

Testimony of Steve Wolff
General Manager, Southwestern Water Conservation District, Durango Colorado
before the
House Committee on Natural Resources
Subcommittee on Water, Wildlife, and Fisheries
July 27, 2023

Regarding

H.R.4596 - To reauthorize the Bureau of Reclamation to provide cost-shared funding to implement the endangered and threatened fish recovery programs for the Upper Colorado and San Juan River Basins.

Good morning, Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. Thank you for the opportunity to testify regarding H.R. 4596.

My name is Steve Wolff and I currently serve as the General Manager of the Southwestern Water Conservation District (Southwestern), in Durango Colorado. The District was created by the Colorado General Assembly in 1941 to protect, conserve, use, and develop the water resources of the San Juan and Dolores River Basins for the welfare of the people in southwest Colorado. Southwestern has been participating in the San Juan Program since its inception. I would also like to thank Representative Boebert for introducing this bill and commend her staff for their efforts to seek input from the participants in the two recovery programs on the bill.

I currently serve on two committees representing water users participating in the Upper Colorado River Endangered Fish Recovery Program and the San Juan River Recovery Implementation Program. Prior to my current position, I was employed by the Wyoming State Engineer's office for 15 years. As part of my duties there, I represented the State of Wyoming on the Management Committee of the Upper Colorado River Endangered Fish Recovery Program from 2013 to 2021, including serving as Chair from 2016 to 2021. My background has given me a perspective on the benefits and needs of these programs that I would like to share with you today with respect to H.R. 4596.

Summary: The purpose of H. R. 4596 is to reauthorize the Bureau of Reclamation (Reclamation) to provide cost-shared funding to implement the endangered and threatened fish recovery programs for the Upper Colorado and San Juan River basins. The authorization for the period of FY 24 through FY 31 is for \$50 million for capital projects and \$80 million dollars for base (annual) funding. Funding authorizations are adjusted annually for inflation.

The Upper Colorado Program was established in 1988. The San Juan Program was established in 1992. These programs were established with two principal goals; 1) the recovery of four threatened and endangered fish species listed under the federal Endangered Species Act (ESA), and 2) allow water development and management activities to proceed in a manner consistent

with state water law. These programs have been and continue to be successful in meeting both of those goals.

Reclamation, in cooperation with the four Upper Colorado River basin states and other partners, has been a participant in the programs since their inception. Reclamation funding, along with substantial funding and in-kind contributions by non-federal parties, is essential to the continued success of the programs. Non-federal water users have provided 2.9 million acre-feet of water to benefit endangered species and their habitats with an estimated value of at least \$580 million.

As I stated earlier, these programs have the goal of recovering four threatened and endangered fish species listed under the federal Endangered Species Act (ESA) in a manner consistent with state water and wildlife law, Reclamation project authorizations, and interstate water compacts adopted by Congress. The listed species are the Colorado pikeminnow, humpback chub, razorback sucker, and bonytail. The species are native to and found only in the Colorado River basin.

The programs have been implemented with the cooperation and participation of federal agencies, the states of Colorado, Utah, New Mexico, and Wyoming, water users, environmental organizations, power customers, and Native American tribes. These programs have been successful in preserving and moving the listed species toward recovery. Prior to the implementation of the programs, the species were on the verge of extinction.

The actions taken to preserve and recover the species are considered by U.S. Fish and Wildlife Service (Service) in evaluating the impacts of water development and management activities in the Upper Colorado River and San Juan River basins on the four listed fish species as required by the ESA. To date, the Service has independently determined that the actions taken by the recovery programs provide ESA compliance for 2,500 water projects in Colorado, Utah, Wyoming, and New Mexico. These projects include every Reclamation project in the basins upstream of Lake Powell. The programs allow the United States to fulfill its trust responsibilities to Native American tribes with respect to water development and management activities compliance with the Endangered Species Act. Importantly, no lawsuits have been filed on ESA compliance provided by the recovery programs.

Program participants are concerned that the \$80 million authorized for annual base funding by Reclamation in H.R. 4596 is below the amount needed by the two recovery programs. The participants identified a need for \$11.85 million in Reclamation funding for fiscal years 2024 through 2028 and \$10.93 million for fiscal years 2029 through 2031, totaling \$92.04 million for the authorization period in H.R. 4596. These amounts would also be adjusted for inflation.

The program participants are aware that the current rules of the House of Representatives limit the amount to be authorized in compliance with the 'cut go' rule. We will continue looking for opportunities to increase authorized base funding in compliance with House rules.

