Funding from the fund would be expected to leverage \$1 million in additional funding from Front Range local governments and private sector participants that are involved in the collaborative planning process.



## Conservation of Aquatic Species of Special Concern/Species at Risk

### FY 99-00 Funding Summary:

	Trust Fund Request	Contributions From Other Sources	Colorado's Estimated Share of Long Term Costs	Estimated Total Long Term Cost
		Estimates not yet available	Estimates not yet available	Estimates not yet available
Operating				
Capital	\$ 304,000			

This program is directed primarily toward developing and implementing conservation plans and agreements for aquatic species that are not currently listed as threatened or endangered under the federal Endangered Species Act, but which may be listed if no action is taken. The species that will benefit from these activities include the South Platte and Arkansas basins plains fishes; the Rio Grande basin native fish; and the Colorado River cutthroat trout.

The activities eligible for funding are drawn from plans and include:

- the establishment of aquatic habitat at the Tamarack State Wildlife Area;
- the establishment of brood fish lakes; and,
- the acquisition of easements for Arkansas Darter habitat.

Performance factors will include the establishment of fish habitat in the lower South Platte and Arkansas basins.

## Prairie Grasslands Conservation

### FY 99-00 Funding Summary:

	Trust Fund Request	Contributions From Other Sources	Colorado's Estimated Share of Long Term Costs	Estimated Total Long Term Cost
		\$75,000	Estimates not yet available	Estimates not yet available
Operating	\$75,000			
Capital				

This program is directed toward developing conservation plans and agreements for prairie grassland species not currently listed under the federal Endangered Species Act, but that may be listed if no action is taken. The species that would be addressed include the Mountain Plover (petitioned for federal listing), the burrowing owl (currently listed under state law as threatened), the long-billed curlew (species of special concern), the upland sandpiper (undetermined status), and the black-tailed prairie dog which has been petitioned for federal listing as a threatened species.

The activities eligible for funding are drawn from DOW plans and include:

- the development of plans that will lead to the acquisition and protection of 5,000 acres of short grass prairie habitat.

Performance factors will include the development and implementation of monitoring systems for prairie grassland species and the protection of prairie grassland habitat.

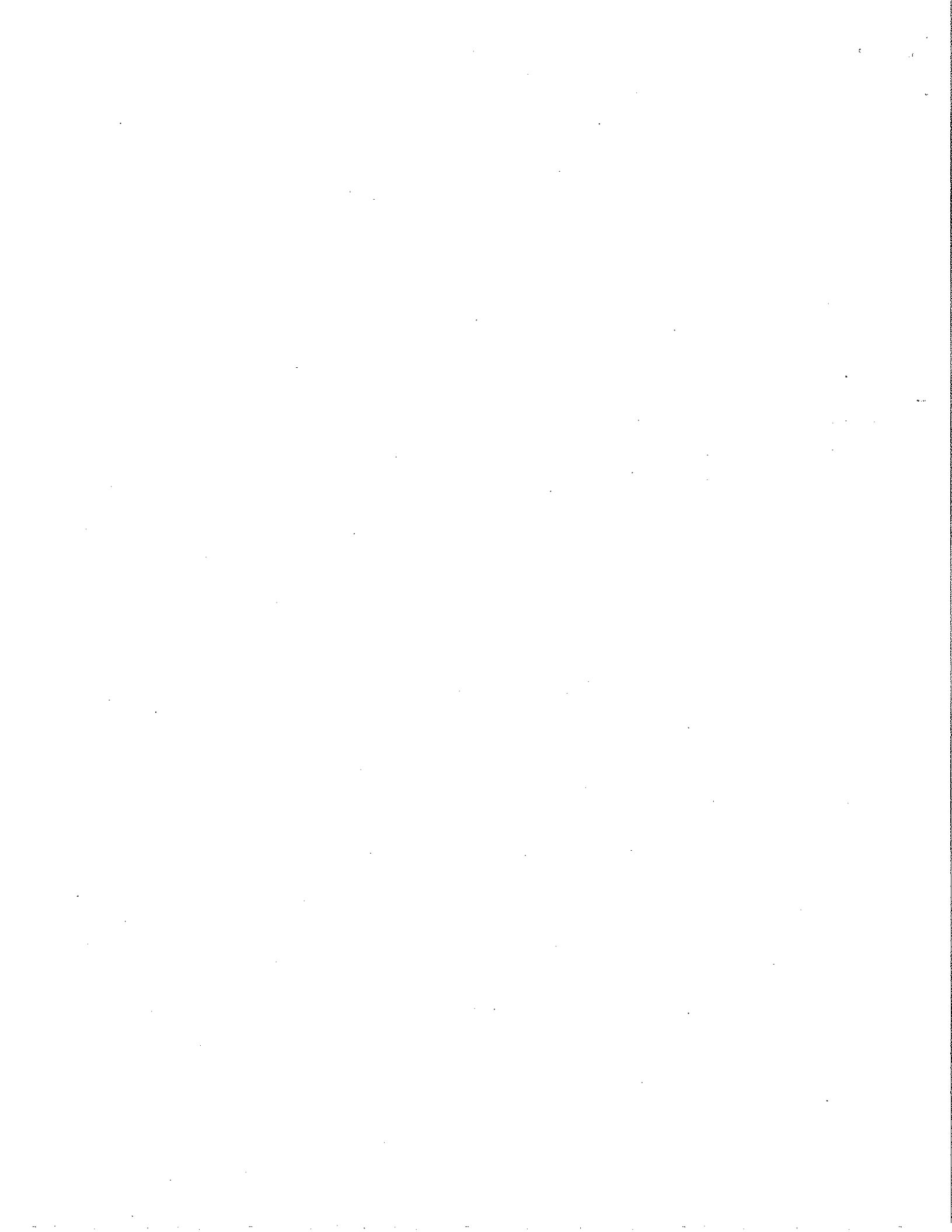
### Conclusion

The draft Species Conservation Eligibility List includes \$1,151,000 in potential expenditures from the Species Conservation Trust Fund in Fiscal Year 1999-2000 for activities that will contribute to the recovery of currently-listed species and other species that are not yet listed but are considered to be at risk. These proposed expenditures from the Fund are weighted heavily toward capital development (91.2%), consistent with the requirements of H.B. 98-1006.

### Recommendations Summary

Cooperative Program / Species Protection Effort	Recommended FY 99 Expenditures from HB 98-1006 Fund	Estimated FY 99 Contributions from other sources	Colorado estimated share of total long-term cost	Estimated total long-term cost
San Juan / Upper Colorado Endangered Fish Recovery Programs	\$222,000	\$837,000	\$9,000,000	\$91,000,000
Platte River Basin Cooperative Species Program	\$300,000	\$1,118,170	\$15,000,000 - \$18,000,000	\$78,000,000 - 80,000,000
Preble's meadow jumping mouse Conservation Plan	\$250,000	\$750,000	Estimates not yet available	Estimates not yet available
Conservation of Aquatic Species of Special Concern/Species at Risk	\$304,000	Estimates not yet available	Estimates not yet available	Estimates not yet available
Prairie Grassland Species	\$75,000	\$75,000	Estimates not yet available	Estimates not yet available
<b>TOTALS</b>	<b>\$1,151,000</b>	<b>\$3,169,170</b>	Estimates not yet available	Estimates not yet available

*Appendix C*  
*1995 Memorandum of Agreement*  
*Concerning Management of Colorado's*  
*Declining Native Species*



**MEMORANDUM OF AGREEMENT**  
between  
**THE STATE OF COLORADO**  
and  
**THE DEPARTMENT OF THE INTERIOR**  
**CONCERNING PROGRAMS TO MANAGE**  
**COLORADO'S DECLINING NATIVE SPECIES**

**I. BACKGROUND AND PURPOSE**

The State of Colorado's fish and wildlife and the habitats upon which they depend represent a unique and valuable part of the state's and the nation's natural and cultural heritage. The State of Colorado (State), through the Colorado Department of Natural Resources and its Division of Wildlife and many other state agencies whose actions affect fish and wildlife, and the Department of the Interior (Department), through the U.S. Fish and Wildlife Service and other agencies within the Department whose actions affect fish and wildlife, are committed to the management and conservation of Colorado's wildlife species, particularly as these species come under increased pressure from habitat loss, degradation, and fragmentation resulting from Colorado's rapid growth and development.

This Agreement between the State and the Department is intended to facilitate and promote collaboration and cooperation in managing and conserving fish and wildlife species and habitat within Colorado in a manner that is consistent with the present direction of Colorado's Smart Growth Initiative as well as state and federal laws. The State and the Department are committed to taking an approach to fish and wildlife conservation that uses the flexibility inherent in state and federal laws and regulations and emphasizes voluntary participation of a broad spectrum of partners to achieve long-term conservation and development solutions. These partners include landowners, water right holders, anglers, hunters, conservationists, the public, Native American tribal governments, local governments and state and federal agencies. This Agreement is further intended as a vehicle to demonstrate that the Departments's flexibility in its implementation of the Endangered Species Act (Act) can be used to find practical solutions that will reduce the need to list species, to consider social and economic issues, and to implement a habitat and community approach to conservation. Finally this Agreement is intended to provide a framework to encourage the voluntary participation of non-governmental parties in the conservation of sensitive fish, wildlife, and habitats. As such, this agreement is intended to complement the many other state and federal programs set up to work with non-governmental parties.

**II. AUTHORITIES AND RESPONSIBILITIES**

- A. The Department of Natural Resources has responsibility, through its divisions, to promote the proper use and conservation of the State's land, water, wildlife,

mineral and energy resources, and authority to develop integrated plans to accomplish these goals and to negotiate with the federal government in all resource and conservation matters. The State of Colorado, through the Colorado Division of Wildlife, has broad trustee and law enforcement responsibilities for the protection, management, and enhancement of the State's fish and wildlife resources and their habitats on federal, state, and private lands. In addition the Colorado Division of Wildlife's Long-Range Plan, adopted in 1994, states that the "Division's foremost aim in the future will be to protect and enhance the viability of all Colorado's wildlife species." The Division intends to meet this goal by using "management programs that are coordinated with those of other managers using the best available data to consider their effects over large areas and long timeframes, and that are biologically sustainable, socially desirable, and economically feasible." The State of Colorado, through the Colorado Water Conservation Board, has sole authority to acquire and protect instream flow water rights to preserve the natural environment to a reasonable degree within the framework of the State's water rights system. The State of Colorado, through the Colorado Division of Parks and Outdoor Recreation's Natural Areas Program, has the authority to recognize certain areas that contain significant biological resources, including plants, as designated Natural Areas.

- B. The Department of Interior has authorities under the Act to list species as threatened or endangered, recover listed species, maintain a list of candidate species which may require future federal listing, and consult on federal actions which may adversely affect listed species. The Department has responsibility for migratory birds under the Migratory Bird Treaty Act. The Department has responsibilities for commenting on fish and wildlife matters relating to federal activities such as permits, licenses, superfund sites, oil pollution responses, land management decisions, and water projects. It also has authority and responsibility for management of fish and wildlife habitats on lands managed by the Department.

The Department's authority for entering into this agreement include the Endangered Species Act of 1973, the Migratory Bird Treaty Act, Fish and Wildlife Coordination Act, Bald Eagle Act, and Refuge Administration Act.

- C. Cooperative initiatives between the Department and the State are specifically authorized by section 6 of the Endangered Species Act whereby the Secretary of the Interior is authorized to cooperate with States to the maximum extent practicable and "may enter into agreements with any state for the administration and management of any area established for the conservation of endangered species or threatened species."

### III. GENERAL PRINCIPLES FOR SPECIES NOT LISTED UNDER THE ACT

- A. The State and the Department affirm their commitment to cooperatively take actions, and encourage others to voluntarily take actions in concert with the State's and the Department's duties, such that the need for future protection under the Act will be greatly reduced and in some cases eliminated.
- B. These actions will be identified, organized and implemented through the development of collaborative action plans (*hereinafter referred to as Conservation Agreements*) designed to reduce or eliminate risks to species and their habitats that might otherwise lead to the need for their protection under the Act. While it is recognized that existing laws provide a framework for implementation of these Conservation Agreements, the State and the Department agree, when developing and implementing Conservation Agreements, to place the highest emphasis on voluntary measures that reduce or remove risks to species and habitats so that mandatory measures as may be required by law do not have to be invoked.
- C. The State and Department believe that Conservation Agreements will be most successful where they appropriately and flexibly balance economic vitality, respect for the property rights of landowners and water users, and maintenance of public values, including hunting and angling opportunities. Therefore, the State and the Department believe that Conservation Agreements need to be:
- (1) based on sound and objective scientific data and analysis, informed as appropriate by peer review;
  - (2) based on a decision-making framework that is collaborative and which places a premium on effective, quick, and responsive communication;
  - (3) cost-effective, such that participants actively keep costs to a minimum by selecting the least costly means to implement Conservation Agreements, by capturing economies of scale through watershed approaches that address multiple conservation objectives, and by developing efficiency enhancing measures that apply to all aspects of the administration of Conservation Agreements in order to reduce overhead;
  - (4) predictable, such that participants fully understand what is expected of them; if expectations change as a result of the adaptive and dynamic nature of implementing Conservation Agreements on the ground, then the basis for these changes will be fully communicated well in advance of making the desired changes on the ground;
  - (5) adaptive, such that participants can easily change approaches or tools according to results of monitoring and evaluation, consistent with

maintaining the objectives of sound science, cost-effectiveness and predictability;

- (6) responsive to considering the economic vitality of areas affected by such agreements.

D. The State and the Department envision that a series of Conservation Agreements will be developed over time by governmental and non-governmental entities pursuant to this Memorandum of Agreement. To facilitate development of species or habitat specific Conservation Agreements, the State and the Department will:

- (1) work with all interested parties and each other to identify species and habitats that could benefit most from voluntary conservation efforts to protect and enhance them and thereby reduce or preclude the need for their protection under the Act. This will be done in a manner that supports local government planning and decision-making processes, and respects interests and opportunities for landowners, water users, hunters, and anglers;
- (2) encourage at every opportunity a multiple species, landscape, watershed, and/or community approach to species and habitat conservation, in contrast to single species approaches, that will allow for multiple issues and opportunities to be addressed together to benefit Colorado's fish, wildlife, plants and habitats. Such an approach can be helpful in ensuring the overall, long-term efficiency of conservation actions.
- (3) provide support for local decision-makers by providing timely and accurate information regarding species, habitats, and pressures that threaten their continued health in a manner that can be efficiently integrated into local comprehensive plans;
- (4) catalogue and make available a broad range of existing tools to protect, rehabilitate and enhance land and water habitats, including but not limited to cooperative agreements, resource management plans (including management of non-native species), protection of instream flows as provided by state law, and willing-seller acquisition of conservation easements, leases and in some cases, fee simple interest in land;
- (5) explore how other innovative tools can be used to create incentives for landowner, water right holders, local governments and others that will result in conservation of fish, wildlife and plants, and their habitats in a manner that enhances the assets of landowners and water right holders. These innovative incentives could include habitat banking, tradeable



permit concepts, capture of tax benefits, transferable development rights and density bonuses, and other measures.

#### IV. GENERAL PRINCIPLES FOR SPECIES LISTED UNDER THE ACT

- A. The Department reaffirms its commitment to apply the ten principles presented by the Clinton Administration to reform and implement the Act. These principles commit the Department to work closely with the State and all affected parties to:
- (1) base decisions on sound and objective science;
  - (2) minimize social and economic impacts;
  - (3) provide quick, responsive answers and certainty to landowners;
  - (4) treat landowners fairly and with consideration;
  - (5) create incentives for landowners to conserve species;
  - (6) make effective use of limited public and private resources by focusing on groups of species dependent on the same habitat;
  - (7) prevent species from becoming endangered or threatened;
  - (8) promptly recover and de-list threatened and endangered species;
  - (9) promote efficiency and consistency; and
  - (10) provide state, tribal and local governments with opportunities to play a greater role in carrying out the Act.
- B. The State and the Department agree to work together and participate in the conservation of fish, wildlife, and plant species and their habitats. For those species currently listed under the Act the State and the Department agree to coordinate efforts to define clear and achievable recovery objectives to protect and recover these species and their habitats, and to seek down-listing and de-listing as soon as practicable after recovery objectives have been met.
- C. The State and the Department agree to work with partners, including landowners, water right holders, the public, Native American tribal governments, other Federal and local agencies, conservation organizations, and other organized groups that can assist with species conservation and recovery. The State and the Department will emphasize voluntary actions with partners.

- D. The Department will retain responsibility for protecting species under the Act, and will work in close coordination and cooperation with the State in determining when, and if, a species requires such protection.
- E. If a species covered by a Conservation Agreement ultimately requires protection under the Act, the Conservation Agreement will serve as the foundation for the state and federal agencies, in cooperation with all other affected parties, to jointly develop a Recovery Agreement. The Recovery Agreement will retain those elements of the Conservation Agreement that will benefit the species as well as actions additional to those in the Conservation Agreement that are necessary to conserve and recover the species. It will be the affirmative responsibility of the Department to advise the State of specific changes or additions needed to allow a Conservation Agreement to serve as a Recovery Agreement within 90 days after final listing of a species or as otherwise agreed to by the State and the Department.

