

**Statement of Robert W Johnson, Commissioner
Bureau of Reclamation
U.S. Department of the Interior
Before the
Energy and Natural Resources Committee
Subcommittee on Water and Power
U.S. Senate
on
S 3189
Endangered Fish Recovery in the Upper Colorado and San Juan River Basins
July 08, 2008**

Mr. Chairman and members of the Subcommittee, I am Robert W. Johnson, Commissioner of the Bureau of Reclamation. I am pleased to provide the Department of the Interior's views on S. 3189, a bill to extend funding and authorization for ongoing endangered fish recovery programs in the Upper Colorado and San Juan River Basins. The Department supports passage of this bill, but recommends that some changes be included as described below.

Public Law 106-392 authorizes the Bureau of Reclamation to provide cost sharing for construction of capital projects and annual base funding for the operations of the Upper Colorado and San Juan Recovery Implementation Programs (Programs). The current authorities provided by P.L. 106-392 expire at the end of FY 2010. The proposed legislation would amend P.L. 106-392 to incorporate several goals.

To date, the two Programs have expended a total of \$77.8 million in federal funds since inception (1988), with a solid record of performance. Activities completed to date have included fish passage improvements at Price-Stubb Dam (2008), and fish ladders and screens on the Grand Valley Diversion Dam on the Colorado River. Along with protections for the four listed fish species, water reliability has also been protected, and no lawsuits have been filed on Endangered Species Act compliance for any of the covered water projects on the Colorado and San Juan Rivers since the two recovery programs were constituted. The programs' efforts have resulted in fewer threats to the survival of Colorado pikeminnow and razorback suckers, and the highest larval counts ever recorded on the Green River for suckers in 2007.

I would like to describe the Department's views on the legislation in detail. First, S. 3189 authorizes an additional \$12 million in federal expenditures for capital projects under the San Juan Program for the purposes of: protecting endangered fish critical habitat and infrastructure from rock slides in a reach of the San Juan River near Farmington, New Mexico, which the Fish and Wildlife Service has determined to be necessary for recovery; and repairing and replacing capital facilities including fish passages, fish screens, aquatic habitat enhancements, hatcheries and fish rearing facilities as needed through 2023. While previous authorizations for this program were for shorter time periods, this longer time window is concurrent with the recovery goals for these species, with the objective of downlisting or de-listing in 2023. Although a longer-term authorization may be warranted, we also believe that it is prudent to reassess the program and its goals so that adaptive

management practice can be applied to ensure the best outcomes for this program. Next, this bill authorizes an additional \$15 million in federal expenditures for capital projects for the Upper Colorado Program for the purposes of: constructing a fish screen at the Tusher Wash Diversion Dam on the Green River in light of significantly increased construction material costs; and for repairing and replacing constructed capital facilities fish screens, fish passages, habitat enhancements, hatcheries and fish rearing facilities as needed through 2023. In addition, we recommend that the bill be revised to raise the authorization in Section 3(c)(1) of Public Law 106-392 for non-federal contributions to capital projects, to ensure that the federal cost-share of program implementation is not escalated further.

Third, this bill attributes additional non-federal cost sharing of \$56 million which relates to power replacement costs borne by power consumers due to reoperation of Flaming Gorge Dam to benefit the endangered fish (years 2010 through 2023). This is consistent with the original definition of cost sharing provided in Public Law 106-392.

Fourth, this bill allows for continuation of base funding derived from power revenues through 2023 for all activities necessary to achieve recovery as currently authorized. While these funds are termed non-federal cost shares consistent with the original cost allocation reflected in Public Law 106-392, they are drawn from revenues otherwise subject to repayment obligations and the Administration does not as a general matter endorse the treatment of such revenues as a non-federal contribution to cost-sharing for restoration projects.

Fifth, section 2(b)(4) of this bill allows the Western Area Power Administration to borrow from the Colorado Water Conservation Board Construction Fund (Construction Fund) if sufficient base funds are not available in the Upper Colorado River Basin Fund (Basin Fund) to meet base funding needs for the Programs. The borrowing authority in S. 3189 is intended to compensate for declining revenues that occur during periods of drought. The proposal to grant WAPA borrowing authority would replace a provision in existing law which requires that WAPA and the Bureau of Reclamation request appropriations in the event that base funds are insufficient.

The Administration generally opposes providing new borrowing authority for operations and maintenance purposes. . This bill provides authority for WAPA to borrow from a non-Federal entity to cover operating, maintenance and rehabilitation costs, as well as the absence of restrictions specifying the amount of allowed outstanding obligations and sufficient limits on the timing of repayment. Further, it is Administration policy that, where we do support borrowing authority, it should be from the Treasury. It is generally not prudent financial policy to use borrowing to cover operating costs. Further, it has been longstanding Treasury policy that, if borrowing authority is justified, Federal agencies should be authorized to borrow exclusively from the Treasury. Also, any borrowing authority should be subject to a specific statutory limit, to be determined taking into consideration the expected needs of the program.

The Upper Colorado and San Juan Programs were initiated in 1988 and 1992 respectively, under the terms of cooperative agreements with departments and agencies of the United States. The Programs' goals are to recover populations of endangered fish while providing for the continued development of water resources in compliance with the Endangered

Species Act. Program partners include the States of Colorado, New Mexico, Utah, and Wyoming; Reclamation; Western Area Power Administration; U.S. Fish and Wildlife Service; Bureau of Land Management; National Park Service; Bureau of Indian Affairs; Native American Tribes including the Jicarilla Apache Nation, Navajo Nation, Southern Ute Indian Tribe and Ute Mountain Ute Tribe; environmental organizations; water users; and power customers. Program actions provide Endangered Species Act compliance for more than 1,600 Federal, Native American, and non-Federal water projects depleting more than 3 million acre-feet of water per year in the Colorado and San Juan rivers and their tributaries.

The Programs are nationally recognized collaborative efforts which have served as models to address other Endangered Species Act issues throughout the country. The Programs have developed comprehensive plans for recovery of the fish species. Aggressive efforts are being implemented to construct fish passages, fish screens, and propagation facilities; restore and enhance aquatic habitat; acquire water; enlarge and coordinate the operations of existing water storage reservoirs; improve water use efficiency; stock native fish and control competing non-native fish species, all activities leading to restoration of ecosystems and recovery of the four listed Colorado River fish species. Both Programs have a demonstrated history of success.

Failure to address these Programs' funding needs would require re-initiation of Section 7 consultation on all Federal projects that rely on the Programs for Endangered Species Act (ESA) compliance. There is strong broad based stakeholder support for this legislation and a critical need exists for the additional authority provided by the proposed amendment. The Department supports passage of S. 3189 with the aforementioned changes.

This concludes my testimony. I am happy to answer any questions.