THE LAW OF THE RIVER

COMPILED
BY THE
COLORADO RIVER MANAGEMENT SECTION
ARIZONA DEPARTMENT OF WATER RESOURCES
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Introduction

Overview

"The Law of the River" as applied to the Colorado River, has evolved out of a combination of both Federal and State statutes, inter-State compacts, court decisions and decrees, contracts with the United States, an international treaty, operating criteria and administrative decisions. All of the foregoing have resulted in a division or apportionment of the waters of the Colorado River among users thereof or the rights to the "consumptive use" of the Colorado River waters. The Colorado River has been described as the most closely regulated and controlled stream in the United States.

Physical Characteristics of the Colorado River

The Colorado River rises in the mountains of Colorado and flows in a southwesterly direction for approximately 1,400 miles until it empties into the Gulf of California in Mexico. It falls some 12,000 feet in its course, which provides its potential for power generation. The river flows through Colorado, Utah, and Arizona and along the Arizona-Nevada and Arizona-California boundaries and in the "limitrophe section"; i.e., the boundary between Arizona and Mexico. Significant amounts of water are added by tributaries, which originate in the State of Wyoming, Colorado, Utah, New Mexico, Nevada and Arizona, but not in California. In the late 1800's and early 1900's, there was commercial navigation on the river.

The river and its tributaries drain portions of seven States: Wyoming, Colorado, Utah, New Mexico, Arizona, California and Nevada, or a vast area of approximately 242,000 square miles, about one-twelfth the area of the continental United States, excluding the States of Alaska and Hawaii. This large basin is approximately 900 miles long and 300 miles wide in the northern part and 500 miles wide in the southern part. Most of it is so arid that the viability of numerous communities in it is largely dependent upon the controlled and managed use of the Colorado River System and the availability of its water to make it productive and inhabitable. The upper portion is one of high elevations, narrow valleys, and a short growing season. The lower portion has lower elevations, wide basins and deserts, and a long growing season. While not a part of the natural drainage area, an additional area of 7,500 square miles, which includes the Imperial and Coachella Valleys in southern California, is considered to be a part of the Lower Colorado River Basin. Population within the drainage area is approximately 2.5 million but through water exports from the river and tributaries nearly 12 million people receive a supplemental water supply from the river.

A canyon section in northern Arizona and southern Utah permits a convenient division of the Colorado River Basin. As described in Article II of the Colorado River Compact of 1922, the Colorado River Basin is divided into the Upper Basin, where waters naturally drain into the Colorado River above Lee Ferry, and the Lower Basin, where waters drain into the Colorado River below Lee Ferry. Lee Ferry, the boundary between the Upper and Lower Basins, is in northern Arizona approximately 1 mile downstream from the Paria River or 17 miles below the Glen Canyon Dam.

Water Supply

The unregulated flow of the river, uneven and unpredictable, varies widely during the year, from year to year, and over long periods of years. Water supply studies of virgin or undepleted flow at Lee Ferry show a maximum of 24 million acre-feet per year (maf/yr) in 1924 and a low flow of 5.5 maf in 1977. The long-term average virgin flow of the river at Lee Ferry, from the turn of the century to the present, averages 14.7 maf/yr. However, the bulk of the high flow occurred during the early part of this century so that the average virgin flow from 1896 to 1930, a "wet" period, was about 17 maf/yr whereas the average virgin flow from 1930 to the present time, a "dry" period, was about 13 maf/yr. The 10-year wettest period saw an average annual virgin flow of 18.8 maf in 1914-1923. The driest 10 years saw an average annual flow of 11.8 maf.

Since more accurate measurements of the flow at Lee Ferry were commenced in 1922, the flows have averaged about 14 maf/yr. This range of flows is significant. For example, the Compact negotiators in 1922 divided what was thought to be a water supply of 16 maf/yr between the Upper and Lower Basins on the assumption that the flows were in excess of that amount. Since 1922 estimates of the river's flow have steadily been revised downward to approximately 14 maf. The lower average river flows; i.e., a shrinking supply coupled with an increasing demand, have contributed greatly to the water problems that arose in later years.

Early River Development

In the late 1800's developers in the Imperial Valley of California devised plans to divert water from the Colorado River and to irrigate Imperial Valley lands by gravity flow. Diversion works were completed in 1901 for that purpose as a private undertaking. In 1903 80,000 acres were irrigated and in 1920 there were 400,000 irrigated acres. Today there are 500,000 irrigated acres.

Following notices of appropriations filed in 1877 by Thomas Blythe, diversion works were also begun by private developers in the Palo Verde Valley in California. Private canal companies also began irrigation in Arizona as early as 1890 in the Yuma Valley and in 1905 in the North Gila Valley.

After the passage of the Reclamation Act of 1902, investigations were started to determine the feasibility of large, Federal irrigation projects. The Yuma Reclamation Project in Arizona and California was authorized in 1904 and the first Colorado River water was delivered to it in 1907. By 1920, irrigation works constructed primarily by private enterprise, especially in the Imperial and Palo Verde Valleys of California, had expanded to such an extent that the unregulated flow of the Colorado River was completely utilized during periods of low flow so that further expansion was dependent upon construction of storage reservoirs on the river.

The erratic flows of the river, its tendency to destructive flooding and its high silt load limited its usefulness for a dependable year-round water supply without some flood control

and storage facilities, both of which were beyond the means of local entities and the States. Before construction of Hoover Dam, which was completed in 1935, the lower reaches of the Colorado River, swollen by floodwaters, broke through a cut several miles below the International Boundary, which had been made by the early developers of the Imperial Valley in California. For 16 months it flowed into the fields of the Imperial Valley enlarging the Salton Sea, approximately 490 square miles in area, and threatened to engulf the entire valley. The break was finally closed largely through the efforts of the Southern Pacific Railroad Company but only after 30,000 acres of arable land had been inundated, farms ruined, homes destroyed, highways washed away, and railroad tracks destroyed. This tragic occurrence, indicating the need for flood control of the lower Colorado River, became a motivating reason for the construction of Hoover Dam. That, plus problems in maintenance of the distribution facilities to Imperial Valley because its diversions of water were through facilities in Mexico, led to demands for a canal within the United States.

In 1901 the Davis and Lippincott Report recommended studies of two major projects which actually materialized in the Boulder Canyon Project Act, a storage dam at the Boulder Canyon site and a canal from the Colorado River to the Imperial Valley in California.

In 1918, under a contract with the Imperial Irrigation District, the All-American Canal Board, chaired by Mr. Meade, recommended legislation which would authorize a high dam for the storage of Colorado River water and an All-American Canal to Imperial Valley.