The State and the Department believe that development and implementation of Recovery Agreements will streamline implementation of the formal requirements of the Act for threatened and endangered species to the mutual benefit of conservation and development goals. Recovery Agreements will outline specific actions to be taken by state and federal agencies and other affected parties that will serve the following functions:

- (1) identify priority actions likely to accelerate recovery and down-listing or delisting of the species;
  - (2) provide a basis, as appropriate, for the development of Conservation Recommendations, Reasonable and Prudent Measures and Reasonable and Prudent Alternatives for activities requiring consultation under Section 7 of the Act;
  - (3) provide a framework for the development of Habitat Conservation Plans and, for threatened species, 4(d) rules.
- F. The State and the Department intend Recovery Agreements to, where practicable, focus on habitat-based, landscape, and multiple species approaches to conservation actions and planning that will allow multiple issues and opportunities to be considered together to benefit Colorado's fish, wildlife, plants, and habitats.

The State and the Department agree that there is value in taking a broad view of public lands (State and Federal) and their management to determine if there are opportunities to develop public land management objectives and practices that better promote conservation of species and habitat conditions that sustain them, consistent with multiple uses where permitted. The State and the Department also

agree that it is essential to consider economic vitality in the affected areas. To advance these objectives, the State and the Department will collaborate on developing strategies intended to optimize conservation measures on public land and that provide additional flexibility for private landowners. These strategies may include options such as creation of collaborative management agreements, voluntary conservation and recovery agreements with private landowners, industry, non-governmental conservation organizations, and others, and adjustment of public land ownership patterns through sales, exchanges, leases, easements and other means.

- G. The State and the Department intend that upon agreement of all affected parties where both listed species covered by Recovery Agreements and unlisted species covered by Conservation Agreements occupy similar habitats and would benefit from similar conservation actions, the Conservation Agreements may be annexed to the Recovery Agreements to facilitate conservation planning that (1) will benefit multiple species; (2) will promote accelerated recovery of listed species; and (3) will implement actions intended to preclude the need to list species not yet listed. The State and the Department will emphasize actions that benefit multiple species, both listed and unlisted.
- H. Where reintroduction of a listed species is necessary for recovery and identified in a recovery plan, the Department will consult with the State and other affected parties prior to reintroduction and will incorporate such actions into any Recovery Agreement.

## V. TASKS


- A. The State and the Department will establish a Steering Committee by December 31, 1995, for the purpose of sharing information, reviewing lists of species at risk, and discussing ideas for their conservation and management.
- B. Consistent with the direction set forth in III.C., the State and the Department agree to mutually develop standards regarding the content of and approval process for Conservation Agreements within 6 months of execution of this Memorandum of Agreement.
- C. The State and the Department agree to develop and implement programs to determine and monitor the status of species at risk.
- D. The State and the Department will encourage partners and stake holders to take a leadership role in working with the State and the Department to develop and implement conservation actions through Conservation Agreements and Recovery Agreements. The State and the Department will initially focus conservation actions in Colorado on:

- (1) declining aquatic species including but not limited to South Platte River species, Arkansas darter, Rio Grande sucker, Colorado River Cutthroat trout, and Rio Grande cutthroat trout;
  - (2) declining short grass prairie species including but not limited to mountain plover, swift fox, burrowing owl, ferruginous hawk and lark bunting;
  - (3) declining populations of sage grouse and Columbian sharptail grouse;
  - (4) declining populations of Preble's meadow jumping mouse;
  - (5) declining amphibians including but not limited to boreal toad and wood frog; and
  - (6) remaining recovery actions that will allow delisting to be proposed for the greenback cutthroat trout.
- E. Within 6 months of execution of the Memorandum of Agreement, the State and the Department will develop criteria to be used to develop a more comprehensive priority list of species requiring conservation and management attention.
- F. The Department will provide the State and other affected parties with timely information about petitions, listings, recovery plans, and, with the concurrence of the Federal action agency, major section 7 issues.
- G. The State and the Department will endeavor to secure funds to implement specific actions under this Memorandum of Agreement.

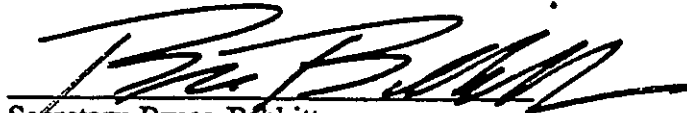
**VI. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE DEPARTMENT AND THE STATE THAT:**

- A. The performance of the State and the Department under this Memorandum of Agreement is contingent upon the authorization and appropriation of funds.
- B. Specific work projects or activities that involve the transfer of funds, services, or property between the State and the Department will require the execution of separate agreements or contracts, contingent upon the availability of funds.
- C. This Memorandum of Agreement in no way restricts the State or the Department from participation in similar activities or arrangements with other public or private agencies, organizations, or individuals.

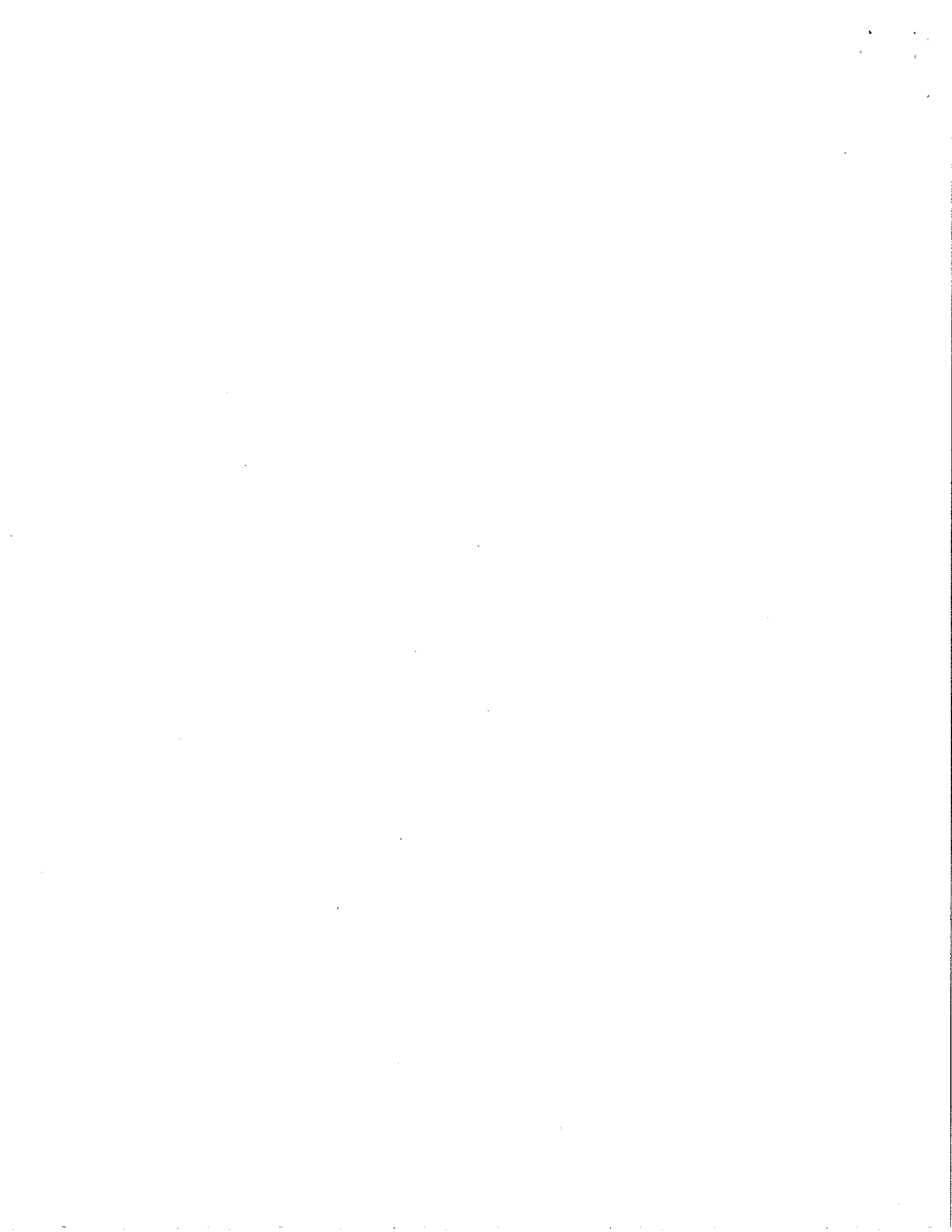
D. This Memorandum of Agreement may be modified or amended upon written request of any party hereto and with the subsequent written concurrence of the other party. Participation in this Memorandum of Agreement may be terminated by the Department or the State with a 30-day written notice to the other party. Unless terminated under the terms of this paragraph, this Memorandum of Agreement will remain in effect until December 31, 1999.

  
Governor Roy Romer  
State of Colorado

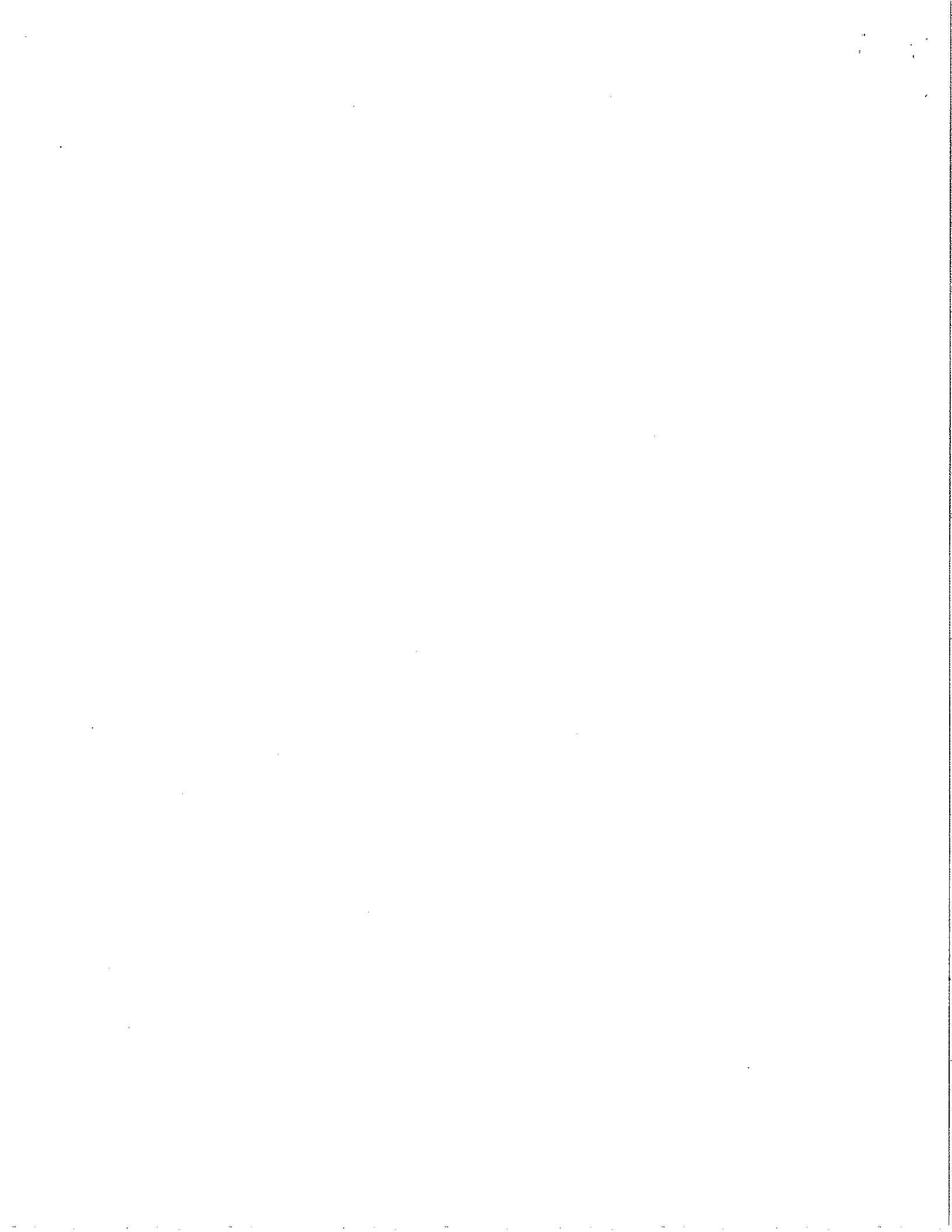
11/29/95  
Date

  
Secretary Bruce Babbitt  
United States Department of the Interior

11/29/95  
Date



*Appendix D*  
*Cooperative Agreement for Platte River Research*  
*and Other Cooperative Efforts Relating to Endangered Species Habitats*  
*Along the Central Platte River, Nebraska*





**COOPERATIVE AGREEMENT FOR PLATTE RIVER RESEARCH  
AND OTHER EFFORTS RELATING TO ENDANGERED SPECIES HABITATS  
ALONG THE CENTRAL PLATTE RIVER, NEBRASKA**

Pursuant to the authorities set forth in Paragraph X.D of this Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska ("Cooperative Agreement"), the signatories agree to participate in and implement certain activities relating to four target species (interior least tern, whooping crane, piping plover and pallid sturgeon) listed as threatened or endangered pursuant to the Endangered Species Act ("ESA"), 16 U.S.C. 1531 *et seq.*, and their associated habitats.<sup>1</sup>

**I. PURPOSES**

The purpose of this Cooperative Agreement is to implement certain aspects of the U.S. Fish and Wildlife Service's ("FWS") recovery plans for the target species that relate to their associated habitats by providing for the following during the term of this Cooperative Agreement:

- A. implementation of research, analysis and other measures that will benefit the target species and their associated habitats, as set forth in Attachment I, "Milestones for the Cooperative Agreement";
- B. implementation of efforts to acquire, restore, and manage land or interests in land so as to provide and improve associated habitats for the target species, as set forth in Attachment I, "Milestones for the Cooperative Agreement";

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<sup>1</sup> For purposes of this Cooperative Agreement and its attachments, the term "associated habitats" means, with respect to the interior least tern, whooping crane and piping plover, the Platte River Valley beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington, Nebraska, and extending eastward to Chapman, Nebraska, including designated critical habitat for the whooping crane. With respect to the pallid sturgeon, the term "associated habitat" means the Lower Platte River between its confluence with the Elkhorn River and its confluence with the Missouri River. "Associated habitats" shall include critical habitat in the Platte River Basin which may be subsequently designated by FWS for the target species. The Governance Committee may, through the adaptive management process, agree to undertake, fund or give credit for activities outside the associated habitats with the intent to focus activities to create the greatest biological benefit to the target species.

C. development and implementation of certain water management, conservation and supply measures, as set forth in Attachment I, "Milestones for the Cooperative Agreement," and in Attachment II, "Water Conservation/Supply Component";

D. development of a basin-wide program ("Program") to be implemented following evaluation of the Proposed Alternative, as defined in Paragraph III and as set forth in Attachment III, and a range of reasonable alternatives in compliance with the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4331 *et seq.*, and the ESA, the intent of which is to: (1) secure defined benefits for the target species and their associated habitats to assist in their conservation and recovery through a basin-wide cooperative approach that can be agreed to by the three states and the Department of the Interior ("DOI"); (2) serve as the reasonable and prudent alternative to offset the effects of existing and new water related activities in the Platte River Basin that, in the absence of such a Program, would be found by FWS to be likely to jeopardize the continued existence of the target species or adversely modify designated critical habitat; (3) help prevent the need to list more basin associated species pursuant to the ESA; and (4) mitigate new water related activities in a state in a manner that will not increase the mitigation responsibilities of other signatory states, with the intent that mitigation will be implemented in the state where the activity occurs to the extent described in Attachment III, Appendix A; and

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<sup>2</sup> For purposes of this Cooperative Agreement and its attachments, the term "water related activities" means activities and aspects of activities which: (1) are subject to section 7(a)(2) of the ESA; (2) occur in the Platte River Basin upstream of the confluence of the Loup River with the Platte River; and (3) may affect Platte River flow quantity or timing, including, but not limited to, water diversion, storage and use activities. Those changes resulting from land use activities which affect flow quantity and timing will be considered impacts of a "water related activity." Changes in temperature and sediment transport will be considered impacts of a "water related activity" to the extent that such changes are caused by activities affecting flow quantity or timing. "Water related activities" do not include those components of land use activities or discharges of pollutants that do not affect flow quantity or timing. "New water related activities" are new surface water or hydrologically connected ground water activities, including both new projects and expansion of existing projects, both those subject to and not subject to section 7(a)(2) of the ESA, which may affect the quantity or timing of water reaching the "associated habitats" and which are implemented after the effective date of this Agreement.

E. establishment of a governance structure that will ensure appropriate state government and stakeholder involvement in the completion of NEPA compliance tasks, in the implementation of research and other projects beneficial to the target species and their associated habitats, and in the development of a Program.

