

July 5, 2012

**Testimony of
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Regarding H.R. 6060, To amend P.L. 106-392 to maintain annual base funding for the Upper Colorado and San Juan fish recovery programs through fiscal year 2019.

“Endangered Fish Recovery Programs Extension Act of 2012”

**Water and Power Subcommittee
House Natural Resources Committee
Washington D.C.
July 10, 2012**

My name is Randy Kirkpatrick. I am Executive Director, San Juan Water Commission, Farmington, New Mexico. I am here to testify in support of H.R. 6060.

The San Juan Water Commission (Commission) was established in 1986 to receive and administer Animas-La Plata Project water and secure additional water supplies for existing and future demands for San Juan County. The Commission holds water rights, monitors water supplies and collects data. The Commission advocates water resource conservation and water development. The Commission represents more than 120,000 people in northwestern New Mexico.

The Commission participated in negotiations initiated in 1989 regarding Endangered Species Act compliance for water projects that resulted in creation of the San Juan River Basin Recovery Implementation Program (San Juan Program). The Commission has been actively involved in implementation of the San Juan Program since its inception in 1992.

My testimony will focus on the San Juan Program, the benefits of the Program to federal, non-federal and tribal water users in the San Juan basin, and the need for H. R. 6060.

I believe you will be receiving or have received letters of support for H.R. 6060 from numerous non-federal participants in the San Juan program.

UPPER COLORADO AND SAN JUAN RIVER BASIN RECOVERY PROGRAMS

The programs have the goals of recovering four federally listed endangered fish species in the Upper Colorado River basin while water development and management activities proceed in compliance with state and laws, interstate compacts, tribal water rights, Indian trust responsibilities of the United States, and the Federal Endangered Species Act. Activities of the

programs provide Endangered Species Act compliance for more than 2,300 water projects depleting approximately three million acre-feet per year in the Upper Colorado River and San Juan River basins, including every Bureau of Reclamation project in the Upper Basin upstream of Lake Powell, water projects that meet the United States trust obligations to American Indian tribes, and literally hundreds of non-federal water projects providing water for municipal, irrigation, industrial, and recreational uses. No lawsuits have been filed as a result of ESA compliance for water projects under the recovery programs.

The programs have been hailed by administrations of both parties for their successes. In 2000, Secretary of the Interior, Bruce Babbitt referred to the Upper Basin recovery programs as “an ongoing success story” (Colorado River Water Users Association, 2000). Secretary of the Interior Gale Norton referred to the programs as a national model of how the Endangered Species Act should be implemented (Colorado Water Congress, 2006). In 2008, Secretary Dirk Kempthorne awarded the Upper Basin and San Juan programs the Department of the Interior’s Cooperative Conservation Award for the successful history of stakeholder collaboration resolving “seemingly intractable water use conflicts...”

The programs have substantial grassroots support among participants. Since the inception of these programs, they have enjoyed strong support in Congress, as indicated by the substantial bipartisan support for H.R. 6060.

THE SAN JUAN RECOVERY PROGRAM

The San Juan Program was established in 1992. The San Juan Program includes the San Juan River drainage in Colorado, New Mexico, and Utah, totaling approximately 23,000 square miles. The two goals of the Recovery Program are:

- 1) to conserve populations of Colorado pikeminnow and razorback sucker in the basin consistent with the recovery goals established under the Endangered Species Act, and
- 2) to proceed with water development in the basin in compliance with federal and state laws, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Ute Tribe, Ute Mountain Ute Tribe, Jicarilla Apache Nation, and the Navajo Nation.

The dual goals guide actions by the San Juan Program.