This led to the Kincaid Act in 1920 (41 Stat. 600) which authorized the Secretary of the Interior to make a study of the diversion and use of Colorado River waters. This resulted in the Fall-Davis Report in 1922, entitled "Problems of Imperial Valley and Vicinity" (Senate Document No. 142, 67th Congress, Second Session). The report recommended the All-American Canal and a storage dam in the Lower Basin, rather than in the Upper Basin, as the best possible site for flood control, storage, and a power development nearest to the markets for power in Southern California. Its data were also used by the negotiators of the Colorado River Compact. The Fall-Davis Report stated that the Colorado River problems"… are of such magnitude as to be beyond the reach of other than a national solution." And, finally, in 1924, the Weymouth Report spelled out the details of what soon became the Boulder Canyon Project.

The Colorado River Compact

Necessity for an interstate agreement. Storage on the Colorado River was essential not only for the flood protection and development for the lower basin, but in order to enable the junior appropriations in the upper basin to develop, the unregulated flow of the river having been appropriated by senior appropriators in the lower basin more rapidly than the upper-basin States could utilize the normal flow, thereby reestablishing the condition they sought to avoid. In general, two methods were open for the protection of the upper basin: a Supreme Court suit predicated on the doctrine of equitable apportionment, as distinguished from the doctrine of priority of appropriation irrespective of State lines, or, in the alternative, an interstate compact cutting across the doctrine of appropriation and reserving water against its operation.

Interstate compacts had been utilized for the settlement of controversies involving boundaries, fisheries, criminal jurisdiction, etc., but had never been used for the allocation for waters of an interstate stream.

The following is the sequence of events by which the Colorado River basin states reached their decision to attempt an interstate compact in this field. These preliminary discussions took place under the shadow of the case of *Wyoming v. Colorado*, then at issue in the United States Supreme Court, but undecided, involving a contest between two appropriation States:

- For some time prior to 1918, an organization for the promotion of western development had existed under the name of the *League of the Southwest*.

- On January 18, 1918, a meeting of the League convened in Salt Lake City on the call of Gov. W.J. Spry of Utah. By that time the Governors of Arizona, California, Nevada, New Mexico, Oklahoma, Texas, and Utah were represented.

- At some later time Wyoming was substituted for Oklahoma.

- On April 1, 2, and 3, 1920, the League met in Los Angeles and adopted resolutions favoring the development of the Colorado River by the Reclamation Service, and recommending immediate investigation of the Boulder Canyon site.

- On August 25-27, 1920, the League met at Denver, Governor Campbell of Arizona presiding. This meeting was made significant by the debate over upper versus lower-basin storage sites, and by discussion of an interstate compact. Governor Shoup of Colorado was appointed chairman of a committee on resolutions, and he, in turn, appointed Delph Carpenter of Colorado and Sims Ely of Arizona as a subcommittee to report a plan. The subcommittee reported favorably Mr. Carpenter's proposal to utilize the treaty-making power of the states. After hearing Arthur P. Davis, Director of the Reclamation Service, with respect to water supply and storage questions, the resolutions committee reported out and the League adopted a resolution endorsing storage on the upper reaches of the river, and concluding with the following paragraph:

  > ***Resolved***, That it is the sense of this Congress that the present and future rights of the several States whose territory is in whole or in part included within the drainage area of the Colorado River, and the rights of the United States, to the use and the benefit of the waters of said stream and its tributaries, should be settled and determined by compact or agreement between said States and the United States, with the consent of Congress, and that the legislatures of said States be requested to authorize the appointment of a commissioner for each of said States for the purpose of entering into such compact or agreement for subsequent ratification and approval by the legislature of each of said States and the Congress of the United States.

This was the genesis of the Colorado River Compact.

[Source: Updating the Hoover Dam Documents 1978]

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Chapter 1 - Colorado River Compact

Signed at Santa Fe, New Mexico,
November 24, 1922

Preface

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, p. 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners: W. S. Norviel for the State of Arizona, W. F. McClure for the State of California, Delph E. Carpenter for the State of Colorado, J. G. Scrugham for the State of Nevada, Stephen B. Davis, Jr. for the State of New Mexico, R. E. Caldwell for the State of Utah, Frank C. Emerson for the State of Wyoming, who, after negotiations participated in by Herbert Hoover, appointed by the President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are; to provide for the equitable division and apportionment of the use of the waters of the Colorado River System, to establish the relative importance of different beneficial uses of water, to promote interstate comity, to remove causes of present and future controversies and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionment may be made.

ARTICLE II - definitions

As used in this compact:

(a) The term *Colorado River System* means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term *Colorado River Basin* means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term *States of the Upper Division* means the States of Colorado, New Mexico,Utah, and Wyoming.

(d) The term *States of the Lower Division* means the States of Arizona, California, and Nevada.

(e) The term *Lee Ferry* means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term *Upper Basin* means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.

(g) The term *Lower Basin* means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term *domestic use* shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which can not reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governors of the signatory States and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex officio

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI
Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State, the Governors of the States affected upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII
Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII
Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situated.

ARTICLE IX
Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X
This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XI
This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice

of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A. D. One Thousand Nine Hundred and Twenty-two.

W. S. Norviel
W. F. McClure
Delph E. Carpenter
J. G. Scrugham
Stephen B. Davis, Jr.
R. E. Caldwell
Frank C. Emerson
Approved:
Herbert Hoover

[Source: Updating the Hoover Dam Documents 1978, Appendix I, pgs. I-4-I-7]

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Chapter 2 - Boulder Canyon Project

Public Law No. 642-70th Congress H.R. 5773

Preface

AN ACT To provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River compact, and for other purposes.

Section 1.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned in this chapter, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law, and shall not be paid out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however*, That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, and other property necessary for said purposes.

Section 2.

(a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of the Act. All revenues received in carrying out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62 per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62 per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest, during construction, upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

(d) The Secretary of the Treasury shall charge the fund as of June 30 in each year with such amount as may be necessary for the payment of interest on advances made undersubdivision (b) at the rate of 4 per centum per annum accrued during the year upon the amounts so advanced and remaining unpaid, except that if the fund is insufficient to meet the payment of interest the Secretary of the Treasury may, in his discretion, defer any part of such payment, and the amount so deferred shall bear interest at the rate of 4 per centum per annum until paid.

(e) The Secretary of the Interior shall certify to the Secretary of the Treasury, at the close of each fiscal year, the amount of money in the fund in excess of the amount necessary for construction, operation, and maintenance, and payment of interest. Upon receipt of each such certificate the Secretary of the Treasury is authorized and directed to charge the fund with the amount so certified as repayment of the advances made under subdivision (b), which amount shall be covered into the Treasury to the credit of miscellaneous receipts.

Section 3.
There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate $165,000,000. required for the uprating program and the visitor facilities program.

Section 4.
(a) This subchapter shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President

by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

(b) Before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the provisions of this Act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 of this title for such works, together with interest thereon made reimbursable under this Act.

Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgement to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this Act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona 18 per centum of such excess revenues and to the State of Nevada 18 per centum of such excess revenues.

Section 5.
That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation

and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgement cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

After the repayments to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress.

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery. Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers, and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

(b) The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

(c) Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Water Power Act as to conflicting applications for permits and licenses, except that

preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants.

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however*, That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision, necessary to enable the applicant to utilize such water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determined by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

(d) Any agency receiving a contract for electrical energy equivalent to one hundred thousand firm horsepower, or more, may, when deemed feasible by the said Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts hereunder for less than the equivalent of twenty-five thousand firm horsepower, upon application to the Secretary of the Interior made within sixty days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be constructed by the former for carrying such energy (not exceeding, however, one-fourth the capacity of such line), upon payment by such other agencies of a reasonable share of the cost of construction, operation, and maintenance thereof.

The use is hereby authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

Section 6.
That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as herein otherwise provided: *Provided, however*, That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this Act relating to revenue, term, renewals,

determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal Water Power Act, so far as applicable, respecting maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits, recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this Act of penalizing failure to comply with such regulations or with the provisions of this Act. He shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer.

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal Water Power Act upon or affecting the Colorado River or any of its tributaries, except the Gila River, in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this Act shall become effective as provided in section 4 herein.

Section 7.
That the Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Siphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him. The said districts or other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost of construction thereof.

Section 8.
(a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the

generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided*, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

Section 9.
All lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute revenue from said project and be covered into the fund herein provided for: *Provided,* That all persons who served in the United States Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4 of the Act of December 5, 1924 (43 Stat. 672, 702: U.S.C., sec. 433); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this subchapter: *Provided further*, That the above exclusive preference rights shall apply to veteran settlers on lands watered from the Gila canal in Arizona the same as to veteran settlers on lands watered from the All-American canal in California: *Provided further*, That in the event such an entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be

open to entry, subject to the preference in this section provided.[1]

Section 10.
That nothing in this Act shall be construed as modifying in any manner the existing contract, dated October 23, 1918, between the United States and the Imperial Irrigation District, providing for a connection with Laguna Dam; but the Secretary of the Interior is authorized to enter into contract or contracts with the said district or other districts, persons, or agencies for the construction, in accordance with this Act, of said canal and appurtenant structures, and also for the operation and maintenance thereof, with the consent of the other users.

Section 11.
That the Secretary of the Interior is hereby authorized to make such studies, surveys, investigations, and do such engineering as may be necessary to determine the lands in the State of Arizona that should be embraced within the boundaries of a reclamation project, heretofore commonly known as the Parker-Gila Valley reclamation project, and to recommend the most practicable and feasible method of irrigating lands within said project, or units thereof, and the cost of the same; and the appropriation of such sums of money as may be necessary for the aforesaid purposes from time to time is hereby authorized. The Secretary shall report to Congress as soon as practicable, and not later than December 10, 1931, his findings, conclusions, and recommendations regarding such project.

Section 12.
Political subdivision or *political subdivisions* as used in this subchapter shall be understood to include any State, irrigation or other district, municipality, or other governmental organization.

Reclamation law as used in this subchapter shall be understood to mean that certain Act of the Congress of the United States approved June 17, 1902, entitled an Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands. and the Acts amendatory thereof and supplemental thereto.

Maintenance as used herein shall be deemed to include in each instance provision for keeping the works in good operating condition.

The Federal Water Power Act, as used in this Act, shall be understood to mean that certain Act of Congress of the United States approved June 10, 1920, entitled an Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes, and the Acts amendatory thereof and supplemental thereto.

[1] As amended by act of March 6, 1946 (60 Stat. 36).

Domestic whenever employed in this subchapter, shall include water uses defined as "domestic" in said Colorado River compact.

Section 13.
(a) Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.

(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this Act, the Federal Water Power Act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.

(d) The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right of way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries.

Section 14.
This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

Section 15.
The Secretary of the Interior is authorized and directed to make investigation and public

reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said States and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colorado river and its tributaries. The sum of $250,000 is hereby authorized to be appropriated from said Colorado River Dam fund, created by section 2 of this Act, for such purposes.

Section 16.
In furtherance of any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system and to the end that the project authorized by this Act may constitute and be administered as a unit in such control, improvement, and utilization, any commission or commissioner duly authorized under the laws of any ratifying State in that behalf shall have the right to act in an advisory capacity to and in cooperation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4, 5, and 14 of this Act, and shall have at all times access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request.

Section 17.
Claims of the United States arising out of any contract authorized by this Act shall have priority over all others, secured or unsecured.

Section 18.
Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement.

Section 19.
That the consent of Congress is given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this Act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river. Any such compact or agreement may provide for the construction of dams, headworks, and other diversion works or structures for flood control, reclamation, improvement of navigation, division of water, or other purposes and/or the construction of power houses or other structures for the purpose of the development of water power and the financing of the same; and for such purposes may authorize the creation of interstate commissions and/or the creation of corporations, authorities or other instrumentalities.

Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to

Congress of the proceedings and of any compact or agreement entered into.

No such compact or agreement shall be binding or obligatory upon any of such States unless and until it has been approved by the legislature of each of such States and by the Congress of the United States.

Section 20.
Nothing is this Act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system.

Section 21.
That the short title of this subchapter shall be "Boulder Canyon Project Act."
Approved, December 21, 1928.[2]

[Source: Hoover Dam Documents 1978, Appendix I, pgs. I-13-I-20]

[2]Although not an amendment to the Project Act, the following statute relating to the lease of reserved lands in Boulder City, Nevada, and the disposition of revenues therefrom is pertinent:

The Secretary of the Interior is hereby authorized and empowered, under such rules and regulations as he may prescribe, to establish rental rates for the lease of reserved lands of the United States situate within the exterior boundaries of Boulder City, Nevada, and, without prior advertising, to enter into leases therefor at not less than rates so established and for periods not exceeding fifty-three years from the date of such leased: Provided, That all revenues which may accrue to the United States under the provisions of such leases shall be deposited in the Treasury and credited to the Colorado River Dam fund established by section 617a of this title (June 18, 1940, ch.395, sec.1, 54 Stat. 437).

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Chapter 3 - Boulder Canyon Project Adjustment Act

[PUBLIC LAW-NO. 756-76TH CONGRESS]
[H.R. 9877]
July 19, 1940

Preface
AN ACT Authorizing the Secretary of the Interior to promulgate and to put into effect charges for electrical energy generated at Boulder Dam, providing for the application of revenues from said project, authorizing the operation of the Boulder Power Plant by the United States directly or through agents, and for other purposes.