## II. RELATIONSHIP OF THE COOPERATIVE AGREEMENT AND ANY PROGRAM TO NEBRASKA V. WYOMING, AND OTHER MATTERS

A. The signatories to this Cooperative Agreement are also parties to Nebraska v. Wyoming, No. 108 Original, expected to go to trial during the term of the Cooperative Agreement. Because certain matters in that proceeding may overlap with issues addressed by the Cooperative Agreement and to be addressed by any Program, each signatory reserves the right to reconsider its participation in the Cooperative Agreement and in any proposed Program based upon the outcome of Nebraska v. Wyoming, whether by settlement or decision. Such reconsideration shall, without restriction, include the right to require modification of the respective obligations and undertakings proposed to be assumed by each of the signatories in the Program to equitably account for the outcome of Nebraska v. Wyoming, and in the absence of an acceptable modification, the right to withdraw from the Cooperative Agreement or from any proposed Program.

B. In the event of such withdrawal, or if any signatory withdraws from this Cooperative Agreement for another reason, or if the Cooperative Agreement terminates and a Program is not adopted, FWS believes such a situation warrants reinitiation of consultation and will reinitiate all ESA section 7(a)(2) consultations, referenced in Paragraph VIII below, which relied upon the Cooperative Agreement and the proposed Program as a component of their reasonable and prudent alternatives, and which are subject to reinitiation pursuant to 50 C.F.R. § 402.16.

C. Because it is the intent and the commitment of the signatories to this Cooperative Agreement to work cooperatively and in good faith to resolve resource issues relating to threatened and endangered species habitats along the Central Platte River in Nebraska, the signatories make the following additional commitments for so long as all signatories remain signatories of this Cooperative Agreement.

1. The signatories agree that the pending trial in Nebraska v. Wyoming does not present the appropriate forum for establishing the specific water flow requirements for threatened and endangered species or their habitat in Nebraska. Those requirements are more appropriately defined and addressed in this Cooperative Agreement and a Program, both of which the signatories enter into or may enter into voluntarily.

2. With the exception of Nebraska v. Wyoming, each state agrees that during the term of this Cooperative Agreement, it shall not, in any judicial or administrative proceeding: (1) assert a position adverse to either of the other states on any issue relating to the target species or the associated habitats, or (2) assert a position adverse to a water related activity in either of the other states on any issue relating to the target species or the associated habitats if that water related activity is covered by this Cooperative Agreement, unless the other state consents to that assertion.

### **III. RELATIONSHIP OF ACTIVITIES UNDER THE COOPERATIVE AGREEMENT TO ANY SUBSEQUENT PROGRAM OR SECTION 7(a)(2) CONSULTATION**

Attachment III to this Cooperative Agreement is a Proposed Alternative for evaluation under NEPA and ESA entitled Proposed Platte River Recovery Implementation Program.

The signatories anticipate that the process to comply with NEPA and the programmatic section 7 consultation process will take approximately three years and have planned specific activities defined in Attachment I, "Milestones for the Cooperative Agreement," which are to take place during that period and which are exempt from or do not require further NEPA review. The Proposed Alternative is designed and other Program alternatives should be designed to build upon these activities. If the term of the Cooperative Agreement is less than three years because a Program is reviewed and agreed to in a shorter period of time, any uncompleted activities planned for the three-year period will be implemented if appropriate within the context of the agreed-to Program. For purposes of the NEPA baseline evaluation, the activities planned to be undertaken during the term of the Cooperative Agreement will be considered part of the Program alternatives evaluated.

If the Proposed Alternative or an alternative Program is agreed to following NEPA and ESA evaluation, the activities undertaken during the term of the Cooperative Agreement will be credited to the appropriate state or the federal government as contributions to the Program. Similarly, if no Program is adopted, consistent with Paragraph VIII below, activities undertaken during the term of the Cooperative Agreement will be credited to the appropriate entity for purposes of ESA evaluations.

### **IV. RESEARCH AND RELATED ACTIVITIES**

Research and analysis undertaken pursuant to this Cooperative Agreement will be designed to resolve issues or fill knowledge gaps concerning actions required to induce measurable improvements to the recovery of the target species and their associated

habitats. The signatories agree to undertake during the term of this Cooperative Agreement specific research, analysis, peer review and related activities as set forth in Attachment I, "Milestones for the Cooperative Agreement."

#### **V. HABITAT ACTIVITIES**

The signatories agree to undertake activities during the term of the Cooperative Agreement to acquire, restore, and manage land and interests in land to provide habitat as set forth in Attachment I, "Milestones for the Cooperative Agreement." Land and interests in land will be acquired from willing landowners only. The intent of the signatories is to focus activities to create the greatest biological benefit to the target species.

#### **VI. WATER CONSERVATION AND SUPPLY ACTIVITIES**

The signatories agree during the term of the Cooperative Agreement to undertake the water conservation and supply activities as set forth in Attachment I, "Milestones for the Cooperative Agreement," and in Attachment II, "Water Conservation/Water Supply Component."

#### **VII. NEPA COMPLIANCE**

A. The Department of the Interior agrees immediately to initiate steps as required by NEPA to undertake evaluation, with assistance from the other signatories, of the Proposed Alternative and of a range of reasonable alternatives which might serve the purposes of the basin-wide Program stated above in Paragraph I.D. The signatories agree that the Proposed Alternative described in Attachment III to this Cooperative Agreement will form the "proposed federal action" to be evaluated in the NEPA process. A range of reasonable alternatives will be rigorously explored and evaluated. The draft environmental impact statement should identify a preferred alternative.

B. Any activities to be implemented under the Cooperative Agreement requiring NEPA evaluation will receive such review separately.

#### **VIII. ESA COMPLIANCE**

A. Consistent with Paragraph X.E, implementation of the following measures is to serve as the reasonable and prudent alternative for impacts to the target species and their habitats within the Platte River Basin downstream from the confluence of the North and South Platte Rivers, for water related activities in the Platte River Basin during the term of this Cooperative Agreement.

1. For any water related activity for which consultation on a federal action pursuant to section 7(a)(2) of the ESA has been completed prior to the effective date of this Cooperative Agreement, and for which a federal action agency has required a non-federal party to implement reasonable and prudent alternatives by engaging in certain measures designed to produce defined benefits to the target species and/or their associated habitats pending development of and participation in a basin-wide recovery implementation program, FWS agrees to seek to extend such measures, as such measures currently exist, for the term of this Cooperative Agreement. To the extent they contribute to the land acquisition and restoration purposes of a Program, payments made or measures undertaken by or on behalf of such signatories shall be credited at the inception of a Program. FWS agrees to request the federal action agency to make provision for the changed circumstances that will exist if a Program is implemented and to include the provisions of Paragraph II.B in the event a Program is not implemented or terminates and provisions of Paragraph VIII.C in the event this Cooperative Agreement terminates prematurely.

2. For water related activities in existence as of the effective date of this Cooperative Agreement, for which consultations on federal actions pursuant to section 7(a)(2) of the ESA will be completed during the term of this Cooperative Agreement, FWS agrees that it will recommend that the federal action agency engage in or require a non-federal party to engage in certain measures or make certain payments designed to produce defined benefits to the target species and/or their associated habitats during the term of this Cooperative Agreement, based on the same formula for the applicant's share of the annual streamflow shortfall and annual cost of riverine habitat required for those parties identified in Paragraph VIII.A.1. To the extent they contribute to the land acquisition and restoration purposes of a Program, payments made or measures undertaken by or on behalf of such non-federal parties shall be credited to the state in which the water related activity is occurring at the inception of a Program. FWS agrees to request the federal action agency to make provision for the changed circumstances that will exist if a Program is implemented and to include the provisions of Paragraph II.B in the event a Program is not implemented or terminates and provisions of Paragraph VIII.C in the event this Cooperative Agreement terminates prematurely.

3. For any new water related activity for which consultation on a federal action pursuant to section 7(a)(2) of the ESA will be completed during the term of this Cooperative Agreement, FWS agrees that it will recommend that the federal action agency engage in or require a non-federal party to engage in certain measures or make certain payments designed to produce defined benefits to the target species and/or their associated habitats during the term of this

Cooperative Agreement. FWS agrees to request the federal action agency to make provision for the changed circumstances that will exist if a Program is implemented and to include the provisions of Paragraph II.B in the event a Program is not implemented or terminates and provisions of Paragraph VIII.C in the event this Cooperative Agreement terminates prematurely.

a. For new water related activities with depletions greater than 25 acre feet per year, FWS agrees to recommend replacing the consumptive use below the diversion point within the state in which the depletion occurs. Timing of replacement water will be outside of the irrigation season and at a time of shortage for the species. Because the consumptive use will be replaced during the term of this Cooperative Agreement, there will be no land component in reasonable and prudent alternatives for new depletions greater than 25 acre feet.

b. For new water related activities with depletions of 25 acre feet or less annually, FWS agrees to recommend reasonable and prudent alternatives pursuant to the June 13, 1996 biological opinion on minor water depletions. To the extent they contribute to the land acquisition and restoration purposes of a Program, payments made or measures undertaken by or on behalf of such signatories shall be credited to the state in which the water related activity is occurring at the inception of a Program.

4. Notwithstanding Paragraph VIII.A.2, the ESA responsibilities for the Federal Energy Regulatory Commission ("FERC") Projects Nos. 1417 and 1835 will be those adopted by FERC in new licenses issued for such projects. The signatories agree to recommend to FERC that license conditions should be consistent with this Cooperative Agreement and a Program. Payments made or measures undertaken by such projects shall be credited to Nebraska at the inception of a Program.

5. During the term of this Cooperative Agreement, FWS agrees that for all water related activities described in Paragraphs VIII.A.1, 2, 3 and 4 the reasonable and prudent alternatives shall define the actions to be undertaken by the activity's proponent. FWS agrees to request the National Fish and Wildlife Foundation, which will administer funds paid pursuant to Paragraphs VIII.1, 2 and 3, to expend the funds for water mitigation for water related activities in the state in which such activity occurs. Reasonable and prudent alternatives also will include a recommendation to the federal action agency for the non-federal signatory to cooperate with and participate in activities undertaken under the Cooperative Agreement and any Program subsequently implemented. During

the term of this Cooperative Agreement, FWS agrees to encourage agencies to rely on measures taken pursuant to this Cooperative Agreement without waiting for completion of the Program's NEPA and ESA evaluation when considering agency actions affecting the target species.

6. Nothing in this Cooperative Agreement shall be construed to require any person or entity undertaking or proposing to undertake any water related activity to rely on the provisions of this Cooperative Agreement or to rely on any Program subsequently implemented. Reliance on this Cooperative Agreement or any subsequent Program shall be voluntary. In the event such person or entity chooses not to so rely, FWS will not consider this Cooperative Agreement or any Program subsequently implemented as providing a reasonable and prudent alternative for such water related activity. In the event such person or entity chooses to revoke its reliance on this Cooperative Agreement, FWS will reinitiate any ESA section 7(a)(2) consultation which relied upon one of the reasonable and prudent alternatives described in Paragraph VIII.A and issue a new biological opinion.

B. In coordination with NEPA compliance as provided for by this Cooperative Agreement, FWS will evaluate whether the activities under the Proposed Alternative and, if different, under the preferred alternative, can serve as a reasonable and prudent alternative under section 7(b)(3) of the ESA for water related activities in the Platte River Basin. In the event FWS determines that the Proposed Alternative cannot serve as the reasonable and prudent alternative and the signatories cannot reach an agreement on modifying the Proposed Alternative so it can so serve, the signatories are not bound to enter into an agreement to implement a Program.

C. In the event that activities under the Cooperative Agreement are not adequately completed, FWS may reinitiate all ESA section 7(a)(2) consultations which relied upon the reasonable and prudent alternatives described in Paragraph VIII.A. Before taking such action or reinitiating consultations as described in Paragraph II, FWS will notify the Governance Committee and request its assistance in resolving the situation. If the Governance Committee is unable to resolve the situation, the Committee shall notify the Secretary of the Interior and the Governors and request their assistance. If such attempts at resolution are unsuccessful, FWS believes such a situation warrants reinitiation and will reinitiate all such ESA section 7(a)(2) consultations and issue new biological opinions.

D. Any time that FWS reinitiates section 7(a)(2) consultation, it will issue a new biological opinion based on then-current conditions. FWS believes that the new biological opinion and any subsequent amendment, restatement, or modification of a federal action based on the new biological opinion would constitute a new federal action



for purposes of administrative or judicial appeals. FWS further believes that no person or entity should be deemed to have waived or relinquished any right to challenge the legal, scientific, or technical validity of any aspect of the new biological opinion or agency action by virtue of its acceptance of or its reliance on this Cooperative Agreement, or by virtue of its support for this Cooperative Agreement in other judicial or administrative proceedings. In developing any new reasonable and prudent alternative, FWS agrees to give credit for any contributions by the owner or operator of the water related activity made pursuant to this Cooperative Agreement.

E. Any person or entity undertaking a water related activity described in Paragraph VIII.A.1, 2, 3 or 4 must agree to inclusion of reopening authority by the federal action agency in its funding or authorization documents and must agree to request amendments by the federal action agency as needed to conform its federal authorization to any agreed upon Program. Notwithstanding Paragraph II.C.2, the states shall not be restrained from taking a position adverse to one another in administrative or judicial proceedings to compel the action agency to include reopening authority in any such federal funding or authorization.

## **IX. GOVERNANCE STRUCTURE**

Following the execution of this Cooperative Agreement, a Governance Committee is to be established to review, direct, and provide oversight for the activities undertaken under this Cooperative Agreement except as provided by Paragraphs VII and VIII of this Cooperative Agreement.

A. **Membership.** The Governance Committee will consist of the following members:

1. one member per signatory state, to be selected by the Governor of that state;
2. two federal members, to be selected by the Secretary of the Interior, one representing FWS and one representing the Bureau of Reclamation ("BOR");
3. two environmental members representing the environmental entities in the three states, to be selected by those entities;
4. one member representing water users on the North Platte River in Wyoming and also water users in Nebraska above Lake McConaughy who have storage contracts for water in the federal reservoirs in Wyoming, to be selected by those users;

5. one member representing water users on the South Platte River above the Western Canal diversion, to be selected by those users; and
6. one member representing water users downstream of Lake McConaughy or the Western Canal and Nebraska users upstream of Lake McConaughy who do not have federal storage contracts, to be selected by those users.

Within 15 days of execution of this Cooperative Agreement, DOI will provide notice to the appropriate constituencies or entities and request that they select their members and notify FWS of the selection within 30 days. Each entity or constituency represented may select its own methods of choosing its member(s). Each member of the Governance Committee will also have an alternate selected in the same manner as that member. Until the initial selections are made, or in the event of a vacancy, the member's seat(s) shall be considered vacant, and the voting requirements in Paragraph IX.B shall be reduced accordingly. Members of the Governance Committee serve at the sufferance of their constituents.

**B. Voting.** For the purpose of voting on any issue, a quorum consists of the member or alternate appointed by each Governor, the members representing FWS or BOR or their alternates, and two other members or alternates. The chair shall provide reasonable notice of all Governance Committee meetings and a proposed agenda to all members and alternates. Nine of the ten members of the Governance Committee, including the member or alternate appointed by each Governor and the member or alternate representing FWS, must vote in the affirmative for the Governance Committee to establish a position on policy issues. Seven of ten votes are needed for the Governance Committee to take action on non-policy issues. For purposes of this Cooperative Agreement, the term "policy issue" shall mean an issue affecting the term, scope, allocation of funding, or continued viability of this Cooperative Agreement. If a member and alternate are absent from a meeting or abstain from voting, the voting requirements will be reduced accordingly.

**C. Responsibilities.** The Governance Committee will:

1. meet on a quarterly basis for the first year of the Cooperative Agreement and semiannually thereafter except when more frequent meetings are agreed upon;
2. elect a chair annually and develop such other rules of governance, procedure and conflict resolution as it deems appropriate;

3. establish technical committees composed of persons with appropriate expertise, as appropriate, to carry out activities under the Cooperative Agreement;
4. serve as arbiter of disputed external peer reviews upon request of any technical committee;
5. agree on allocations of funds and other available resources to any technical committees for utilization consistent with the committees' responsibilities, subject to any applicable limitations on the use of federal or state funds;
6. enter into an agreement with an appropriate entity for the administration of certain funds expended pursuant to this Cooperative Agreement;
7. assess accomplishments, implement measures to correct any shortfalls, and revise milestones accordingly; and
8. develop specific milestones for implementing a Program.

Although the signatories agree to cooperatively participate in the Governance Committee, nothing in this paragraph is intended to modify the provisions of Paragraph X.E.

**D. Contributions of the Signatories.** The Department of the Interior and the States of Nebraska, Colorado, and Wyoming will provide representatives to the Governance Committee and to any technical committees established by the Governance Committee without compensation from any other signatory.

**E. Governance Structure for Any Program.** The governance structure, responsibilities and authorities described in Attachment III, Appendix C, shall be applicable to any Program developed pursuant to this Cooperative Agreement unless, after the NEPA evaluation, the signatories agree otherwise.

## **X. OTHER PROVISIONS**

**A. Geographic Scope.** This Cooperative Agreement applies only to water related activities and new water related activities occurring in the Platte River Basin upstream of the confluence of the Loup River with the Platte River.