San Juan Program participants include:

- Bureau of Reclamation
- U.S. Fish & Wildlife Service
- Bureau of Indian Affairs
- Bureau of Land Management
- States of Colorado and New Mexico
- Jicarilla Apache Nation
- Navajo Nation

- Southern Ute Tribe
- Ute Mountain Ute Tribe
- The Nature Conservancy
- Water Development Interests

ESA COMPLIANCE FOR WATER DEPLETIONS IN THE SAN JUAN BASIN

The San Juan Program implements actions to achieve recovery of the species and provide ESA compliance for Federal, non-Federal and tribal water development and management activities. These actions avoid jeopardy, avoid adverse modifications of critical habitat, and provide measures to minimize any incidental take of endangered fish that occurs. Federal Reclamation Projects include Navajo Dam, Reservoir, the Animas-La Plata Project and others. ESA compliance for water projects in New Mexico, Colorado, and Utah is summarized in the table below:

**Summary of Endangered Species Act Section 7 Consultations
(1/1992 through 12/31/2011)**

| State | Number of Projects | Depletions Acre-Feet/Year |
|--------------|---------------------------|--------------------------------------|
| New Mexico | 21 | 653,753 |
| Colorado | 284 | 217,788 |
| Utah | 14 | 9,146 |
| | | |
| TOTAL | 319 | 880,687 |

In addition to in-basin water use, the Recovery Program provides ESA compliance for the Reclamation’s San Juan-Chama Project. San Juan-Chama diverts 100,000 acre-feet/year of critical water supplies to Rio Grande basin municipalities, industries, agriculture, and Native American pueblos in central New Mexico.

ESA COMPLIANCE FOR TRIBAL WATER PROJECTS

Reservations of four Native American tribes are located wholly or partially within the San Juan basin: Navajo Nation, Jicarilla Apache Nation, Southern Ute Tribe, and Ute Mountain Ute Tribe. The Secretary of the Interior has a trust responsibility to assert and protect the trust water resources of the four tribes in the basin. The San Juan Program allows the United States to carry out its trust responsibilities in compliance with the ESA for a number of activities that benefit the tribes including:

- Colorado Ute Settlement

- Navajo Water Settlement
- Jicarilla PNM Water Contract
- Navajo Gallup Pipeline
- Navajo Indian Irrigation Project
- Jicarilla Water Settlement

The San Juan Program also provides ESA compliance for small water projects on tribal lands benefitting the tribes.

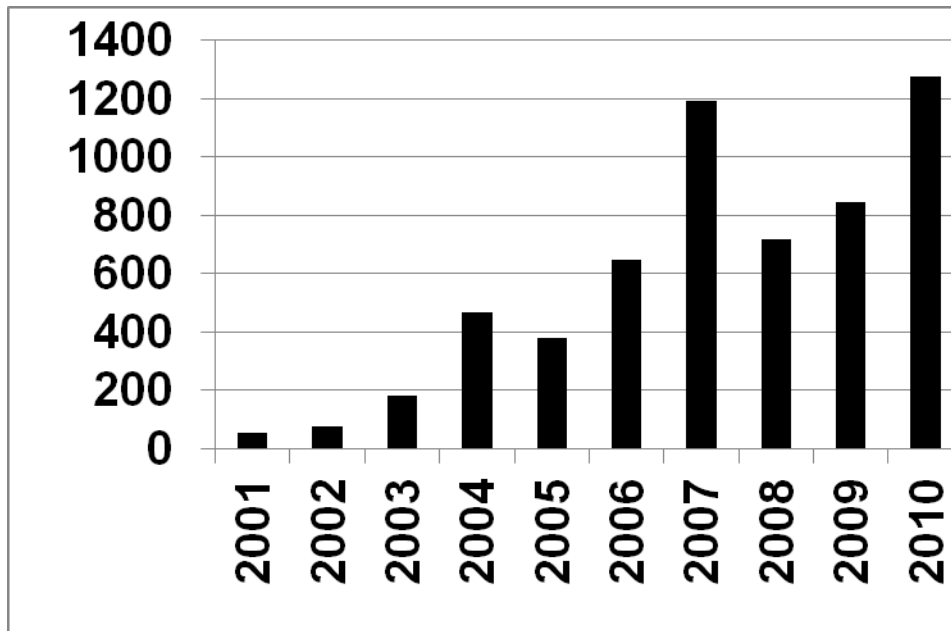
RECOVERY OF ENDANGERED FISH IN THE SAN JUAN BASIN

The originators of the San Juan Program recognized that factors other than flows contributed to the endangerment and affect the recovery of the endangered fish species. To achieve recovery, the multifaceted Program includes:

- provision of water for fish habitat,
- habitat development (fish screens, fish passages, braided reaches),
- research and monitoring,
- stocking of endangered fish,
- controlling non-native fish species, and
- water quality protection.