Section 1
Be it enacted by the Senate and House of Representatives of the United States of America Project in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Boulder Dam during the period beginning June 1, 1937, and ending May 31, 1987, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes:

(a) To meet the cost of operation and maintenance, and to provide for replacements, of the project during the period beginning June 1, 1937, and ending May 31, 1987;

(b) To repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the project made prior to June 1, 1937, within fifty years from that date (excluding advances allocated to flood control by section 2 (b) of the Project Act, which shall be repayable as provided in section 7 hereof), and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987; (45 Stat.1057, 43USC617a(b))

(c) To provide $600,000 for each of the years and for the purposes specified in section 2 (c) hereof; and

(d) To provide $500,000 for each of the years and for the purposes specified in section 2 (d) hereof.

Such charges may be made subject to revisions and adjustments at such times, to such extent, and in such manner as by the terms of their promulgation the Secretary shall prescribe.

Section 2.
All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available for:

(a) Annual appropriation for the operation, maintenance, and replacements of the project, including emergency replacements necessary to insure continuous operations;

(b) Repayment to the Treasury, with interest (after making provision for the payments and transfers provided in subdivisions (c) and (d) hereof), of advances to the Colorado River Dam Fund for the construction of the project (excluding the amount allocated to flood control by section 2 (b) of the Project Act), and any readvances made to said fund under section 5 hereof; and

(c) Payment subject to the provisions of section 3 hereof, in commutation of the payments now provided for the States of Arizona and Nevada in section 4 (b) of the Project Act, to each of said States of the sum of $300,000 for each year of operation, beginning with the year of operation ending May 31, 1938, and continuing annually thereafter until and including the year of operation ending May 31, 1987, and such payments for any year of operation which shall have expired at the time when this subdivision (c) shall become effective, shall be due immediately, and be paid, without interest, as expeditiously as administration of this Act will permit, and each such payment for subsequent years of operation shall be made on or before July 31, following the close of the year of operation for which it is made. All such payments shall be made from revenues hereafter received in the Colorado River Dam Fund.

Notwithstanding the foregoing provisions of this subsection, in the event that there are levied and collected by or under the authority of Arizona or Nevada or by any lawful taxing political subdivision thereof, taxes upon-
(i) the project as herein defined;
(ii) the electrical energy generated at Boulder Dam by means of facilities, machinery, or equipment both owned and operated by the United States, or owned by the United States and operated under contract with the United States;
(iii) the privilege of generating or transforming such electrical energy or of use of such facilities, machinery, or equipment or of falling water for such generation or transforming; or
(iv) the transmission or control of such electrical energy so generated or transformed (as distinguished from the transmission lines and other physical properties used for such transmission or control) or the use of such transmission lines or other physical properties for such transmission or control,

Payments made hereunder to the State or by or under the authority of which such taxes are collected shall be reduced by an amount equivalent to such taxes. Nothing herein shall in anywise impair the right of either the State of Arizona or the State of Nevada, or any lawful taxing political subdivision of either of them, to collect nondiscriminatory taxes upon that portion of the transmission lines and all other physical properties, situated within such State and such political subdivision, respectively, and belonging to any of the lessees and/or allottees under the Project Act and/or under this Act, and nothing herein shall exempt or be

construed so as to exempt any such property from nondiscriminatory taxation, all in the manner provided by the constitution and laws of such State. Sums, if an received by each State under the provisions of the Project Act shall be deducted from the first payment or payments to said State authorized by this Act. Payments under this section 2 (c) shall be contractural obligations of the United States, subject to the provisions of section 3 of this Act.

(d) Transfer, subject to the provisions of section 3 hereof, from the Colorado River Dam Fund to a special fund in the Treasury, hereby established and designated the "Colorado River Development Fund", of the sum of $500,000 for the year of operation ending May 31, 1938, and the like sum of $500,000 for each year of operation thereafter, until and including the year of operation ending May 31, 1987. The transfer of the said sum of $500,000 for each year of operation shall be made on or before July 31, next following the close of the year of operation for which it is made: *Provided*, That any such transfer for any year of operation which shall have ended at the time this section 2 (d) shall become effective, shall be made, without interest, from revenues received in the Colorado River Dam Fund, as expeditiously as administration of this Act will permit, and without readvances from the general funds of the Treasury. Receipts of the Colorado River Development Fund for the years of operation ending in 1938, 1939, and 1940 (or in the event of reduced receipts during any of said years, due to adjustments under section 3 hereof, then the first receipts of said fund up to $1,500,000), are authorized to be appropriated only for the continuation and extension, under the direction of the Secretary, of studies and investigations by the Bureau of Reclamation for the formulation of a comprehensive plan for the utilization of waters of the Colorado River system for irrigation, electrical power, and other purposes, in the States of the upper division and the States of the lower division, including studies of quantity and quality of water and all other relevant factors. The next such receipts up to and including the receipts for the year of operation ending in 1955 are authorized to be appropriated only for the investigation and construction of projects for such utilization in and equitably distributed among the four States of the upper division. Such receipts for the years of operation ending in 1956 to 1987, inclusive, are authorized to be appropriated for the investigation and construction of projects for such utilization in and equitably distributed among the States of the upper division and the States of the lower division.

The terms *Colorado River system*, *States of the upper division*, and *States of the lower division* as so used shall have the respective meanings defined in the Colorado River compact mentioned in the Project Act. Such projects shall be only such as are found by the Secretary to be physically feasible, economically justified, and consistent with such formulation of a comprehensive plan. Nothing in this Act shall be construed so as to prevent the authorization and construction of any such projects prior to the completion of said plan of comprehensive development; nor shall this Act be construed as affecting the right of any State to proceed independently of this Act or its provisions with the investigation or construction of any project or projects. Transfers under this section 2 (d) shall be deemed contractual obligations of the United States, subject to the provisions of section 3 of this Act.

Section 3.
If, by reason of any act of God, or of the public enemy, or any major catastrophe, or any payments and other unforeseen and unavoidable cause, the revenues, for any year of operation, after making provision for costs of operation, maintenance, and the amount to be set aside for said year for replacements, should be insufficient to make the payments to the States of Arizona and Nevada and the transfers to the Colorado River Development Fund herein provided for, such payments and transfers shall be proportionately reduced, as the Secretary may find to be necessary by reason thereof.

Section 4.
(a) Upon the taking effect of this Act, pursuant to section 10 hereof, the charges, or the basis of computation thereof, promulgated hereunder, shall be applicable as from June 1, 1937, and adjustments of accounts by reason thereof, including charges by and against the United States, shall be made so that the United States and all parties that have contracted for energy, or for the privilege of generating energy, at the project, shall be placed in the same position, as nearly as may be, as determined by the Secretary, that they would have occupied had such charges, or the basis of computation thereof, and the method of operation which may be provided for under section 9 hereof, been effective on June 1, 1937: *Provided*, That such adjustments with contractors shall not be made in cash, but shall be made by means of credits extended over such period as the Secretary may determine.