**B. Term.** This Cooperative Agreement shall remain in effect for three years or until the signatories enter into an agreement implementing a Program following the

NEPA and ESA processes, whichever comes earlier, or until terminated by the Governance Committee after notification of the Secretary of the Interior and the Governors as described in Paragraph IX.C.6. If required to complete NEPA or ESA review, the Cooperative Agreement may be extended for six months and the Governance Committee may include further activities in the Milestones which are exempt from or do not require further NEPA or ESA review. FWS will take appropriate action regarding ESA compliance for the activities described in Paragraph VIII in the event of such extension.

C. Contributions of the Signatories. DOI and the States of Nebraska, Colorado, and Wyoming will make certain cash and cash-equivalent contributions during the term of the Cooperative Agreement for purposes of undertaking the activities provided for by this Cooperative Agreement, as set forth in Attachment I, "Milestones for the Cooperative Agreement," and subject to the authorities and limitations described in Paragraphs X.D, E, F, G and H.

D. Authorities and Responsibilities

1. Federal Cooperation with States. Section 2(c)(2) of the ESA, 16 U.S.C. § 1531(c)(2), states that "the policy of Congress is that federal agencies shall cooperate with state and local agencies to resolve water resource issues in concert with conservation of endangered species." Under Section 6 of the ESA, the Secretary of the Interior is directed to cooperate to the maximum extent practicable with the states in carrying out the program authorized by the ESA and to consult with the affected states before acquiring any land and water, or interest therein, for the purpose conserving listed species. Under 31 U.S.C. § 6305, an executive agency should enter a cooperative agreement when anything of value will be transferred to a state or local government to carry out a public purpose authorized by federal statute.

2. Recovery Plans and Teams. Under section 4(f) of the ESA, 16 U.S.C. § 1533(f), the Secretary of the Interior is directed to develop and implement plans for the conservation of endangered species. The Secretary of the Interior may procure the services of public and private agencies and institutions in developing and implementing such recovery plans. Advice from such agencies and institutions is not subject to the Federal Advisory Committee Act, 5 U.S.C. app.2.

3. Consultation and Regulatory Certainty. Under section 7 of the ESA, 16 U.S.C. § 1536, federal agencies shall utilize their programs and authorities in furtherance of the purposes of the ESA and ensure that their actions are not

likely to jeopardize listed species or adversely modify designated critical habitat of such species. Under the Fish and Wildlife Coordination Act, 16 U.S.C. § 662, federal agencies must consult with the Service and with state wildlife agencies on the impacts to fish and wildlife resources of federal or federally licensed or permitted water projects.

4. Operation of Federal Water Projects. The Bureau of Reclamation is charged with the operation of certain federal projects in the North Platte and South Platte River Basins under applicable federal laws.

5. Applicable State Law. Subject to applicable compacts and decrees, the States of Wyoming, Nebraska, and Colorado administer water rights, including water rights for instream flows. Each of these states also has certain statutory authorities and responsibilities to protect and manage its fish and wildlife resources. All water rights necessary to carry out activities under the Cooperative Agreement and a Program developed under its terms will be applied for by a state agency or a project operator, and granted as appropriate under the state's water law and in keeping with state authorities and responsibilities for fish and wildlife. Nothing in this Cooperative Agreement shall be construed as creating federal water rights or requiring the granting of water rights to federal entities.

E. No Delegation or Abrogation. Although this Cooperative Agreement sets forth a cooperative process, all signatories to this Cooperative Agreement recognize that they each have statutory responsibilities that cannot be delegated, and that this Cooperative Agreement does not and is not intended to abrogate any of their statutory responsibilities.

F. Consistency with Applicable Law. This Cooperative Agreement is subject to and is intended to be consistent with all applicable federal and state laws and interstate compacts and decrees.

G. Legislative Approval. Funding commitments made under this Cooperative Agreement are subject to approval and appropriations by the appropriate state and federal legislative bodies.

H. Officials Not to Benefit. No member of, or delegate to Congress, or resident Commissioner, shall receive any benefit that may arise from this Cooperative Agreement.

I. No Admissions by States. The states are entering into this Cooperative Agreement on a voluntary and cooperative basis in an effort to resolve ESA species

conflicts through a negotiated and mutually agreed upon basin-wide Cooperative Agreement and Program. Nothing herein shall constitute an admission that any water related activities or new water related activities have caused or will cause adverse effects to the target species or their habitats.

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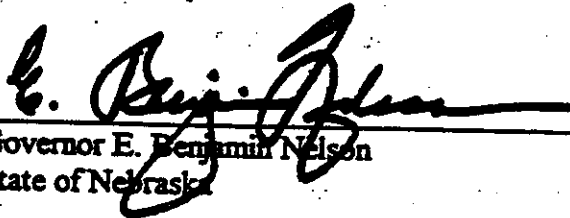
Date



Secretary Bruce Babbitt  
Department of the Interior

7/1/97

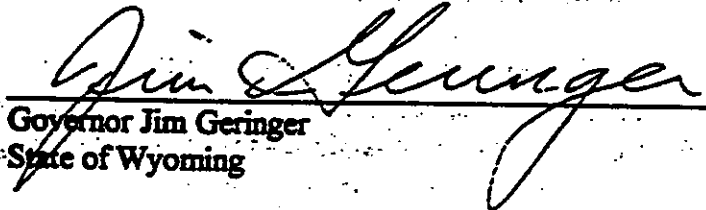
Date



Governor E. Benjamin Nelson  
State of Nebraska

7-1-97

Date



Governor Jim Geringer  
State of Wyoming

7/1/97

Date



Governor Roy Romer  
State of Colorado

*Appendix E*  
*Cooperative Agreement for Recovery Implementation Program for*  
*Endangered Species in*  
*The Upper Colorado River Basin*





COOPERATIVE AGREEMENT

for

RECOVERY IMPLEMENTATION PROGRAM FOR  
ENDANGERED SPECIES IN  
THE UPPER COLORADO RIVER BASIN

1. Purpose. The parties hereto agree to participate in and implement the recovery program as provided for in the document "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin" (Program), dated September 29, 1987. The parties also agree to participate in the Recovery Implementation Committee which will be established to oversee the implementation of the Program. The Program provides for a broad range of measures to manage and recover three endangered fishes and to manage the razorback sucker, while providing for new water development to proceed in the Upper Colorado River Basin. The Program has five principal elements: (a) habitat management through the provision of instream flows; (b) nonflow habitat development and maintenance; (c) native fish stocking; (d) management of nonnative species and sportfishing; and (e) research, data management, and monitoring. The Program depends on the effective implementation of all of these elements and on their successful coordination. It is agreed that the Program may be modified from time to time by the Committee as experience is gained in implementing the Program.

2. Geographic Scope. The Program and this Cooperative Agreement apply only to the Upper Colorado River Basin above Glen Canyon Dam, excluding the San Juan River Subbasin.

3. Term. This Cooperative Agreement shall remain in effect for a period of 15 years from the date of its execution.

4. Amendment. This Cooperative Agreement may be extended, amended, or terminated by agreement of the parties, or any party may withdraw from this Cooperative Agreement upon written notice to the other parties.

5. Authorities and Responsibilities

A. Federal Cooperation with States. Section 2(c)(2) of the Endangered Species Act, states that "the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." Under Section 6 of the Act, the Secretary of the Interior is directed to cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act and to consult with affected States before acquiring any land and water, or interest therein, for the purpose of conserving endangered species. Under Section 6 of 41 USC 505, an executive agency should enter a cooperative agreement when anything of value will be transferred to a State or local government to carry out a public purpose authorized by Federal statute.

B. Recovery Plans and Teams. Under Section 4(f) of the Endangered Species Act, the Secretary is directed to develop and implement plans for the conservation of endangered species and may procure the services of public and private agencies and institutions in developing and implementing such recovery plans.

C. Consultation and Coordination Among Federal Agencies. Under Section 7 of the Endangered Species Act, Federal agencies shall utilize their programs and authorities in furtherance of the purposes of the Act and ensure

that their actions are not likely to jeopardize listed species. Under Section 2 of the Fish and Wildlife Coordination Act, Federal agencies must consult with the Fish and Wildlife Service and with State wildlife agencies on the fish and wildlife impacts of Federal or federally licensed or permitted water projects.

D. Operation of Federal Water Projects. The Bureau of Reclamation is charged with the operation of the Flaming Gorge and Curecanti storage units under the 1956 Colorado River Storage Project Act and with the operation of Ruedi Reservoir under P.L. 87-590 and other applicable Federal laws.

E. Applicable State Law. Pursuant to applicable State laws and interstate compacts, Colorado, Utah, and Wyoming administer water rights, including water rights for instream flows, and oversee development of water resources, allocated and apportioned to them in perpetuity by interstate compacts. Each of these States also has certain statutory authority and responsibility to protect and manage its fish and wildlife resources.

6. No Delegation or Abrogation. All parties to this Cooperative Agreement recognize that they each have statutory responsibilities that cannot be delegated, and that this Cooperative Agreement does not and is not intended to abrogate any of their statutory responsibilities.

7. Consistency with Applicable Law. This Cooperative Agreement is subject to and is intended to be consistent with all applicable Federal and State laws and interstate compacts.

8. Legislative Approval. All funding commitments made under the Program and this Cooperative Agreement are subject to approval by the appropriate State and Federal legislative bodies.

Donald Paul Hodel

Donald Paul Hodel  
Secretary of the Interior

Jan 21 1988  
Date

Roy Romer  
Roy Romer  
Governor of Colorado

1/21/88  
Date

Norman H. Bangerter  
Norman H. Bangerter  
Governor of Utah

1/22/88  
Date

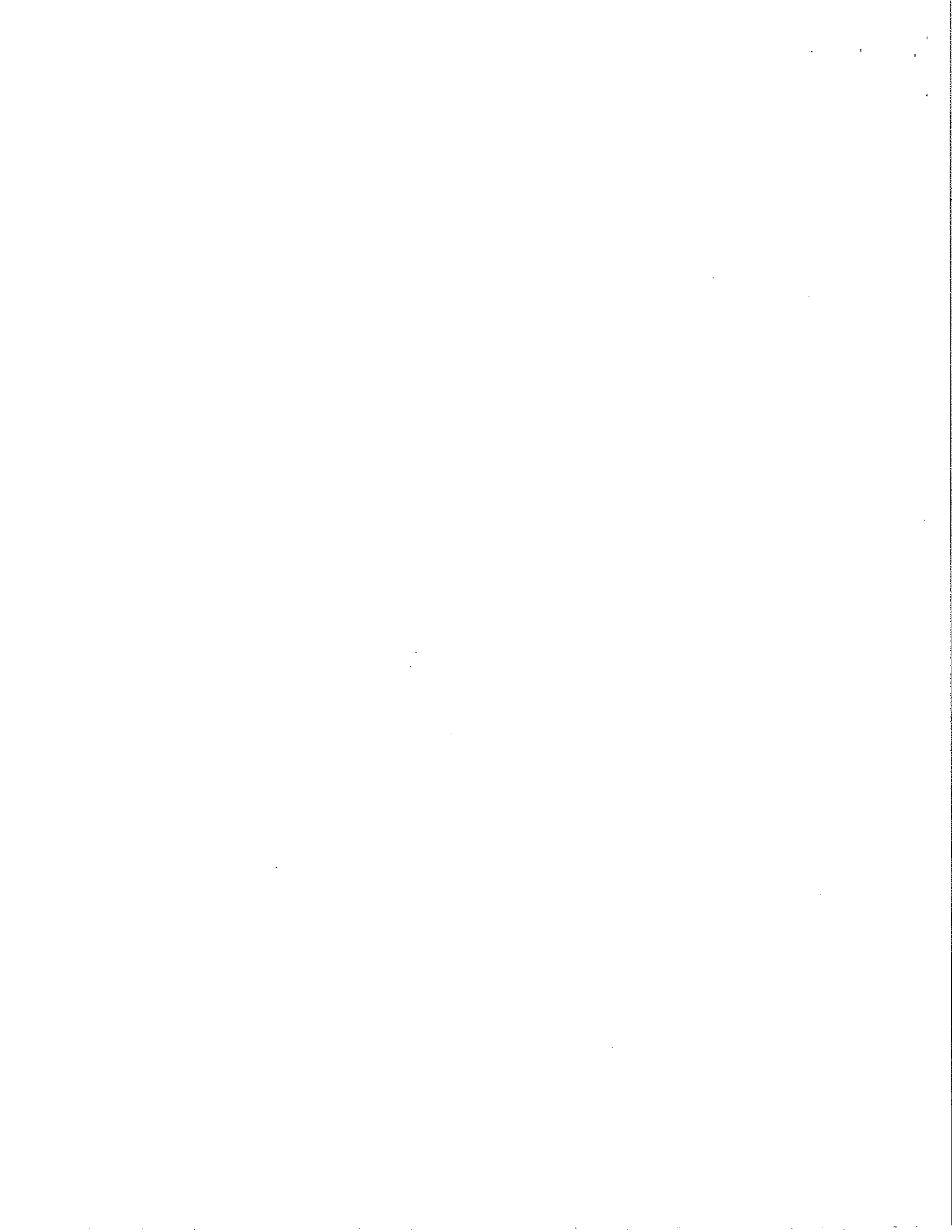
Mike Sullivan  
Mike Sullivan  
Governor of Wyoming

1/21/88  
Date

William H. Clagett  
William H. Clagett  
Administrator, Western Area Power  
Administration, Department of Energy

21 Jun 88  
Date

*Appendix F*  
*Section 7 Consultations for Water Depletions*  
*In the Upper Colorado River Basin*  
*Through August 30, 1998*



Section 7 Consultations For Water Depletions in the Upper Colorado River After Recovery Implementation Program Initiation (January 1988): Through 9/30/98

Federal Agency	Project Name	State	River	Initiation Date	Due Date	Acres Feet of New Depletion	Acres Feet of Hist. Depletion	Charge	Opinion	Footnote
BLM	Conoco Buttes-Ourray Gas	UT	White	6-Feb-92	6-May-92	11		\$130.00	Finalized	11-Feb-92
BLM	James Creek	CO	White	23-Nov-88	23-Feb-89	400		\$4,000.00		3-Feb-89
BLM	Jensen-Miller	CO	White	18-Nov-88	18-Feb-89	30		\$300.00		3-Feb-89
BLM	Muddy Creek	CO	Colorado	24-Jan-89	24-Mar-89	7716		\$80,324.00		7-Feb-90
BLM	Yellow Eagle Mine	CO	Dolores	5-Apr-91	5-Jul-91	24		\$275.00		6-Dec-91
BLM	Colo Interst Uinta Pipeline	CO	Green	3-Oct-91	3-Jan-92	17		\$196.00		10-Feb-92
BLM	Somerset Coal Mine	CO	Gunnison	17-Apr-92	17-Jul-92	1		\$12.00		24-Jul-92
BLM	Trans-Colorado Gas Pipeline	CO	Colorado	1-Mar-92	2-Jun-92	13		\$149.00		30-Nov-92
BLM	Chapman-Riebold Amend	CO	White	5-Nov-92	5-Feb-93	35		\$419.00		29-Jul-93 7
BLM	Devils Canyon	CO	Colorado	12-Jan-93	12-Apr-93	15		\$180.00		29-Jul-93 7
BLM	Dowler Pipeline	CO	Colorado	16-Jun-93	16-Sep-93		29	\$0.00		27-Aug-93 7
BLM	Rocky Mt. Natural Gas	CO	Colorado	24-Jun-93	24-Sep-93	9		\$108.00		27-Aug-93 7
BLM	Wilcoxson Water Supply	CO	Colorado	20-Jul-93	20-Oct-93		0.55	\$0.00		27-Sep-93 2,7
BLM	Mountain Coal	CO	Gunnison	26-Nov-93	26-Feb-94	1		\$12.00		21-Dec-93 7
BLM	Cason Irrigation Pipeline	CO	Colorado	20-Jul-93	20-Oct-93	14		\$169.00		13-Jan-94 7
BLM	Hastings Pipeline	CO	Colorado	13-Dec-93	13-Feb-94		44	\$0.00		28-Jan-94 2,7
BLM	JQS Pit Reservoirs	CO	Colorado	18-Jan-94	18-Apr-94	2.55		\$31.00		22-Feb-94 7
BLM	Taylor Grazing Pond	CO	Colorado	18-Jan-94	18-Apr-94	1.28		\$16.00		22-Feb-94 7
BLM	Vasten Homestead Waterfowl	CO	Colorado	18-Jan-94	18-Apr-94	6.38		\$79.00		22-Feb-94 7
BLM	Jolly-Potter	CO	Colorado	10-Feb-94	10-May-94		125	\$0.00		3-Mar-94 2,7
BLM	Schenk Water Tank	CO	Colorado	25-Feb-94	25-May-94		30.4	\$0.00		7-Apr-94 2,7
BLM	Greenhorn Stock Pond	CO	Colorado	18-Jan-94	18-Apr-94	2.55		\$31.00		7-Apr-94 7
BLM	North Northwater Spring	CO	Colorado	5-Apr-94	5-Jul-94	1.61		\$20.00		31-May-94 7
BLM	Clough-Alber Ponds	CO	Colorado	5-Apr-94	5-Jul-94	1.28		\$16.00		31-May-94 7
BLM	New Castle Water Tank	CO	Colorado	8-Apr-94	8-Jul-94		446.22	\$0.00		31-May-94 2,7
BLM	Jolley Irrigation	CO	Colorado	13-Apr-94	13-Jul-94	393		\$0.00		31-May-94 2,7
BLM	Programmatic Colo <125	CO	Colorado	29-May-94	29-Aug-94	1400		\$0.00		13-Jun-94 2,4,7
BLM	Jerry Creek/Ute Water/BLM Land Exch.	CO	Colorado	20-Mar-97			670	\$0.00		15-Apr-97 2,7
BLM	Ute Pipeline	CO	Colorado	1-Jul-96		1054		\$14,555.74		2-Feb-98 2,7,9
BLM	Wolford Mtn. Resv.	CO	Colorado	23-May-97		5769		\$79,670.00		4-Mar-98 7
BLM	Trans-Colorado Gas Pipeline 2	CO	Colorado	14-Jan-98	14-Apr-98	124		\$1,712.44		18-May-98 7
BLM	Rock Creek	UT	Green	6-Nov-85	18-Apr-86	120		\$1,200.00		24-Mar-89
BLM	Columbia Gas Development	UT	Colorado	8-Aug-91	8-Nov-91	1	15	\$173.00		2-Oct-91 2
BLM	Hog Canyon Reservoir	UT	Colorado	14-Feb-92	14-May-92			\$12.00		4-Jun-92
BLM	Buckhorn Wash	UT	Green	6-Nov-92	6-Feb-93	15		\$180.00		10-Dec-92
BLM	Aable Trucking Co	UT	Colorado	17-May-93	17-Aug-93	20		\$240.00		21-Jun-93
BLM	Moab District	UT	Colo, Green	2-Feb-94	2-May-94	531				6-May-94 4,7
BLM	Monument Butte	UT	Green	14-May-94	14-Aug-94	500		\$6,170.00		18-Jul-94 7
BLM	Balcon Oil & Gas Development	UT	Green	2-Dec-94	2-Mar-95	441		\$5,605.00		21-Apr-95 7
BLM	Lisbon Valley Copper Project	UT	Green	13-Mar-96	20-Jun-96	907		\$12,162.87		26-Nov-96 7