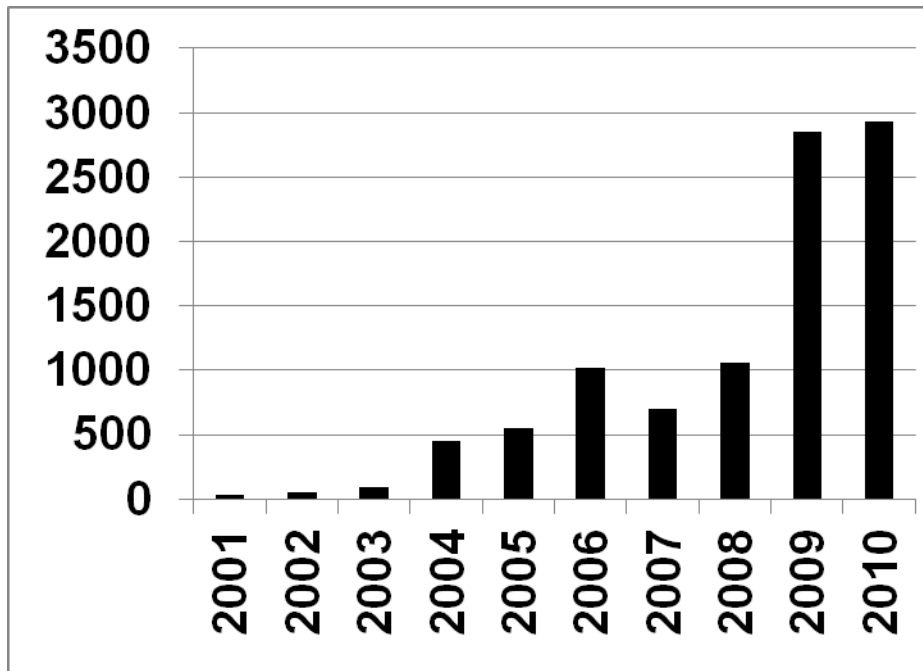
The San Juan Program also includes information/education and program management components.

Some 180 miles of critical habitat are now accessible to the endangered fish and other native species due to fish passages. Hatcheries are producing genetically diverse Colorado pikeminnow and razorback suckers for stocking to restore these species. The impacts of introduced non-native species are being reduced. Research and monitoring continue to evaluate the populations, impacts of recovery actions on those populations, and the need for scientifically based adaptive management. When the San Juan Program was initiated, there were an estimated 20 to 60 Colorado pikeminnow and virtually no razorback sucker in the San Juan River. The numbers of Colorado pikeminnow and razorback sucker, once almost gone in the basin, have dramatically increased as shown in the graphs below.



Adult Razorback sucker captured in the San Juan River

(Source: San Juan Recovery Program)



Adult and subadult Colorado pikeminnow captured in the San Juan River

Razorback sucker and Colorado pikeminnow adult and sub-adult numbers continue to increase in the San Juan River, showing that the adult fish are surviving in the system. Both species are also spawning as evidenced by constant larval fish captures. Juvenile razorback sucker have been captured indicating that larval fish are surviving.

END DATES FOR RECOVERY PROGRAMS

Recovery of the listed species is the goal of the San Juan Program. Recovery provides a defined end point for the Program. Recovery is dependent on the status of the species in both the Upper Colorado and San Juan river basins. The projected delist date for the Colorado pikeminnow is 2020. For the razorback sucker, it is 2023. Therefore, the projected end date for the San Juan Program is 2023. Following delisting, the Federal government, the states and possibly other parties will enter into agreements to ensure that conditions resulting in delisting are maintained so that the species don't become listed again.