(b) In the event payments to the States of Arizona and Nevada, or either of them, under section 2 (c) hereof, shall be reduced by reason of the collection of taxes mentioned in said section, adjustments shall be made, from time to time, with each allottee which shall have paid any such taxes, by credits, or otherwise for that portion of the amount of such reductions which the amount of the payments of such taxes by such allottee bears to the total amount of such taxes collected.

Section 5.
If at any time there shall be insufficient sums in the Colorado River Dam Fund to meet the cost of replacements, however necessitated, in addition to meeting the other requirements of this Act, or of regulations authorized hereby and promulgated by the Secretary, the Secretary of the Treasury, upon request of the Secretary of the Interior, shall readvance to the said fund, in amounts not exceeding, in the aggregate, moneys repaid to the Treasury pursuant to Section 2 (b) hereof, the amount required for replacements, however necessitated, in excess of the amount currently available therefor in said Colorado River Dam Fund. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums, not exceeding said aggregate amount, as may be necessary to permit the Secretary of the Treasury to make such readvances. All such readvances shall bear interest.

Section 6.
Whenever by the terms of the Project Act or this Act payment of interest is provided for, and whenever interest shall enter into any computation thereunder, such interest shall be computed at the rate of 3 per centum per annum, compounded annually.

Section 7.
The first $25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 2 (b) of the Project Act and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine.

Section 8.
The Secretary is hereby authorized from time to time to promulgate such regulations and enter into such contracts as he may find necessary or appropriate for carrying out the purposes of this Act and the Project Act, as modified hereby, and, by mutual consent, to terminate or modify any such contract: *Provided, however,* That no allotment of energy to any allottee made by any rule or regulation heretofore promulgated shall be modified or changed without consent of such allottee.

Section 9.
The Secretary is hereby authorized to negotiate for and enter into a contract for the termination of the existing lease of the Boulder Power Plant made pursuant to the Project Act, and in the event of such termination the operation and maintenance, and the making of replacements, however necessitated, of the Boulder Power Plant by the United States, directly or through such agent or agents as the Secretary may designate, is hereby authorized. The powers, duties, and rights of such agent or agents shall be provided by contract, which may include provision that questions relating to the interpretation or performance thereof may be determined to the extent provided therein, by arbitration or court proceedings. The Secretary in consideration of such termination of such existing lease is authorized to agree (a) that the lessees therein named shall be designated as the agents of the United States for the operation of said power plant; (b) that (except by mutual consent or in accordance with such provisions for termination for default as may be specified therein) such agency contract shall not be revocable or terminable; and (c) that suits or proceedings to restrain the termination of any such agency contract, otherwise than as therein provided, or for other appropriate equitable relief or remedies, may be maintained against the Secretary. Suits or other court proceedings pursuant to the forgoing provisions may be maintained in, and jurisdiction to hear and determine such suits or proceedings and to grant such relief or remedies is hereby conferred upon, the District Court of the United States for the District of Columbia, with the like right of appeal or review as in other like suits or proceedings in said court. The Secretary is hereby authorized to act for the United States in such arbitration proceedings.

Section 10.
This Act shall be effective immediately for the purpose of the promulgation of charges, or the basis of computation thereof, and the execution of contracts authorized by the terms of this Act, but neither such charges, nor the basis of computation thereof, nor any such contract, shall be effective unless and until this Act shall be effective for all purposes. This Act shall take effect for all purposes when, but not before, the Secretary shall have found that provision has been made for the termination of the existing lease of the Boulder Power Plant and for the operation thereof as authorized by section 9 hereof, and that allottees obligated under contracts in force on the date of enactment of this Act to pay for at least 90 per centum of the firm energy shall have entered into contracts (1) consenting to such operation, and (2) containing such other provisions as the Secretary may deem necessary or proper for carrying out the purposes of this Act. For purposes of this section such 90 per centum shall be computed as of the end of the absorption periods provided for in regulations heretofore promulgated by the Secretary and in effect at the time of the enactment of this Act.

If contracts in accordance with the requirements of this section shall not have been entered into prior to June 1, 1941, this Act shall cease to be operative and shall be of no further force or effect.

Section 11.
Any contractor for energy from the project failing or refusing to execute a contract modifying its existing contract to conform to this Act shall continue to pay the rates and charges provided for in its existing contract, subject to such periodic readjustments as are therein provided, in all respects as if this Act had not been passed, and so far as necessary to support such existing contract all of the provisions of the Project Act shall remain in effect, anything in this Act inconsistent therewith notwithstanding.

Section 12.
The following terms wherever used in this Act shall have the following respective meanings:

Project Act shall mean the Boulder Canyon Project Act;

Project shall mean the works authorized by the Project Act to be constructed and owned by the United States, exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal;

Secretary shall mean the Secretary of the Interior of the United States;

Firm energy and allottees shall have the meaning assigned to such terms in regulations heretofore promulgated by the Secretary and in effect at the time of the enactment of this Act;

Replacements shall mean such replacements as may be necessary to keep the project in good operating condition during the period from June 1, 1937, to May 31, 1987, inclusive, but shall not include (except where used in conjunction with the word "emergency" or the words "however necessitated") replacements made necessary by any act of God, or of the public

enemy, or by any major catastrophe; and

Year of operation shall mean the period from and including June 1 of any calendar year to and including May 31 of the following calendar year.

Section 13.
The Secretary of the Interior shall, in January of each year, submit to the Congress a financial statement and a complete report of operations under this Act during the preceding year of operation as herein defined.

Section 14.
Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement. Neither he promulgation of charges, or the basis of charges, nor anything contained in this Act, or done thereunder, shall in anywise affect, limit, or prejudice any right of any State in or to the waters of the Colorado River system under the Colorado River compact. Sections 13 (b), 13 (c), and 13 (d) of the Project Act and all other provisions of said Project Act not inconsistent with the terms of this Act shall remain in full force and effect.

Section 15.
All laborers and mechanics employed in the construction of any part of the project, or in the operation, maintenance, or replacement of any part of the Boulder Dam, shall be paid not less than the prevailing rate of wages or compensation for work of a similar nature prevailing in the locality of the project. In the event any dispute arises as to what are the prevailing rates, the determination thereof shall be made by the Secretary of the Interior, and his decision, subject to the concurrence of the Secretary of Labor, shall be final.

Section 16.
This Act may be cited as "Boulder Canyon Project Adjustment Act".
Approved July 19, 1940.