BLM	Enron Oil & Gas	WY	Green	10-Apr-89	10-Jul-89	30		\$300.00	12-Apr-89
BLM	Chevron	WY	Green	11-Aug-89	11-Nov-89	8		\$80.00	8-Sep-89
BLM	Pac. Enterpr. Oil	WY	Green	11-Aug-89	11-Nov-89	2		\$20.00	8-Sep-89
BLM	Coastal Oil and Gas	WY	Green	9-Nov-89	9-Feb-90	4		\$40.00	17-Nov-89
BLM	Texaco	WY	Green	9-Nov-89	9-Feb-90	8		\$80.00	17-Nov-89
BLM	Mobil Oil Drill	WY	Green	9-May-90	9-Aug-90	8		\$83.00	11-May-90
BLM	Amoco Moxa Arch	WY	Green	11-Jun-91	11-Sep-91	82		\$895.00	6-Aug-91
BLM	Big Piney/La Barge Crd Act Pin	WY	Green	26-Jun-91	26-Sep-91	0		\$0.00	6-Aug-91
BLM	PG&E Fontenelle Gas Infill	WY	Green	16-Jun-91	16-Sep-91	61		\$666.00	14-Aug-91
BLM	Mobil Tip Top/Hogsback	WY	Green	13-May-94	13-Aug-94	162		\$1,676.25	27-Jun-94 4,7
BLM	Dad Ponds	WY	Little Snake	16-Jun-97	16-Sep-97	125		Exempt	8-Mar-89
BR	Lake City/Blue Mesa	CO	Gunnison	13-Dec-88	15-Mar-89	25		Exempt	8-Jun-89
BR	Paradox Valley Salinity	CO	Dolores	29-Mar-89	29-Jun-89	1448		Exempt	28-Mar-90
BR	Paradox-Related Water Sales	CO	Gunnison	13-Mar-90	13-Jun-90	6000		Exempt	21-Jun-91
BR	Crested Butte/Blue Mesa	CO	Gunnison	3-Jun-91	3-Sep-91	98		Exempt	23-Oct-91 2
BR	Paonia Water Sale	CO	Gunnison	2-Aug-91	2-Nov-91	800		Exempt	29-Jun-92 2
BR	Colbran Project Amendment	CO	Colorado	24-Jun-92	24-Sep-92	746		Exempt	12-Mar-93
BR	Lone Dome Ditch	CO	Dolores	4-Mar-93	4-Jun-93	240		Exempt	10-Nov-93 7
BR	Grand Valley BLM Sdk Ponds	CO	Colorado	24-Sep-93	24-Dec-93	21		Exempt	10-Nov-93 7
BR	Crawford Reservoir	CO	Gunnison	30-Sep-93	30-Dec-93	8		Exempt	26-May-95 7
BR	Ruedi Rsvr Round 2 Water Sale	CO	Colorado	1-Sep-94	1-Dec-94	17000		Exempt	13-Jan-97 7
BR	Paradox Valley Salinity Control Unit	CO	Dolores	18-Dec-96		516		Exempt	11-Feb-97 7
BR	Basalt Water Conserv. Water Sale Contr.	CO	Colorado	23-Dec-96		1000		Exempt	7
BR	West Divide Conserv. Water Sales Contr.	CO	Colorado	23-Dec-96		200		Exempt	2-Sep-98 2,7
BR	Green Min. Resv. Water Service Contr.	CO	Colorado	25-Jul-97	25-Oct-97	1000		\$0.00	31-Aug-90 2,3
*BR	Silt WCD Diversion Replacement	CO	Colorado	14-Aug-98	14-Nov-98			\$1,995.00	9-Jan-95 3,7
BR	Strawberry Aqueduct CUP	UT	Duchesne	7-Jul-94	9-Oct-94	157		Exempt	29-Jul-98 2,7
BR	Narrows Amendment	UT	Green	27-Mar-97		25300		Exempt	19-Apr-88
*BR	Duchesne River Basin	UT	Duchesne	14-Dec-87	14-Mar-88	1250		Exempt	25-Nov-92
BR	Church & Dwight Co	WY	Green	1-Jan-78	1-Jun-80	0		Exempt	15-May-95 7
BR	Flaming Gorge	WY	Green	22-Feb-95	22-May-95	500		Exempt	4-Feb-92 3
BR	Fontenelle Resv Water Contract	WY	Green	9-Aug-88	15-Feb-90	25310		Exempt	
BR/SCS	Price-San Rafael	UT	Green					\$258,290.00	
	BR: 2,850							\$62,100.00	25-Mar-92 3
	SCS: 22,460							\$12,092.00	15-Aug-89 2
BR/COE	Narrows	UT	Green	8-Nov-91	7-Feb-92	5400		\$3,881.00	16-Aug-89
COE	West Slope Refinery	CO	Colorado	8-Feb-89	8-May-89	1209		\$2,082.00	2-Nov-89 2
COE	Frei & Sons	CO	Colorado	25-Apr-89	25-Jul-89	388		\$285.00	13-Apr-90
COE	Colo.Div.Wild. Rio Blanco	CO	White	26-Jun-89	26-Sep-89	200		\$22.00	27-Jul-90
COE	Steamboat Springs Pipeline	CO	Colorado	20-Mar-90	20-Jun-90	27		\$21.00	14-Nov-90 2
COE	Town of New Castle	CO	Colorado	6-Jul-90	6-Oct-90	2		\$21,820.00	11-Mar-91
COE	Colorado DOW Crystal Hatchery	CO	Colorado	24-Jan-90	24-Apr-90	2000		\$45.00	31-May-91
COE	Bluestone/Roan Creek	CO	Colorado	9-Oct-90	9-Jan-91	4			
COE	Everist Gravel	CO	Colorado	8-Mar-91	8-Jun-91				







FS	Convulsion Canyon	UT	Green	2-May-94	2-Aug-94	0.15	1-Jul-94 4,7	
FS	Soda Unit Natural Gas	WY	Green	13-Dec-88	15-Mar-89	102	\$1,020.00 14-Mar-89	
FS	Bridger/Teton Forest Plan	WY	Green	27-Mar-89	15-Aug-89	174	\$2,145.00 22-Sep-94 7	
FS	Pelican Ponds	WY	Green	16-Aug-94	16-Nov-94	36	\$0.00 23-Sep-92 6	
FWS	Ouray Fish Hatchery	UT	Green	3-Aug-92	3-Nov-92	4	\$47.00 13-Nov-92	
FWS	Featherdown Wetland	WY	Green	15-Oct-92	15-Jan-93	1000	Exempt 3-Jul-94 4,7	
FWS	Small Depletions	REG	Colo, Green			2000	Exempt 9-Mar-95 4,7	
FWS	Small Depletions	REG	Colo, Green			3000	Exempt 8-Jul-97 4,7	
FWS	Small Depletions	REG	Colo, Green			1	\$12.00 13-Aug-92	
NPS	Natural Bridges National Monument	UT	Colorado	22-Jul-92	22-Oct-92	154.3	\$2,130.88 29-Jul-98 7	
*NRC	Atlas Mill Tailings Reclamation	UT	Colorado	12-Feb-97	12-Aug-94	11.84	\$146.00 3-Jun-94 7	
SCS	Bray Irrigation	CO	Dolores	12-May-94	12-Aug-94	628	\$0.00 23-Sep-98 2,7	
*NRCS	Brock Ditch	CO	Yampa	8-Sep-98	8-Dec-98	127	\$1,270.00 18-Apr-88	
OSM	Colowyo Coal Company	CO	Yampa	11-Jan-88	9-Apr-88	123	\$1,228.00 18-Apr-88	
OSM	Trapper Mine	CO	Colorado	25-Mar-88	25-Jun-88	3	\$34.00 18-Oct-88	
OSM	Apex #2 Mine	CO	Yampa	30-Aug-88	30-Nov-88	2	\$20.00 8-Aug-89	
OSM	Munger Canyon Mine	CO	Colorado	12-Sep-88	12-Dec-88	4	\$40.00 16-Apr-92	
OSM	Munger/McCane Mine	CO	Colorado	2-Mar-92	2-Jun-92	3	\$30.00 22-May-92	
OSM	Colowyo Coal Expand	CO	Yampa	14-Jan-92	14-Apr-92	3.5	\$40.00 2-Jun-92	
OSM	Salt Creek Mine	CO	Colorado	5-Mar-92	5-Jun-92	30	\$364.00 3-Feb-93	
OSM	Sanborn East Tract	CO	Colorado	11-Dec-92	11-Mar-93	56	\$676.00 23-Jul-93 7	
OSM	Hayden Gulch Loadout	CO	Yampa	2-Mar-93	2-Jun-93	37.5	\$463.00 31-May-94 7	
OSM	Orchard Valley Mine	CO	Gunnison	15-Mar-94	15-Jun-94	15.3	\$189.00 31-May-94 7	
OSM	Bear Mine #3	CO	Colorado	29-Mar-94	29-Jun-94	17.1	\$211.00 30-Jun-94 7	
OSM	Mt. Coal West Elk	CO	Gunnison	16-Sep-93	16-Dec-93	165.45	\$2,103.00 4-May-95 7	
OSM	Foidel Creek Mine	CO	Yampa	20-Apr-95	20-Jul-95	123.6	\$1,611.74 3-Sep-96 7	
OSM	Bowie Mine #2	CO	Gunnison	22-Jul-96	22-Oct-96	134.89	\$1,808.87 11-Jul-97 7	
OSM	Foidel Creek Mine Expansion	CO	Yampa	9-May-97	8/9/97	730	\$9,789.30 4-Nov-96 7	
OSM	Cyprus Plateau's Willow Creek Mine	UT	Price	20-Aug-96	11-Sep-87	107	\$1,600.00 9-Feb-88	
OSM	Kemmerer Mine Modification	WY	Green	11-Jun-87	11-Sep-87	72	\$720.00 18-Apr-88 2	
OSM	Black Butte Mine	WY	Green	5-Feb-88	5-May-88	11	\$148.00 22-Dec-93 7	
OSM	Lion Coal Swanson Mine	WY	Green	9-Nov-93	9-Feb-93	123,614.32	568,448.78	
							TOTAL:	692,063.10
BLM	Major Ongoing Consultations	UT	Duchesne	19-Sep-91		5.4		
BR	Coors Duchesne Oil & Gas	CO	Gunnison	3-Jun-05		5	Exempt	
FWS	Aspinall	CO	Colorado			7		
COE	15-Mile Reach Programmatic	WY	Little Snake	27-Jul-98	7-Dec-98	7724	0	
BR	High Savery Dam & Reservoir	UT	Price			7		
BR	Narrows reinitiation (on hold)	UT	Price			7		
BR	Scofield Dam (on hold)	UT	Price			7		

Depletion charge: Pre FY 1990 - \$10/AF; FY 1990 - \$10.41/AF; FY 1991 - \$10.91/AF;  
FY 1992 - \$11.50/AF; FY 1993 - \$11.98/AF; FY 1994 - \$12.34/AF; FY 1995 - \$12.71/AF;

FY 1996 - \$13.04/AF; FY 1997 - \$13.41/AF; FY 1998 \$13.81/AF; FY 1999 \$14.13/AF

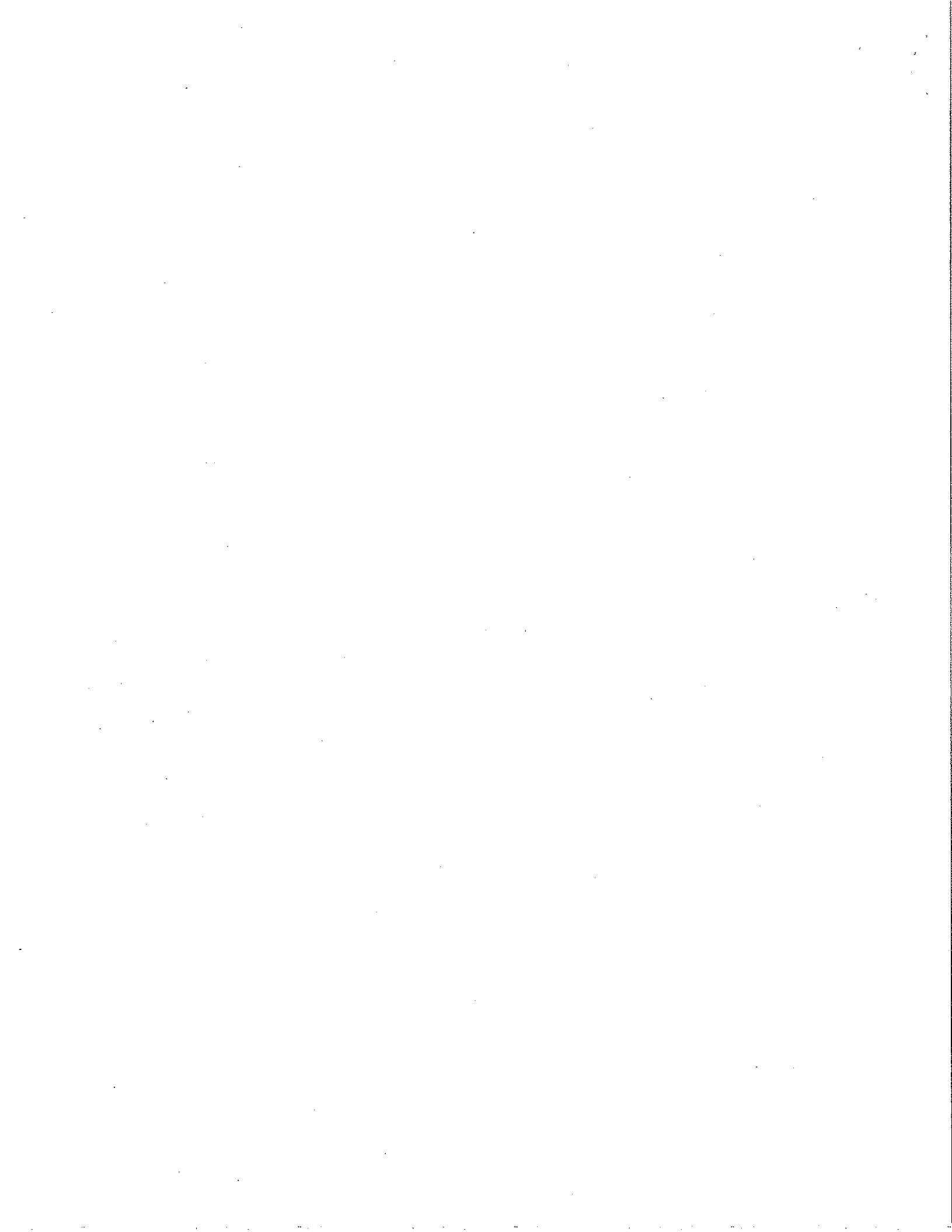
Footnotes:

- 2 Historic Depletion
- 3 Subject to Flaming Gorge Biological Opinion
- 4 Amount to be determined on project specific basis
- 5 Consultation period extended
- 6 No depletion charge because project has net benefit to fish
- 7 Consultation under Section 7 Agreement
- 8 Payments were collected under individual consultations for Enron, Chevron, Pacific, Coastal, & Mobil
  - An asterisk in the "Federal Agency" column denotes a consultation added in the last quarter

Note: Since 1988, the Service has consulted on 202 projects with a potential to deplete a total of 692,063 af in the Upper Colorado River Basin, of which 57 are historic depleting 568,449 af. Three of these "projects" are blanket consultations for deple

Operation of Flaming Gorge dam enhances spring peak flows on the Green River by up to 145,787 af each year. Operation of Ruedi Reservoir provides up to 31,650 af to augment late summer and fall flows in the Colorado River

*Appendix G*  
*Cooperative Agreement*  
*For the*  
*San Juan River Basin Recovery Implementation Program*



**COOPERATIVE AGREEMENT**

**for the**

**SAN JUAN RIVER BASIN RECOVERY IMPLEMENTATION PROGRAM**

*[The following text is extremely faint and largely illegible due to low contrast and scan quality. It appears to be the beginning of the agreement's body text, likely containing the names of the parties and the purpose of the program.]*

## COOPERATIVE AGREEMENT

This Cooperative Agreement is entered into by the United States of America, represented by the Department of the Interior (Department); the State of Colorado; the State of Utah; the State of New Mexico; the Navajo Nation; the Southern Ute Indian Tribe; the Ute Mountain Ute Indian Tribe; and the Jicarilla Apache Indian Tribe.