The recovery programs have been successful in the goals of preserving and moving listed species towards recovery and in providing ESA compliance for 2,500 water projects in the Upper

Colorado and San Juan river basins. Cost-sharing funding authorized by H. R. 4596 is essential for the continued success of the programs.

I will be happy to answer any questions from Subcommittee members. If I cannot provide answers, I request your permission to provide written responses subsequent to this hearing in a time frame specified by the Subcommittee.

Cooperation and Collaboration: Participants in the two programs include;

- States of Colorado, Utah, New Mexico, and Wyoming,
- Navajo Nation, Jicarilla Apache Nation, Ute Mountain Ute Tribe, Southern Ute Tribe,
- The Nature Conservancy, Western Resource Advocates,
- Colorado River Energy Distributors Association,
- U.S. Fish and Wildlife Service, Bureau of Reclamation, Western Area Power Administration, Bureau of Indian Affairs, and Bureau of Land Management.

The program partners participate in management and technical committees that determine actions and the priority of actions to be taken by the recovery programs to benefit listed fish, the development of annual work plans, and the development of long-range plans.

Recovery Program Activities to Benefit Threatened and Endangered Fish: The programs provide ESA compliance for basin-wide water development activities using an innovative structure to adaptively manage on-the-ground recovery actions at a system-wide level rather than project by project. This allows for more effective recovery actions and more efficient use of resources. Ongoing research and monitoring assure that recovery activities to benefit the species are effective, efficiently implemented, scientifically based, and evaluated through an adaptive management process. The components of the programs are

- instream flow identification and protection,
- habitat restoration,
- nonnative fish management,
- outreach,
- research and monitoring, and
- program management.

Activities supported by base (annual) funding include operation and maintenance of capital facilities, instream flow management, stocking of endangered fish, nonnative fish management, research and monitoring, and program management.

These capital and base-funded activities are vital to the preservation and recovery of the species and to providing ESA compliance for water development and management activities in the two basins. These are the activities that are provided with continuing cost-share funding authorized in H. R. 4596 and with substantial cash and in-kind contributions by non-federal partners.

Status of the Endangered Fish: At the beginning of the recovery programs, two of the listed species, Colorado pikeminnow, and humpback chub were on the verge of extinction. The

razorback sucker and bonytail were found only in very low numbers. In 2021, the Service down listed the humpback chub from endangered to threatened and proposed down listing of the razorback sucker from endangered to threatened. The programs have preserved populations of Colorado pikeminnow. The Upper Colorado Program is stocking bonytail to restore populations in the Upper Colorado River basin.

Funding Authorized by H. R. 4596: H. R. 4596 authorizes appropriations to the Bureau of Reclamation (Reclamation) for capital and base (annual) funding of the recovery programs. For the period of FY 24 through FY 31 capital funding is authorized to \$50 million and base funding is authorized at \$80 million, based on \$10 million per year. Both capital and base funding are adjusted for inflation each year to ensure that funding is increased with the cost of construction and personnel. The inflation adjustment is a critical component of both programs' funding.

Recovery Program participants have identified capital funding needs of \$50 million over the authorization period. These needs include the construction of fish passages, fish screens, hatcheries, and habitat development and improvement. In addition, capital funding is used to rehabilitate aging capital projects constructed over the last 30 years and to make structural improvements to the project for more efficient and effective operation. The capital projects provide the infrastructure needed to preserve and recover the listed species. The states will contribute capital funds on a project-by-project basis as funds are available.

Activities supported by base funding include operation and maintenance of capital facilities, instream flow management, stocking of endangered fish, nonnative fish management, research and monitoring, and program management. In addition to base funding provided by Reclamation, direct cash funding is also provided by the states and U.S. Fish and Wildlife Service. The states provide \$500,000 per year in annual funding. U.S. Fish and Wildlife Service provides \$1.5 million per year. These are in addition to the substantial in-kind and cash equivalent contributions discussed below.

Within the last year, participants in the programs conducted a thorough assessment of future needs and costs to continue the preservation and recovery of the listed species. Program participants are concerned that the \$80 million authorized for annual base funding by Reclamation in H.R. 4596 is below the amount needed by the two recovery programs. The participants identified a need for \$11.85 million in Reclamation funding for fiscal years 2024 through 2028 and \$10.93 million for fiscal years 2029 through 2031, totaling \$92.04 million for the authorization period in H.R. 4596. These amounts would also be adjusted for inflation.