[Source: Updating the Hoover Dam Documents 1978, Appendix I, pgs. I-21-I-26]

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Chapter 4 - California Limitation Act

CONDITIONS PRECEDENT TO THE PROJECT ACT:
THE CALIFORNIA "LIMITATION ACT"
(Act of March 4, 1929; Ch. 16, 48th Sess.; Statutes and Amendments to the Codes, 1929, pp. 38-39)

Preface

AN ACT To limit the use by California of the waters of the Colorado river in compliance with the act of congress known as the "Boulder canyon project act," approved December 21, 1928, in the event the Colorado river compact is not approved by all of the states signatory thereto

(Approved by the Governor March 4, 1929; in effect August 14, 1929)

The people of the State of California do enact as follows:

Section 1.

In the event the Colorado river compact signed at Santa Fe, New Mexico November 24, 1922, and approved by and set out at length in that certain act entitled " An act to ratify and approve the Colorado river compact, signed at Santa Fe, New Mexico, November 24, 1922, to repeal conflicting acts and resolutions and directing that notice be given by the governor of such ratification and approval," approved January 10, 1929 (statutes 1929, chapter 1), is not approved within six months from the date of the passage of that certain act of the congress of the United States known as the "Boulder canyon project act," approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado river compact, then when six of said states, including California, shall have ratified and approved said compact, and shall have consented to waive the provisions of the first paragraph of article eleven of said compact which makes the same binding and obligatory when approved by each of the states signatory thereto, and shall have approved said compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said "Boulder canyon project act," the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming as an express covenant and in consideration of the passage of the said " Boulder canyon project act" that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado river for use in the State of California including all uses under contracts made under the provisions of said "Boulder canyon project act," and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph "a" of article three of the said Colorado river compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

Section 2.
By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4 (a) of the said "Boulder canyon project act "and this act shall be so construed.
[Source: Updating the Hoover Dam Documents 1978, Appendix I, pgs. I-12]

Chapter 5 - Boulder Canyon Project, Seven-Party Agreement

August 18, 1931

REQUESTING THE DIVISION OF WATER RESOURCES OF THE STATE OF CALIFORNIA TO APPORTION CALIFORNIA'S SHARE OF THE WATERS OF THE COLORADO RIVER AMONG THE VARIOUS APPLICANTS AND WATER USERS THEREFROM IN THE STATE, CONSENTING TO SUCH APPORTIONMENTS, AND REQUESTING SIMILAR APPORTIONMENTS BY THE SECRETARY OF THE INTERIOR OF THE UNITED STATES

Preface

This Agreement, made the 18th day of August, 1931, by and between Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego and County of San Diego;

Witnesseth:
WHEREAS the Secretary of the Interior did, on November 5, 1930, request of the Division of Water Resources of California, a recommendation of the proper apportionment of the water of and from the Colorado River to which California may be entitled under the provisions of the Colorado River compact, the Boulder Canyon project act and other applicable legislation and regulations, to the end that the same could be carried into each and all of the contracts between the United States and applicants for water contracts in California as a uniform clause; and

WHEREAS the parties hereto have fully considered their respective rights and requirements in cooperation with the other water users and applicants and the Division of Water Resources aforesaid;

NOW, THEREFORE, the parties hereto do expressly agree to the apportionment and priorities of water of and from the Colorado River for use in California as hereinafter fully set out and respectfully request the Division of Water Resources to, in all respects, recognize said apportionment and priorities in all matters relating to State authority and to recommend the provisions of Article I hereof to the Secretary of the Interior of the United States for insertion in any and all contracts for water made by him pursuant to the terms of the Boulder Canyon project act, and agree that in every water contract which any party may hereafter enter into with the United States, provisions in accordance with Article I shall be included therein if agreeable to the United States.

ARTICLE I

The waters of the Colorado River available for use within the State of California under the Colorado River compact and the Boulder Canyon project act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

Section 1.
A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said district as it now exists and upon lands between said district and the Colorado River, aggregating (within and without said district) a gross area of 104,500 acres, such waters may be required by said lands.

Section 2.
A second priority to Yuma project of United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

Section 3.
A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

Section 4.
A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre feet of water per annum.

Section 5.
A fifth priority, (a) to The Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre feet per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 6.
A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the

"Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

Section 7.
A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on Map No. 23000 of the Department of Interior, Bureau of Reclamation.

Section 8.
So far as the rights of the allottees named above are concerned, The Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said district and/or said city (not exceeding at any one time 4,750,000 acre feet in the aggregate) by reason of reduced diversions by said district and/or said city; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said district and/or said city and such users resulting therefrom.

Section 9.
In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said city and/or said county (not exceeding at any one time 250,000 acre feet in the aggregate) by reason of reduced diversions by said city and/or said county; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between the said city and/or said county and such users resulting therefrom.

Section 10.
In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said district and said city, and either or both may use said apportionment as may be agreed by and between said district and said city.

Section 11.
In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said city

and said county, and either or both may use said apportionment as may be agreed by and between said city and said county.

Section 12.
The priorities hereinbefore set forth shall be in nowise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

ARTICLE II

That each and every party hereto who has heretofore filed an application or applications for a permit or permits to appropriate water from the Colorado River requests the Division of Water Resources to amend such application or applications as far as possible to bring it or them into conformity with the provisions of this agreement; and each and every party hereto who has heretofore filed a protest or protests against any such application or applications of other parties hereto does hereby request withdrawal of such protest or protests against such application or applications when so amended.

ARTICLE III

That each of all the parties to this agreement respectively request that the contract for delivery of water between The United States of America and The Metropolitan Water District of Southern California under date of April 24, 1930, be amended in conformity with Article I hereof.
IN WITNESS WHEREOF, the parties; hereto have caused this agreement to be executed by their respective officers thereunto duly authorized, the day and year first above written.
Executed in seven originals.

Recommended for Execution:
Palo Verde Irrigation District,
By Ed J. Williams.
Arvin B. Shaw, Jr.

Imperial Irrigation District,
By Chas L. Childers.
M.J. Dowd.

Coachella Valley County Water District,
By Thos. C. Yager.
Robbins Russel.

Metropolitan Water District of Southern California,
By W.B. Matthews.
C.C. Elder.

City of Los Angeles,
By W.W. Hurlbut.
C.A. Davis.

City of San Diego,
By C.L. Byers.
H.N. Savage.

County of San Diego,
By H.N. Savage.
C.L. Byers.
[The agreement was thereafter ratified by each of the seven parties.]

[Source: The Hoover Dam Documents 1948, Appendix 1003, pgs. A479-A483]

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Chapter 6 - Arizona Water Contract, 1944

CONTRACT OF FEBRUARY 9, 1944
(EFFECTIVE FEBRUARY 24, 1944)
(Act of February 24, 1944; Ch. 4, Seventeenth Legislature;
Session Laws of Arizona, 1944, pp. 419-427)
[House Bill No. 2]

Preface
An Act ratifying the contract between the United States and the State of Arizona for storage and delivery of water from Lake Mead, and declaring an emergency.