### I. PURPOSE

On October 24, 1991, a Memorandum of Understanding was executed by the Department, the States of Colorado, Utah, and New Mexico, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and the Jicarilla Apache Indian Tribe, to set forth certain agreements and to establish the foundation for a long-term program to recover the endangered fish species of the San Juan River Basin. This Cooperative Agreement adopts the attached San Juan River Basin Recovery Implementation Program (Implementation Program). The signatories to this Cooperative Agreement agree to participate in and support the Implementation Program including the committees established by the Implementation Program.

### II. AUTHORITIES AND RESPONSIBILITIES

- A. Federal Cooperation with States. Section 2(c)(2) of the Endangered Species Act, states that "the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." Under section 6 of the Act, the Secretary of the Interior is directed to cooperate to the maximum extent practicable with the States in carrying out the program authorized by the Act and to consult with affected States before acquiring any land and water, or interest therein, for the purpose of conserving endangered species. Under section 6 of the Act, an executive agency should enter a cooperative agreement when anything of value will be transferred to a State or local government to carry out a public purpose authorized by Federal statute.
- B. Recovery Plans and Teams. Under section 4(f) of the Endangered Species Act, the Secretary is directed to develop and implement plans for the conservation of endangered species and may procure the services of public and private agencies and institutions in developing and implementing such recovery plans.
- C. Consultation and Coordination Among Federal Agencies. Under section 7 of the Endangered Species Act, Federal agencies shall utilize their programs and authorities in furtherance of the purposes of the Act and ensure that their actions are not likely to jeopardize listed species. The Department has the authority to enter into this Cooperative Agreement under section 1 of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.). Under



section 2 of the Fish and Wildlife Coordination Act, Federal agencies must consult with the Fish and Wildlife Service and with State wildlife agencies on the fish and wildlife impacts of Federal or federally licensed or permitted water projects.

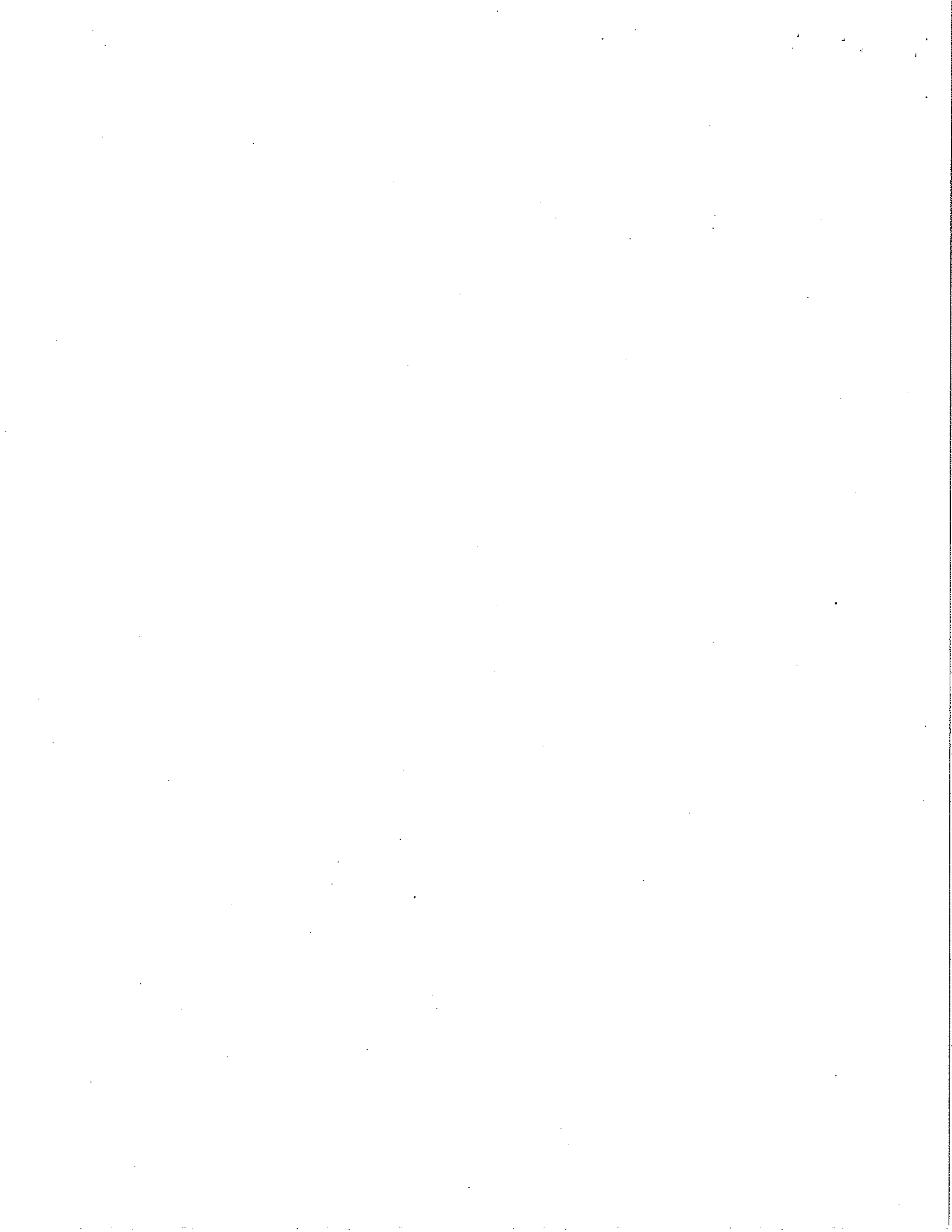
- D. Applicable State Law. Pursuant to the applicable State laws and interstate compacts, Colorado, Utah, and New Mexico administer water rights, including water for instream uses, and oversee development of water resources, allocated and apportioned to them in perpetuity by interstate compacts. Each of these States also has certain statutory authority and responsibility to protect and manage its fish and wildlife resources.
- E. Applicable Tribal Law. Pursuant to the applicable Tribal laws, and inherent Tribal sovereignty, the Navajo Nation, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, and the Jicarilla Apache Indian Tribe have the authority to administer water rights, to oversee the development of water resources, and to protect and manage fish and wildlife resources within the boundaries of their reservations.
- F. Statement of Authorities. The signatories hereby state that they have legal authority to enter into this Cooperative Agreement, and have legal authority to carry out all the provisions of the Implementation Program.

### III. TERMS AND CONDITIONS

- A. Effective Date and Duration. This Cooperative Agreement shall be effective as of November 1, 1992, and shall remain in effect for a period of 15 years, however, the protection of the reservoir releases as per the Biological Opinion for the Animas-LaPlata Project (Project) shall survive the termination of this agreement and last for the life of the Project.
- B. Amendment. This Cooperative Agreement may be extended, amended, or terminated by agreement of the signatories, or any signatory may withdraw from this Cooperative Agreement upon written notice to the other signatories.
- C. No Delegation or Abrogation. All signatories to this Cooperative Agreement recognize that they each have statutory responsibilities that cannot be delegated, and that this Cooperative Agreement does not and is not intended to abrogate any of their statutory responsibilities.
- D. Consistency with Applicable Law. This Cooperative Agreement is subject to and is intended to be consistent with all applicable Federal, State, and Tribal laws and interstate compacts.

- E. Legislative Approval. All funding commitments made under the Implementation Program and this Cooperative Agreement are subject to approval by the appropriate State, Tribal, and Federal legislative bodies.
- F. Implementation Program Modifications. Modifications to the Implementation Program may be made pursuant to section 5.4 of the attached Implementation Program without requiring modification to this Cooperative Agreement or the additional written consent of the signatories to this agreement.

*Appendix H*  
*Minor Depletions Receiving Favorable Opinions*  
*In the San Juan River Basin*  
*Through September 21, 1998*



Minor Depletions, San Juan River  
September 21, 1998

Date	Entity (State)	Depletion	Duration	Annual Accounting of 3,000 a-1 Minor Depletions						
				1992	1993	1994	1995	1996	# 1997	1998
3/5/92	City of Bloomfield (NM)	40 a-1	5 years	40	40	40	40	40	0	0
3/5/92	Elks Lodge No. 1747 (NM)	20 a-1	5 years	20	20	20	20	20	0	0
3/5/92	Mr. Douglas Lee (NM)	80 a-1	5 years	80	80	80	80	80	0	0
3/5/92	Nielson Incorporated (NM)	14 a-1	1 year	14	0	0	0	0	0	0
3/5/92	Bloomfield Refinery (see San Juan Refining Co. (8/14/95)	340 a-1	1 year	340	0	0	0	0	0	0
3/5/92	San Juan Basin Water Haulers (NM)	500 a-1	5 years	500	500	500	500	500	0	0
6/26/92	Forest Groves Estates Homeowners Association (CO)	43 a-1	5 years	See	Contr	act	Sales	March	4,	1998
6/26/92	Los Ranchitos, Inc. (CO)	36 a-1	5 years	See	Contr	act	Sales	March	4,	1998
6/26/92	Country Aire Estates (CO)	7 a-1	5 years	See	Contr	act	Sales	March	4,	1998
5/18/93	Burns Fish Pond (CO)	1 a-1		0	1	1	1	1	1	1
6/17/93	Pagosa Springs (CO)	4 a-1		0	4	4	4	4	4	4
8/30/93	Elk Springs Ranch (CO)	3 a-1		0	3	3	3	3	3	3
1/6/94	Pond Construction (CO)	5.1 a-1		0	0	5.1	5.1	5.1	5.1	5.1

Date	Entity (State)	Depletion	Duration	Annual Accounting of 3,000 a-f Minor Depletions						
				1992	1993	1994	1995	1996	1997	1998
5/1/94	E. Earl Hickman	150 a-f	1 Year	0	0	150	0	150	0	0
6/1/94	Bureau of Land Management	176 a-f	5 years	0	0	176	176	176	176	176
7/20/94	Pine Gulch Ponds (CO) CoE	.5 a-f		0	0	0.5	0.5	0.5	0.5	0.5
8/10/94	Delzell Stock Tank (CO) SCS	.5 a-f		0	0	0.5	0.5	0.5	0.5	0.5
8/10/94	Delzell Stock Tank (CO)	.5 a-f		0	0	0.5	0.5	0.5	0.5	0.5
10/11/94	Bureau of Land Management	50 a-f		0	0	0	50	50	50	50
12/22/94	Pine River CoE	.14 a-f		0	0	0	.14	.14	.14	.14
1/23/95	FHwy	87 a-f		0	0	0	87	87	87	87
2/21/95	Scott Gravel CoE	15 a-f		0	0	0	15	15	15	15
4/26/95	Shenandoah CoE	54.9 a-f		0	0	0	54.9	54.9	54.9	54.9
5/8/95	Cortez Ponds NRCS	6.33 a-f		0	0	0	6.33	6.33	6.33	6.33
6/7/95	Durange CoE	85 a-f		0	0	0	85	85	85	85
6/16/95	Mary Fletcher CoE	0.07 a-f		0	0	0	0.07	0.07	0.07	0.07
6/16/95	Day Gravel CoE	11.6 a-f		0	0	0	11.6	11.6	11.6	11.6
6/28/95	San Juan NF	1.3 a-f		0	0	0	1.3	1.3	1.3	1.3
8/8/95	CoE	12.3 a-f		0	0	0	12.3	12.3	12.3	12.3
8/14/95	CoE	68 a-f		0	0	0	68	68	68	68
8/14/95	San Juan Refining Co	340 a-f		0	0	0	340	340	340	340

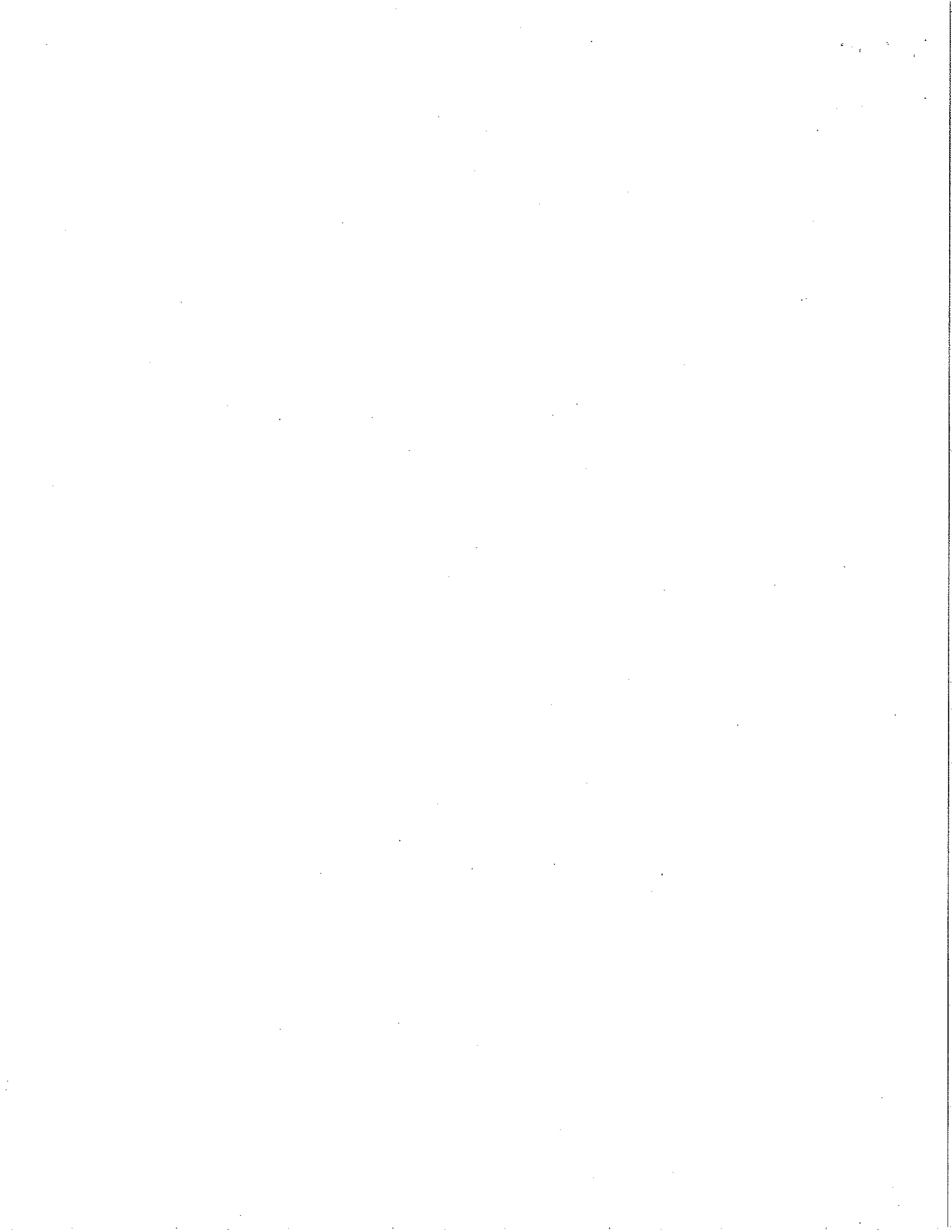
Date	Entity (State)	Depletion	Duration	Annual Accounting of 3,000 a-f Minor Depletions						
				1992	1993	1994	1995	1996	1997	1998
8/31/95	NPS Mesa Verde NP	79.2 a-f		0	0	0	79.2	79.2	79.2	79.2
9/29/95	N.F. Stock Tanks	3.4 a-f		0	0	0	3.4	3.4	3.4	3.4
1/17/96	CoE Stock Ponds	0.02 a-f		0	0	0	0	.02	.02	.02
3/6/96	CoE Fire Ponds	0.65 a-f		0	0	0	0	.65	.65	.65
3/7/96	San Juan NF	283.47 a-f		0	0	0	0	283.47	283.47	283.47
5/19/96	San Juan-Rio Grande NF	4.64 a-f		0	0	0	0	4.64	4.64	4.64
7/25/96	San Juan-Rio Grande NF	0.12 a-f		0	0	0	0	0.12	0.12	0.12
8/1/96	BLM:Sultan Spring	0.03 a-f		0	0	0	0	0.03	0.03	0.03
9/17/96	CoE Redi Mix	13.3 a-f		0	0	0	0	13.3	13.3	13.3
9/17/96	CoE Dalton Pit	2.6 a-f		0	0	0	0	2.6	2.6	2.6
10/1/96	CoE Pond	3.3 a-f		0	0	0	0	3.3	3.3	3.3
11/7/96	San Juan NF	7.2 a-f		0	0	0	0	7.2	7.2	7.2
11/15/96	CoE Pond	1.4 a-f		0	0	0	0	1.4	1.4	1.4
12/23/96	NRCS	8.3 a-f		0	0	0	0	8.3	8.3	8.3
12/23/96	San Juan/Rio Grande NF	5.0 a-f		0	0	0	0	5.0	5.0	5.0