RECOVERY PROGRAMS AUTHORIZING LEGISLATION -- P.L. 106-392

P.L.106-392 was signed into law on October 30, 2000. The law authorizes the Bureau of Reclamation to provide cost sharing of capital construction and annual operations for both the Upper Colorado and San Juan River endangered fish recovery programs. The law recognizes significant and specific cost sharing contributions to the programs by the States of Colorado, Wyoming, Utah, and New Mexico, power customers, and water users for these purposes.

P.L. 106-392 has been amended three times with strong bi-partisan support. P.L.107-375 extended the period for capital construction to 2008 for both programs. P.L.109-183 extended the period for construction of capital projects for both programs through FY 2010, authorized an additional \$15 million in capital expenditures for the Upper Colorado River Recovery Program, and recognized an additional \$11 million in non-federal cost share contributions. P.L. 111-11 provided an additional \$27 million in federal authority, recognized an additional \$56 million in non-federal contributions, and extended the funding authority to FY 2023, the expected date for recovery of the four endangered fish species.

H.R. 6060 AMENDMENTS REGARDING AUTHORIZATION OF CONTINUED ANNUAL BASE FUNDING FROM POWER REVENUES

Annual base funds from power revenues contribute significantly to the successful implementation of recovery actions by both recovery programs, including instream flow identification, evaluation, and protection; habitat restoration and maintenance; management of nonnative fish impacts; endangered fish propagation and stocking; research, monitoring, and data management; public information and involvement; and program management. Subsequent to passage of P.L. 106-392, \$46,465,562 in power revenue base funds have been expended or obligated by the Upper Colorado Recovery Program, and \$22,269,167 by the San Juan Recovery Program (2001–2012). The U.S. Fish and Wildlife Service, the four participating states, American Indian Tribes, and water users also provide additional annual funding and in-kind contributions for these activities.

The authorization for use of power revenues for annual base funding of recovery program actions, other than for operation and maintenance of capital projects and monitoring, ceased as of fiscal year 2011.

The approximate fiscal impacts of reductions in annual base funding (estimates in fiscal year 2008 dollars) after fiscal year 2011 without reauthorization are summarized as follows:

| Recovery Program | Full Base Funding | Reductions in Annual Base Funding Without Reauthorization | Remaining Annual Base Funding Without Reauthorization |
|------------------|-------------------|---|---|
| Upper Colorado | \$5,087,791 | (\$2,289,506) | \$2,798,285 |
| San Juan | \$2,533,874 | (\$999,728) | \$1,534,146 |
| Total: | \$7,621,665 | (\$3,289,234) | \$4,332,431 |
| Percent: | 100% | 43% | 57% |

The fiscal impacts are based on 2011-2011 expenditures by the two recovery programs. Without reauthorization, annual base funding from power revenues for nonnative fish management, research, public information and involvement, and program management would be eliminated from both recovery programs. This would delay and significantly impede the recovery programs' achievements in restoring populations of the endangered fishes. As a result, ESA compliance provided by recovery program actions for more than 2,300 water projects, as well as future projects, would not likely continue. ESA compliance depends not only on implementing recovery actions, but is ultimately and directly linked to long-term improvement in the status of fish populations.

CONTINUATION OF CURRENT LEVELS OF ANNUAL FUNDING FROM OTHER SOURCES

The language in the existing legislation that base funding and depletion charges previously agreed upon will be retained: *“Nothing in this Act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the Recovery Implementation Programs.”* This provides that annual and in-kind contributions by the U.S. Fish and Wildlife Service, the four participating States, American Indian Tribes, and water users identified in the original agreements will continue.

RECOMMENDATION REGARDING BASE FUNDING

P.L.106-392 should be amended to allow continued use of power revenues through 2019 for annual base funding of all activities as originally authorized and which are necessary to achieve recovery. The expected date of recovery of the razorback sucker and bonytail is 2023. H.R. 6060 implements these recommendations. I recommend that Congress pass amendments to insure continued base funding at current levels. H.R. 6060 accomplishes this.

I appreciate the opportunity to provide this testimony to the Water and Power Subcommittee.