Be it enacted by the Legislature of the State of Arizona:

Section I. Ratification.
There is hereby unconditionally ratified, approved, and confirmed, that certain contract for the storage and delivery of water from Lake Mead executed on behalf of the United States by the Honorable Harold L. Ickes, Secretary of the Interior, and on behalf of the State of Arizona by its Colorado river commission, bearing date the 9th day of February 1944, as follows:

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
BOULDER CANYON PROJECT
ARIZONA-CALIFORNIA-NEVADA
CONTRACT FOR DELIVERY OF WATER

THIS CONTRACT made this 9th day of February 1944 pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplemental thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States," acting for this purpose by Harold L. Ickes, Secretary of the Interior, hereinafter referred to as the "Secretary," and the STATE OF ARIZONA, hereinafter referred to as the "Secretary," and the STATE OF ARIZONA, hereinafter referred to as "Arizona," acting for this purpose by the Colorado River Commission of Arizona, pursuant to Chapter 46 of the 1939 Session Laws of Arizona,
WITNESSETH THAT:

Section 2. Explanatory Recitals.
Whereas for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States,

the Secretary acting under and in pursuance of the provisions of the Colorado River Compact and Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Boulder Dam and incidental works, creating thereby a reservoir designated Lake Mead of a capacity of about thirty-two million (32,000,000) acre-feet; and

Section 3.
Whereas said Boulder Canyon Project Act provides that the Secretary, under such general rules and regulations as he may prescribe, may contract for the storage of water in the reservoir created by Boulder Dam, and for the delivery of such water at such points on the river as may be agreed upon, for irrigation and domestic uses, and provides further that no person shall have or be entitled to have the use for any purpose of the water stored, as aforesaid, except by contract made as stated in said Act; and

Section 4.
Whereas it is the desire of the parties to this contract to contract for the storage of water and the delivery thereof for irrigation of lands and domestic uses within Arizona; and

Section 5.
Whereas nothing in this contract shall be construed as affecting the obligations of the United States to Indian tribes:

Section 6.
Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Section 7. Delivery of Water.
(a) Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet.

(b) The United States also shall deliver from storage in Lake Mead for use in Arizona, at a point or points of diversion on the Colorado River approved by the Secretary, for the uses set forth in subdivision (a) of this Article, one-half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under said compact and said act, less such excess or surplus water unapportioned by said compact as may be used in Nevada, New Mexico, and Utah in accordance with the rights of said states as stated in subdivisions (f) and (g) of this Article.

(c) This contract is subject to the condition that Boulder Dam and Lake Mead shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the United States and Arizona, and agencies and water users therein, shall observe and be subject to and controlled by said Colorado River Compact and the Boulder Canyon Project Act in the construction, management, and operation of Boulder Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other uses.

(d) The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.

(e) This contract is for permanent service, subject to the conditions stated in subdivision (c) of this Article, but as to the one-half of the waters of the Colorado River system unapportioned by paragraphs (a), (b), and (c) of Article III of the Colorado River Compact, such water is subject to further equitable apportionment at any time after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(f) Arizona recognizes the right of the United States and the State of Nevada to contract for the delivery from storage in Lake Mead for annual beneficial consumptive use within Nevada for agricultural and domestic uses of 300,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact, and in addition thereto to make contract for like use of 1/25 (one twenty-fifth) of any excess or surplus waters available in the Lower Basin and unapportioned by the Colorado River Compact, which waters are subject to further equitable apportionment after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(g) Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such compact, and nothing contained in this contract shall prejudice such rights.

(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies.

(i) Nothing in this contract shall preclude the parties hereto from contracting for storage and

delivery above Lake Mead of water herein contracted for, when and if authorized by law.

(j) As far as reasonable diligence will permit, the water provided for in this contract shall be delivered as ordered and as reasonably required for domestic and irrigation uses within Arizona. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered, for the purpose of investigation and inspection, maintenance, repairs, replacements, or installation of equipment or machinery at Boulder Dam, or other dams heretofore or hereafter to be constructed, but so far as feasible will give reasonable notice in advance of such temporary discontinuance or reduction.

(k) The United States, its officers, agents, and employees shall not be liable for damages when for any reason whatsoever suspensions or reductions in the delivery of water occur.

(l) Deliveries of water hereunder shall be made for use within Arizona to such individuals, irrigation districts, corporations or political subdivisions therein of Arizona as may contract therefor with the Secretary, and as may qualify under the Reclamation Law or other federal statutes or to lands of the United States within Arizona. All consumptive uses of water by users in Arizona, of water diverted from Lake Mead or from the main stream of the Colorado River below Boulder Dam, whether made under this contract or not, shall be deemed, when made, a discharge pro tanto of the obligation of this contract. Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this contract

(m) Rights-of-way across public lands necessary or convenient for canals to facilitate the full utilization in Arizona of the water herein agreed to be delivered will be granted by the Secretary subject to applicable federal statutes.

Section 8. Points of Diversion: Measurements of Water.
The water to be delivered under this contract shall be measured at the points of diversion, or elsewhere as the Secretary may designate (with suitable adjustment for losses between said points of diversion and measurement), by measuring and controlling devices or automatic gauges approved by the Secretary, which devices, however, shall be furnished, installed, and maintained by Arizona, or the users of water therein, in manner satisfactory to the Secretary; said measuring and controlling devices or automatic gauges shall be subject to the inspection of the United States, whose authorized representatives may at all times have access to them, and any deficiencies found shall be promptly corrected by the users thereof. The United States shall be under obligation to deliver water only at diversion points where measuring and controlling devices or automatic gauges are maintained, in accordance with this contract, but in the event diversions are made at points where such devices are not maintained, the Secretary shall estimate the quantity of such diversions and his determination thereof shall be final.

Section 9. Charges for Storage and Delivery of Water.
No charge shall be made for the storage or delivery of water at diversion points as herein provided necessary to supply present perfected rights in Arizona. A charge of $.50 per acre-foot shall be made for all water actually diverted directly from Lake Mead during the

Boulder Dam cost repayment period, which said charge shall be paid by the users of such water, subject to reduction by the Secretary in the amount of the charge if it is concluded by him at any time during said cost-repayment period that such charge is too high. After expiration of the cost-repayment period, charges shall be on such basis as may hereafter be prescribed by Congress. Charges for the storage or delivery of water diverted at a point or points below Boulder Dam, for users, other than those specified above, shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, and shall be paid by such users; provided such charges shall, in no event, exceed $.25 per acre-foot.

Section 10. Reservations.
Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III (a) of the Colorado River Compact; (3) what part, if any, is within Article III (b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by said Compact; and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system; provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III (a) of the Colorado River Compact between the Upper Basin and the Lower Basin.