Date	Entity (State)	Depletion	Duration	Annual Accounting of 3,000 a-f Minor Depletions						
				1992	1993	1994	1995	1996	1997	1998
8/5/97	CoE (CO)	3.3 a-f		0	0	0	0	0	3.3	3.3
8/5/97	Eddie Murphy NRCS (CO)	1.88 a-f		0	0	0	0	0	1.88	1.88
8/5/976	Vic Hodges NRCS (CO)	5.02 a-f		0	0	0	0	0	5.02	5.02
8/5/97	La Plata CR #240 BoR (CO)	5.0 a-f		0	0	0	0	0	5.0	0
9/9/97	Hover Irrigation Pipeline BLM (CO)	44.68 a-f		0	0	0	0	0	44.68	44.68
12/30/97	Florida River Diversions (CO)	62 a-f		0	0	0	0	0	0	62
3/4/98	Florida Water Sale Contracts Los Ranchitos Country Air Forest Groves	86 a-f		0	0	0	0	0	0	86
4/26/98	DOE Monticello Remediation	10 a-f		0	0	0	0	0	0	10
7/7/98	NRCS wildlife area	0.11 a-f		0	0	0	0	0	0	0.11
9/31/98	USFS 2 projects	19 a-f		0	0	0	0	0	0	19
9/2/98	CoE golf course	189 a-f		0	0	0	0	0	0	189
9/4/98	NRCS wildlife dugout	0.07 a-f		0	0	0	0	0	0	0.07
9/15/98	CoE infiltration gallery-Pagosa	404 a-f		0	0	0	0	0	0	404
Cumulative Annual Total (a-f).....				994	648	980.6	1644.84	2124.87	1396.55	2163.53
Balance Available (a-f).....				2006	2352	2019.4	1355.16	875.13	1603.45	836.47

Not included as a minor depletion because it was included in the 18,000 a-f baseline depletion for Colorado -- Region 6 (FWS) did not issue a biological opinion for these depletions.



*Appendix I*  
*List of Interested Parties Invited*  
*To Review and Comment*  
*On Draft HB 98-1006 Documents*



HB 1006 INVITEES

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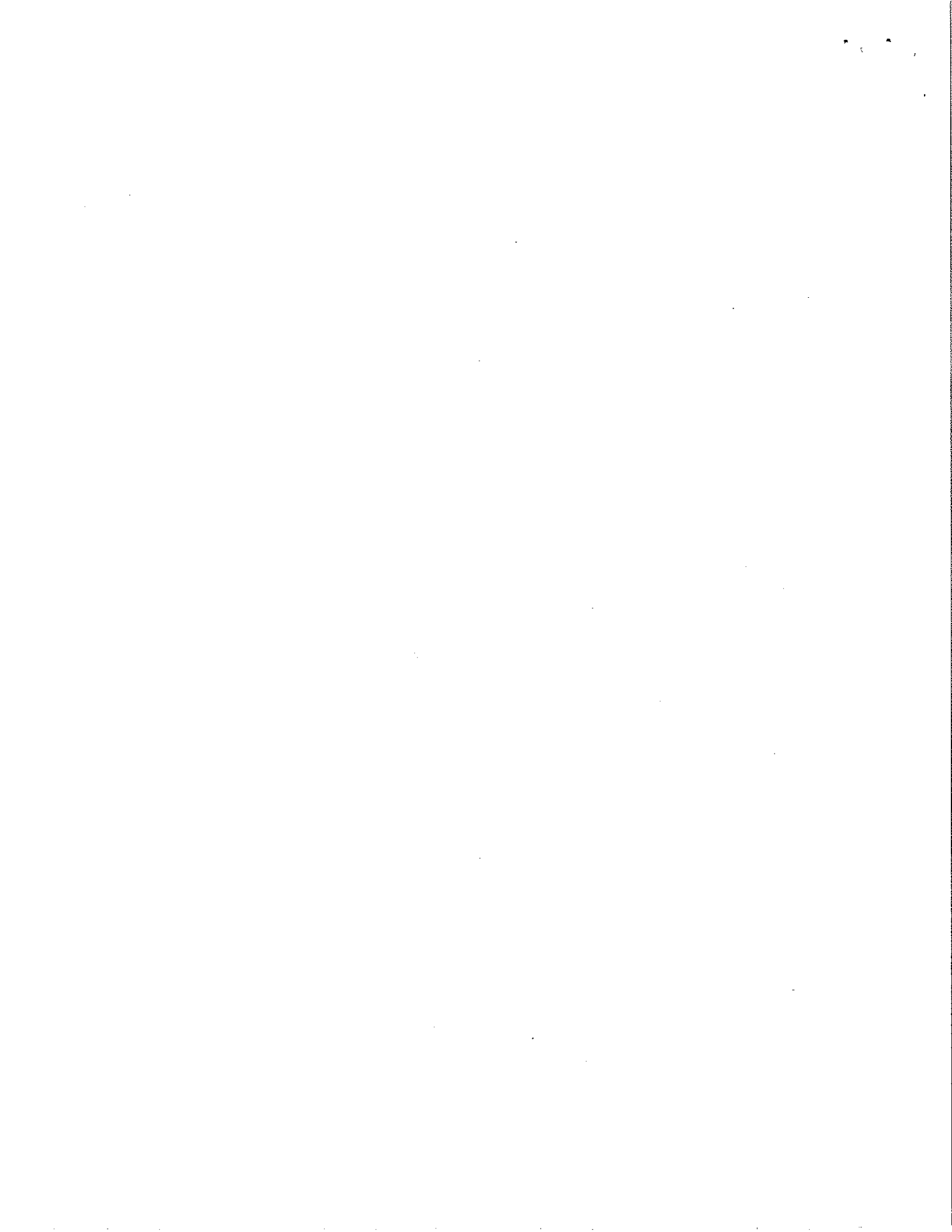
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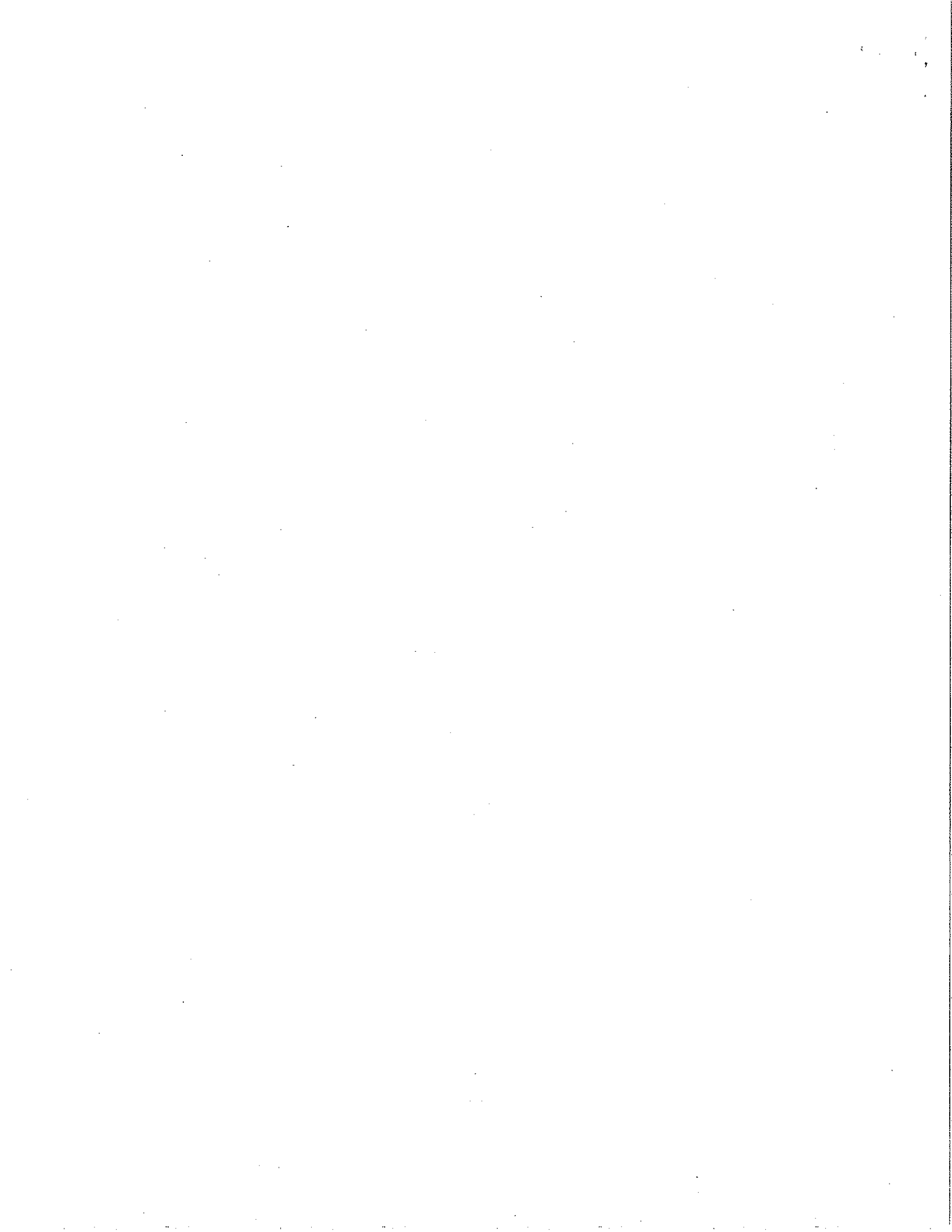
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*Appendix J*  
*Federal Long Term Funding Legislation*  
*S. 1749 and H.R. 3669*





105TH CONGRESS  
2D SESSION

# S. 1749

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

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IN THE SENATE OF THE UNITED STATES

MARCH 12, 1998

Mr. ALLARD (by request) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

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.**

4 This Act may be cited as the "Upper Colorado River  
5 and San Juan River Endangered Fish Recovery Act of  
6 1998".

1 **SEC. 2. PURPOSE.**

2 The purpose of the "Upper Colorado River and the  
3 San Juan River Endangered Fish Recovery Act of 1998"  
4 is to authorize and provide funding for the Secretary, act-  
5 ing through the Bureau of Reclamation and the Bureau  
6 of Indian Affairs, to continue implementation of the en-  
7 dangered fish recovery implementation programs for the  
8 Upper Colorado and San Juan River Basins in order to  
9 accomplish the objectives of these programs within a cur-  
10 rently established time schedule.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act—

13 (1) the term "Recovery Implementation Pro-  
14 grams" means the intergovernmental programs es-  
15 tablished pursuant to the 1988 Cooperative Agree-  
16 ment to implement the Recovery Implementation  
17 Program for the Endangered Fish Species in the  
18 Upper Colorado River dated September 29, 1987,  
19 and the 1992 Cooperative Agreement to implement  
20 the San Juan River Recovery Implementation Pro-  
21 gram dated October 21, 1992, and as they may be  
22 amended by the parties thereto;

23 (2) the term "Secretary" means the Secretary  
24 of the Interior;

1           (3) the term "Upper Division States" means  
2 the States of Colorado, New Mexico, Utah, and Wy-  
3 oming;

4           (4) the term "Endangered Species Act" means  
5 the Endangered Species Act of 1973 (16 U.S.C.  
6 1531 et seq.) and any Federal regulation implement-  
7 ing the Endangered Species Act;

8           (5) the term "Reclamation" means the U.S.  
9 Bureau of Reclamation;

10          (6) the term "Service" means the U.S. Fish  
11 and Wildlife Service;

12          (7) the term "Indian Affairs" means the U.S.  
13 Bureau of Indian Affairs;

14          (8) the term "Bureau" means the U.S. Bureau  
15 of Land Management;

16          (9) the term "capital projects" means planning,  
17 design, permitting or other compliance, construction,  
18 construction management, and replacement of facili-  
19 ties, and the acquisition of interests in land or  
20 water, as necessary to carry out the Recovery Imple-  
21 mentation Programs;

22          (10) the term "facilities" includes facilities for  
23 the genetic conservation or propagation of the en-  
24 dangered fishes, those for the restoration of flood-  
25 plain habitat or fish passage, those for regulation or

1 supply of instream flows, and those for the removal  
2 or translocation of nonnative fishes;

3 (11) the term "interests in land and water" in-  
4 cludes long-term leases and easements, and long-  
5 term enforcement or other agreements protecting  
6 instream flows;

7 (12) the term "base funding" means funding  
8 for operation and maintenance of capital projects,  
9 implementation of recovery actions other than cap-  
10 ital projects, monitoring and research to evaluate the  
11 need for or effectiveness of any recovery action, and  
12 program management, as necessary to carry out the  
13 Recovery Implementation Programs. Base funding  
14 also includes annual funding provided under the  
15 terms of the 1988 Cooperative Agreement and the  
16 1992 Cooperative Agreement; and

17 (13) the term "recovery actions other than cap-  
18 ital projects" includes short-term leases and agree-  
19 ments for interests in land, water, and facilities; the  
20 reintroduction or augmentation of endangered fish  
21 stocks; and the removal, translocation, or other con-  
22 trol of nonnative fishes.

1 **SEC. 4. AUTHORIZATION TO FUND RECOVERY PROGRAMS.**

2 (a) **COST OF CAPITAL PROJECTS.**—The costs of the  
3 capital projects undertaken for the Recovery Implementa-  
4 tion Programs shall not exceed \$100,000,000.

5 (1) For the Recovery Implementation Program  
6 for Endangered Fish Species in the Upper Colorado  
7 River Basin through the year 2003, such costs shall  
8 not exceed \$82,000,000.

9 (2) For the San Juan River Recovery Imple-  
10 mentation Program through the year 2007, such  
11 costs shall not exceed \$18,000,000.

12 (3) These costs will be adjusted for inflation.

13 (b) **AUTHORIZATION FOR APPROPRIATIONS FOR FED-**  
14 **ERAL PARTICIPATION IN CAPITAL PROJECTS.**—There is  
15 hereby authorized to be appropriated to the Secretary, act-  
16 ing through Reclamation, \$46,000,000 to undertake cap-  
17 ital projects pursuant to this Act. Such funds shall be con-  
18 sidered a nonreimbursable Federal expenditure.

19 (1) The authority of the Secretary to request  
20 appropriations to implement capital projects for the  
21 Recovery Implementation Program for Endangered  
22 Fish Species in the Upper Colorado River Basin  
23 shall expire in the year 2003 unless reauthorized by  
24 an Act of Congress.

25 (2) The authority of the Secretary to request  
26 appropriations to implement the capital projects for

1 the San Juan River Basin Recovery Implementation  
2 Program shall expire in the year 2007 unless reau-  
3 thorized by an Act of Congress.

4 (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL  
5 PROJECTS.—(1) The Secretary, acting through Reclama-  
6 tion, may enter into agreements with the Upper Division  
7 States, political subdivisions or organizations within the  
8 Upper Division States which contribute to the payment  
9 of capital project costs. Such non-Federal contributions  
10 shall not exceed \$17,000,000.

11 (2) In addition to the contribution described in  
12 4(c)(1), the Secretary may utilize power revenues collected  
13 pursuant to the Colorado River Storage Project Act to  
14 carry out the purposes of this Act. Such funds shall be  
15 treated as reimbursable costs assigned to power for repay-  
16 ment under section 5 of the Colorado River Storage  
17 Project Act. This additional contribution shall not exceed  
18 \$17,000,000. Such funds shall be considered a non-Fed-  
19 eral contribution for the purposes of this Act. The addi-  
20 tional funding provided pursuant to this provision may be  
21 provided through a loan or loans from the Colorado Water  
22 Conservation Board Construction Fund (37-60-121  
23 C.R.S.) to the Secretary of Energy to replace revenues  
24 which would otherwise be used for project repayments.  
25 The Secretary is authorized to repay such loan or loans

1 from power revenues, subject to an agreement between the  
2 Colorado Water Conservation Board and the Secretary of  
3 Energy. The agreement shall include provisions designed  
4 to minimize future increases in electrical power rates and  
5 ensure that a lump-sum repayment, which includes prin-  
6 cipal and interest, is paid to the Colorado Water Conserva-  
7 tion Board no later than October 31, 2057.