The program participants are aware that current rules of the House of Representatives limit the amount to be authorized in compliance with the 'cut go' rule. We will continue looking for opportunities to increase authorized base funding in compliance with House rules.

Cash and In-Kind Contributions by Non-Federal Participants: In-kind, cash, cash equivalent, land, and water contributions to the recovery programs have been made by non-federal participants in the programs including states, tribes, power customers, water users, and environmental organizations. These contributions have supported both capital and annual

activities. These contributions will continue to be made through FY 31 and beyond. These contributions are in addition to direct cash contributions by Reclamation and other parties.

In-kind funding and actions provided by non-federal participants in the Upper Colorado and San Juan Programs are substantial and essential for the preservation and recovery of the listed fishes. In-kind contributions are essential for providing ESA compliance for over 2,500 federal, tribal, and non-federal water projects upstream of Lake Powell.

It has been common for the states to contribute additional staffing and funding to support the annual activities of the programs. Cash-equivalent contributions that the states fund provide directly support activities in the programs' annual workplans and reduce cash expenditures by the programs. Examples of current cash-equivalent actions include direct funding of stream gages utilized by the programs, operation of a fish hatchery, water management by state water agencies to assure protection and delivery of water to endanger fish habitat, and non-native fish control activities by state wildlife agencies.

Water for Endangered Fish: Under the recovery programs, water users and the states have agreed to provide water to benefit the listed species in accordance with state water law and interstate compacts approved by Congress. Reclamation operates Reclamation projects in accordance with congressional authorizations. There has been no taking water from any water user or Reclamation contractor.

Water users and the recovery programs have cooperatively implemented water efficiency projects that provide saved water to benefit listed fish and their habitats. Water is also provided to augment the spring peak and base flows through efficient operation of Federal and non-federal projects without diminishing the yields of those projects.

From 1998 through 2022, non-federal water users have contributed approximately 2.9 million acre-feet of water to benefit endangered fish. The value of this water, if it had to be purchased at a nominal low estimated cost of \$200 per acre-foot, would be \$590 million.

Without the provision of water to benefit endangered fish and the management of water by states for delivery to the listed species' habitat, the programs could not provide ESA compliance for federal, tribal, or non-federal water projects.

Federal Native American Trust Responsibilities: Average annual total depletions in the San Juan River basin are approximately 869,000 acre-feet per year. Tribal depletions and settlements account for approximately 62% of the depletions totaling 540,000 acre-feet per year. Tribal and non-tribal depletions are provided with ESA compliance by the San Juan Recovery Program. The San Juan Recovery Program allows the United States to carry out its trust responsibilities with respect to tribal depletions and settlements in compliance with the ESA.

Endangered Species Act Compliance: The Endangered Species Act requires federal agencies to consult with the U.S. Fish and Wildlife Service on any action taken that may affect threatened or endangered species. These actions include issuance/renewal of contracts for water from Reclamation projects, permitting, and granting rights of way. The Service has been required to

identify reasonable and prudent alternatives and measures to mitigate the impacts of those actions. Almost all federal, tribal, and nonfederal water projects are subject to ESA compliance in the Upper Colorado River and San Juan River basins due to impacts on the listed species.

U.S. Fish and Wildlife Service has agreed to consider actions taken by the recovery programs to determine if those actions provide compliance with the Endangered Species Act for water projects. The Service independently makes such a determination but is not obligated to make a determination that Recovery Program actions provide ESA compliance. The Service also conducts a biennial assessment of the programs overall to determine if the programs are continuing to provide ESA compliance for the water projects consulted on. In these assessments, the Service may make recommendations to ensure that the programs continue to provide ESA compliance. These recommendations are incorporated into the recovery programs' annual work plans.

Since the inception of the San Juan and Upper Colorado programs in 1988 and 1992 respectively, the Service has found that the programs provide ESA compliance for approximately 2,500 federal, tribal, and non-federal water projects depleting approximately 3.8 million acre-feet per year in Colorado, Wyoming, Utah, and New Mexico. These projects include every Reclamation project in the two basins upstream of Lake Powell. ESA compliance provided by the programs provides much more efficient administration of and compliance with the ESA for water users, federal agencies, and the Service. There have been no lawsuits contesting ESA compliance provided by the recovery programs.

Conclusion: The recovery programs have been successful in achieving the goals of preserving and moving listed species towards recovery and in providing ESA compliance for 2,500 water projects in the Upper Colorado and San Juan river basins. Cost-sharing funding authorized by H.R. 4596 is essential for the continued success of the programs.