8 (3) All contributions made pursuant to subsection  
9 (c)(1) and (c)(2) shall be in addition to the cost of replace-  
10 ment power purchased due to modifying the operation of  
11 the Colorado River Storage Project and the capital value  
12 of water from Wolford Mountain Reservoir in Colorado.  
13 Such contributions shall not exceed \$20,000,000.

14 (d) BASE FUNDING.—The Secretary may utilize  
15 power revenues collected pursuant to the Colorado River  
16 Storage Project Act for the annual base funding contribu-  
17 tions to the Recovery Implementation Programs by Rec-  
18 lamation. Such funding will be treated as being non-  
19 reimbursable and as having been repaid and returned to  
20 the general fund of the Treasury as costs assigned to  
21 power for repayment under section 5 of the Colorado River  
22 Storage Project Act.

23 (1) For the Recovery Implementation Program  
24 for the Endangered Fish Species in the Upper Colo-

1 rado River Basin, such contributions shall not ex-  
2 ceed \$4,000,000 per year.

3 (2) For the San Juan River Recovery Imple-  
4 mentation Program, such contributions shall not ex-  
5 ceed \$2,000,000 per year.

6 These limits on the annual contributions to base funding  
7 will be adjusted for inflation. Any transfer of funds within  
8 these limits to the Service shall not be subject to transfer  
9 fees. No later than December 31, 2010, the Secretary  
10 shall submit a report on the utilization of power revenues  
11 to the Subcommittee on Energy and Water Development  
12 for the Senate and House Committee on Appropriations.  
13 The Secretary shall also make a recommendation regard-  
14 ing the need for additional funding that may be required  
15 to fulfill the goals of the Recovery Implementation Pro-  
16 grams. Nothing in this Act shall otherwise modify or  
17 amend existing agreements among participants regarding  
18 base funding and depletion fees for the Recovery Imple-  
19 mentation Programs. The Secretary of Energy and Rec-  
20 lamation shall maintain sufficient revenues in the Colo-  
21 rado River Basin Fund to meet their obligations to provide  
22 base funding in accordance with this provision.

23 (e) **AUTHORITY TO RETAIN APPROPRIATED**  
24 **FUNDS.**—At the end of each fiscal year any unexpended  
25 appropriated funds for capital projects shall be retained



1 for use in future fiscal years. Unexpended funds which are  
2 carried over shall continue to be used to implement the  
3 capital projects needed for the Recovery Implementation  
4 Programs.

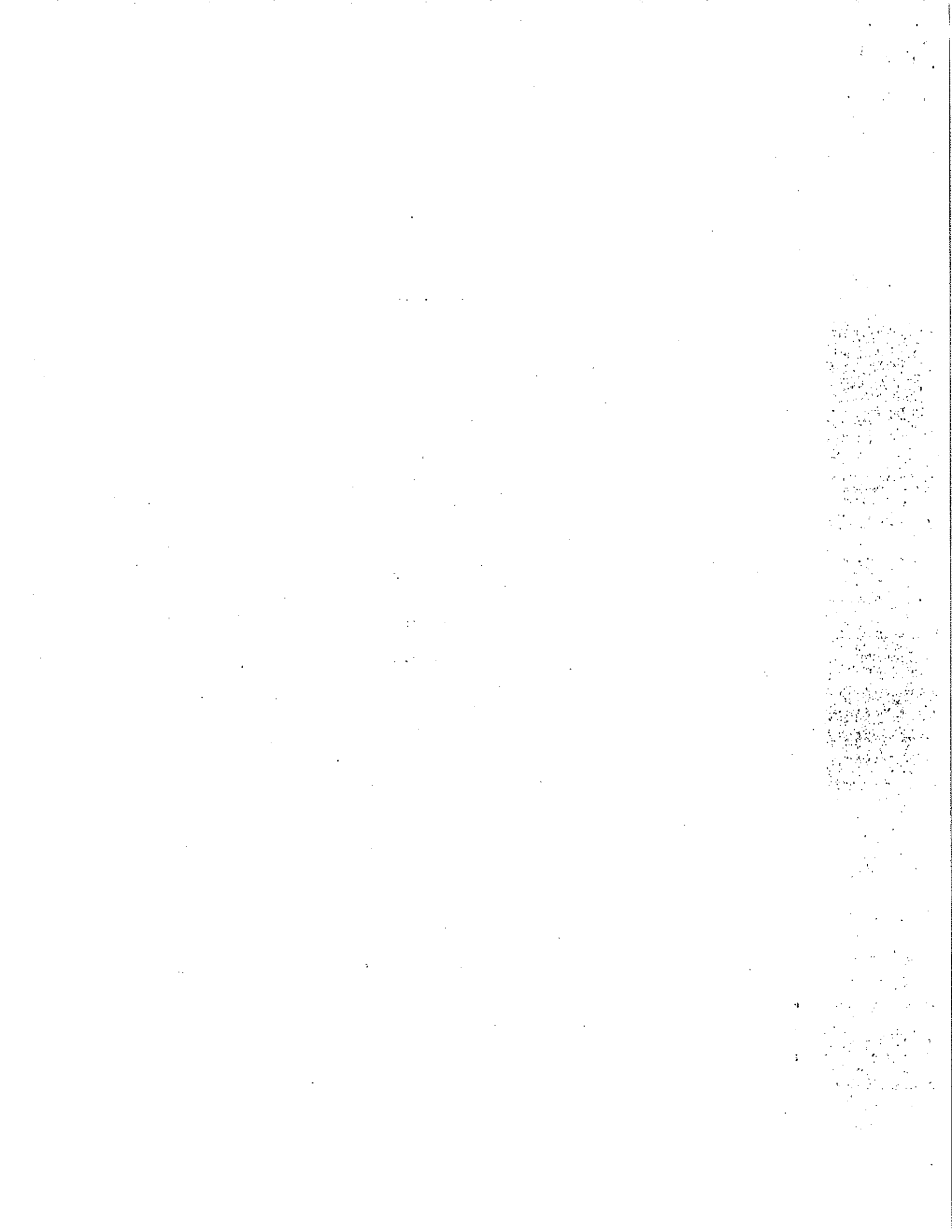
5 (f) **ADDITIONAL AUTHORITY.**—The Secretary may  
6 enter into agreements and contracts with Federal and  
7 non-Federal entities; acquire and transfer interests in  
8 land, water and facilities; and accept or give grants in  
9 order to carry out the purposes of this Act.

10 (g) **INDIAN TRUST ASSETS.**—As much of the poten-  
11 tial water development in the San Juan River Basin is  
12 for the benefit of Indian tribes and most of the federally  
13 designated critical habitat for the endangered fish species  
14 in the basin is on Indian trust lands, nothing in this Act  
15 shall be construed to restrict the Secretary from funding  
16 activities or capital items in accordance with the Federal  
17 Government's Indian trust responsibility.

18 **SEC. 5. EFFECT ON RECLAMATION LAW.**

19 Construction of facilities and acquisition of land and  
20 water interests as contemplated herein shall not render  
21 these facilities or land and water interests or associated  
22 processes and procedures subject to the Reclamation Act  
23 of 1902, as amended.

○



105TH CONGRESS  
2D SESSION

# H. R. 3669

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1998

Mr. McINNIS introduced the following bill; which was referred to the Committee on Resources.

---

## A BILL

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

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.**

4 This Act may be cited as the "Upper Colorado River  
5 and San Juan River Endangered Fish Recovery Act of  
6 1998".

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to authorize and provide  
3 funding for the Secretary, acting through the Bureau of  
4 Reclamation and the Bureau of Indian Affairs, to continue  
5 implementation of the endangered fish recovery implemen-  
6 tation programs for the Upper Colorado and San Juan  
7 River Basins in order to accomplish the objectives of these  
8 programs within a currently established time schedule.

9 **SEC. 3. DEFINITIONS.**

10 As used in this Act:

11 (1) The term "Recovery Implementation Pro-  
12 grams" means the intergovernmental programs es-  
13 tablished pursuant to the 1988 Cooperative Agree-  
14 ment to implement the Recovery Implementation  
15 Program for the Endangered Fish Species in the  
16 Upper Colorado River dated September 29, 1987,  
17 and the 1992 Cooperative Agreement to implement  
18 the San Juan River Recovery Implementation Pro-  
19 gram dated October 21, 1992, and as they may be  
20 amended by the parties thereto.

21 (2) The term "Secretary" means the Secretary  
22 of the Interior.

23 (3) The term "Upper Division States" means  
24 the States of Colorado, New Mexico, Utah, and Wy-  
25 oming.

1           (4) The term "Endangered Species Act" means  
2 the Endangered Species Act of 1973 (16 U.S.C.  
3 1531 et seq.) and any Federal regulation implement-  
4 ing the Endangered Species Act.

5           (5) The term "Reclamation" means the Bureau  
6 of Reclamation.

7           (6) The term "Service" means the United  
8 States Fish and Wildlife Service.

9           (7) The term "Indian Affairs" means the Bu-  
10 reau of Indian Affairs.

11           (8) The term "capital projects" means plan-  
12 ning, design, permitting or other compliance, con-  
13 struction, construction management, and replace-  
14 ment of facilities, and the acquisition of interests in  
15 land or water, as necessary to carry out the Recov-  
16 ery Implementation Programs.

17           (9) The term "facilities" includes facilities for  
18 the genetic conservation or propagation of the en-  
19 dangered fishes, those for the restoration of flood-  
20 plain habitat or fish passage, those for regulation or  
21 supply of instream flows, and those for the removal  
22 or translocation of nonnative fishes.

23           (10) The term "interests in land and water" in-  
24 cludes long-term leases and easements, and long-

1 term enforcement or other agreements protecting  
2 instream flows.

3 (11) The term "base funding" means funding  
4 for operation and maintenance of capital projects,  
5 implementation of recovery actions other than cap-  
6 ital projects, monitoring and research to evaluate the  
7 need for or effectiveness of any recovery action, and  
8 program management, as necessary to carry out the  
9 Recovery Implementation Programs. The term in-  
10 cludes annual funding provided under the terms of  
11 the 1988 Cooperative Agreement and the 1992 Co-  
12 operative Agreement.

13 (12) The term "recovery actions other than  
14 capital projects" includes short-term leases and  
15 agreements for interests in land, water, and facili-  
16 ties; the reintroduction or augmentation of endan-  
17 gered fish stocks; and the removal, translocation, or  
18 other control of nonnative fishes.

19 **SEC. 4. AUTHORIZATION TO FUND RECOVERY PROGRAMS.**

20 (a) **COST OF CAPITAL PROJECTS.**—(1) The costs of  
21 the capital projects undertaken for the Recovery Imple-  
22 mentation Programs shall not exceed \$100,000,000 of  
23 which—

24 (A) costs for the Recovery Implementation Pro-  
25 gram for Endangered Fish Species in the Upper

1 Colorado River Basin through 2005 shall not exceed  
2 \$82,000,000; and

3 (B) costs for the San Juan River Recovery Im-  
4 plementation Program through 2007 shall not ex-  
5 ceed \$18,000,000.

6 (2) These costs will be adjusted for inflation.

7 (b) AUTHORIZATION OF APPROPRIATIONS FOR FED-  
8 ERAL PARTICIPATION IN CAPITAL PROJECTS.—(1) There  
9 is hereby authorized to be appropriated to the Secretary,  
10 acting through Reclamation, \$46,000,000 to undertake  
11 capital projects pursuant to this Act. Such funds shall be  
12 considered a nonreimbursable Federal expenditure.

13 (2) The authority of the Secretary to request appro-  
14 priations to implement capital projects for the Recovery  
15 Implementation Program for Endangered Fish Species in  
16 the Upper Colorado River Basin shall expire in 2005 un-  
17 less reauthorized by an Act of Congress.

18 (3) The authority of the Secretary to request appro-  
19 priations to implement the capital projects for the San  
20 Juan River Basin Recovery Implementation Program shall  
21 expire in 2007 unless reauthorized by an Act of Congress.

22 (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL  
23 PROJECTS.—(1) The Secretary, acting through Reclama-  
24 tion, may enter into agreements with the Upper Division  
25 States, political subdivisions, or organizations within the

1 Upper Division States which contribute to the payment  
2 of capital project costs. Such non-Federal contributions  
3 shall not exceed \$17,000,000.

4 (2) In addition to the contribution described in para-  
5 graph (1), the Secretary may utilize power revenues col-  
6 lected pursuant to the Colorado River Storage Project Act  
7 to carry out the purposes of this Act. Such funds shall  
8 be treated as reimbursable costs assigned to power for re-  
9 payment under section 5 of the Colorado River Storage  
10 Project Act. This additional contribution shall not exceed  
11 \$17,000,000. Such funds shall be considered a non-Fed-  
12 eral contribution for the purposes of this Act. The addi-  
13 tional funding provided pursuant to this provision may be  
14 provided through a loan or loans from the Colorado Water  
15 Conservation Board Construction Fund (37-60-121  
16 C.R.S.) to the Secretary of Energy to replace revenues  
17 which would otherwise be used for project repayments.  
18 The Secretary is authorized to repay such loan or loans  
19 from power revenues, subject to an agreement between the  
20 Colorado Water Conservation Board and the Secretary of  
21 Energy. The agreement shall include provisions designed  
22 to minimize future increases in electrical power rates and  
23 ensure that a lump sum repayment, which includes prin-  
24 cipal and interest, is paid to the Colorado Water Conserva-  
25 tion Board no later than October 31, 2057.



1 (3) All contributions made pursuant to paragraphs  
2 (1) and (2) shall be in addition to the cost of replacement  
3 power purchased due to modifying the operation of the  
4 Colorado River Storage Project and the capital cost of  
5 water from Woford Mountain Reservoir in Colorado. Such  
6 costs shall be considered as non-Federal contributions, not  
7 to exceed \$20,000,000.

8 (d) BASE FUNDING.—(1) The Secretary may utilize  
9 power revenues collected pursuant to the Colorado River  
10 Storage Project Act for the annual base funding contribu-  
11 tions to the Recovery Implementation Programs by Rec-  
12 lamation. Such funding will be treated as being non-  
13 reimbursable and as having been repaid and returned to  
14 the general fund of the Department of the Treasury as  
15 costs assigned to power for repayment under section 5 of  
16 the Colorado River Storage Project Act.

17 (2) For the Recovery Implementation Program for  
18 the endangered fish species in the Upper Colorado River  
19 Basin, such contributions shall not exceed \$4,000,000 per  
20 year.

21 (3) For the San Juan River Recovery Implementation  
22 Program, such contributions shall not exceed \$2,000,000  
23 per year.

24 (4) These limits on the annual contributions to base  
25 funding will be adjusted for inflation. Any transfer of

1 funds within these limits to the Service shall not be subject  
2 to transfer fees. No later than December 31, 2010, the  
3 Secretary shall submit a report on the utilization of power  
4 revenues to the Subcommittees on Energy and Water De-  
5 velopment for the Senate and the Committee on Appro-  
6 priations of the House of Representatives. The Secretary  
7 shall also make a recommendation regarding the need for  
8 additional funding that may be required to fulfill the goals  
9 of the Recovery Implementation Programs. Nothing in  
10 this Act shall otherwise modify or amend existing agree-  
11 ments among participants regarding base funding and de-  
12 pletion fees for the Recovery Implementation Programs.  
13 The Secretary of Energy and Reclamation shall maintain  
14 sufficient revenues in the Colorado River Basin Fund to  
15 meet their obligations to provide base funding in accord-  
16 ance with this provision.

17 (e) **AUTHORITY TO RETAIN APPROPRIATED**  
18 **FUNDS.**—At the end of each fiscal year, any unexpended  
19 appropriated funds for capital projects shall be retained  
20 for use in future fiscal years. Unexpended funds which are  
21 carried over shall continue to be used to implement the  
22 capital projects needed for the Recovery Implementation  
23 Programs.

24 (f) **ADDITIONAL AUTHORITY.**—The Secretary may  
25 enter into agreements and contracts with Federal and

1 non-Federal entities; acquire and transfer interests in  
2 land, water, and facilities; and accept or give grants in  
3 order to carry out the purposes of this Act.

4 (g) INDIAN TRUST ASSETS.—As much of the poten-  
5 tial water development in the San Juan River Basin is  
6 for the benefit of Indian tribes and most of the federally  
7 designated critical habitat for the endangered fish species  
8 in the Basin is on Indian trust lands, nothing in this Act  
9 shall be construed to restrict the Secretary, acting through  
10 Reclamation and Indian Affairs, from funding activities  
11 or capital projects in accordance with the Federal Govern-  
12 ment's Indian trust responsibility.

13 **SEC. 5. EFFECT ON RECLAMATION LAW.**

14 Construction of facilities and acquisition of land and  
15 water interests as contemplated herein shall not render  
16 these facilities or land and water interests or associated  
17 processes and procedures subject to the Reclamation Act  
18 of 1902, as amended.

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