Section 11. Disputes and Disagreements.
Whenever a controversy arises out of this contract, and if the parties hereto then agree to submit the matter to arbitration, Arizona shall name one arbitrator and the Secretary shall name one arbitrator and the two arbitrators thus chosen shall meet within ten days after their selection and shall elect one other arbitrator within fifteen days after their first meeting, but in the event of their failure to name the third arbitrator within thirty days after their first meeting, such arbitrator not so selected shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Tenth Circuit. The decision of any two of the three arbitrators thus chosen shall be a valid and binding award.

Section 12. Rules and Regulations.
The Secretary may prescribe and enforce rules and regulations governing the delivery and diversion of waters hereunder, but such rules and regulations shall be promulgated, modified, revised or extended from time to time only after notice to the State of Arizona and opportunity is given to it to be heard. Arizona agrees for itself, its agencies and water users that in the operation and maintenance of the works for diversion and use of the water to be delivered hereunder, all such rules and regulations will be fully adhered to.

Section 13. Agreement Subject to Colorado River Compact
This contract is made upon the express condition and with the express covenant that all rights of Arizona, its agencies and water users, to waters of the Colorado River and its tributaries, and the use of the same, shall be subject to and controlled by the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the Act of

Congress approved August 19, 1921 (42 Stat. 171), as approved by the Boulder Canyon Project Act.

Section 14. Effective Date of Contract.
This contract shall be of no effect unless it is unconditionally ratified by an Act of the Legislature of Arizona, within three years from the date hereof, and further, unless within three years from the date hereof the Colorado River Compact is unconditionally ratified by Arizona. When both ratifications are effective, this contract shall be effective.

Section 15. Interest In Contract Not Transferable.
No interest in or under this contract, except as provided by Article 7 (1), shall be transferable by either party without the written consent of the other.

Section 16. Appropriation Clause.
The performance of this contract by the United States is contingent upon Congress making the necessary appropriations for expenditures for the completion and the operation and maintenance of any dams, power plants or other works necessary to the carrying out of this contract, or upon the necessary to the carrying out of this contract, or upon the necessary allotments being made therefor by any authorized federal agency. No liability shall accrue against the United States, its officers, agents, or employees by reason of the failure of Congress to make any such appropriations or of any federal agency to make such allotments.

Section 17. Member-of-Congress Clause.
No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Section 18. Definitions.
Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act, such definitions shall apply in construing this contract.

THE UNITED STATES OF AMERICA,
By (s) HAROLD L. ICKES, *Secretary of the Interior*.
STATE OF ARIZONA, acting by and through its
COLORADO RIVER COMMISSION,
By (s) HENRY S. WRIGHT, *Chairman*.
By (s) NELLIE T. BUSH, *Secretary*.

Approved this 11th day of February 1944:[3]
(s) SIDNEY P. OSBORN,

[3]On copies of this contract furnished by the Department of the Interior, this date appears 7th day of February 1944.

Governor of the State of Arizona.

Section II. Emergency.
To preserve the public peace, health and safety it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor: February 24, 1944.
Filed in the Office of the Secretary of State: February 24, 1944.

[Source: The Hoover Dam Documents 1948, Appendix 1016, pgs. A559-A565]

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Chapter 7 - The Mexican Water Treaty

TREATY SERIES 994 (59 STAT. 1219)
Utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande

TREATY BETWEEN THE UNITED STATES OF AMERICA AND MEXICO RESPECTING UTILIZATION OF WATERS OF THE COLORADO AND TIJUANA RIVERS AND OF THE RIO GRANDE, SIGNED AT WASHINGTON, FEBRUARY 3, 1944; AND PROTOCOL SIGNED AT WASHINGTON, NOVEMBER 14, 1944; RATIFICATION ADVISED BY THE SENATE OF THE UNITED STATES OF AMERICA, APRIL 18, 1945, SUBJECT TO CERTAIN UNDERSTANDINGS; RATIFIED BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, NOVEMBER 1, 1945, SUBJECT TO SAID UNDERSTANDINGS; RATIFIED BY MEXICO, OCTOBER 16, 1945; RATIFICATIONS EXCHANGED AT WASHINGTON, NOVEMBER 8, 1945; PROCLAIMED BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, NOVEMBER 27, 1945, SUBJECT TO SAID UNDERSTANDINGS; EFFECTIVE NOVEMBER 8, 1945

By the President of the United States of America
A Proclamation

Preface

Whereas a treaty between the United States of America and the United Mexican State relating to the utilization of the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, to the Gulf of Mexico, was signed by their respective Plenipotentiaries in Washington on February 3, 1944, and a protocol supplementary to the said treaty was signed by their respective Plenipotentiaries in Washington on November 14, 1944, the originals of which treaty and protocol, in the English and Spanish languages, are word for word as follows:

The Government of the United States of America and the Government of the United Mexican States: animated by the sincere spirit of cordiality and friendly cooperation which happily governs the relations between them; taking into account the fact that Articles VI and VII of the Treaty of Peace, Friendship and Limits between the United States of America and the United Mexican States signed at Guadalupe Hidalgo on February 2, 1848[4], and Article IV of the boundary treaty between the two countries signed at the City of Mexico December 30, 1853[5] regulate the use of the waters of the Rio Grande (Rio Bravo) and the Colorado River for purposes of navigation only; considering that the utilization of these waters for other purposes is desirable in the interest of both countries, and desiring, moreover, to fix and delimit the rights of the two countries with respect to the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United

[4][Treaty series 207;9 Stat. 922;18 Stat.(pt. 2, Public Treaties)492.]

[5][Treaty series 208;10 Stat. 1031;18 Stat.(pt. 2, Public Treaties)503.]

States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof, have resolved to conclude a treaty and for this purpose have named as their plenipotentiaries:

The President of the United States of America:
Cordell Hull, Secretary of State of the United States of America, George S. Messersmith, Ambassador Extraordinary and Plenipotentiary of the United States of America in Mexico, and Lawrence M. Lawson, United States Commissioner, International Boundary Commission, United States and Mexico; and

The President of the United Mexican States:
Francisco Castillo Najera, Ambassador Extraordinary and Plenipotentiary of the United Mexican States in Washington, and Rafael Fernandez MacGregor, Mexican Commissioner, International Boundary Commission, United States and Mexico; who, having communicated to each other their respective Full Powers and having found them in good and due form, have agreed upon the following:

PRELIMINARY PROVISIONS

ARTICLE 1

For the purposes of this Treaty it shall be understood that:
(a) *The United States* means the United States of America.
(b) *Mexico* means the United Mexican States. ……
(c) *The Commission* means the International Boundary and Water Commission, United States and Mexico, as described in Article 2 of this Treaty.
(d) *To divert* means the deliberate act of taking water from any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods.
(e) *Point of diversion* means the place where the act of diverting the water is effected.
(f) *Conservation capacity of storage reservoirs* means that part of their total capacity devoted to holding and conserving the water for disposal thereof as and when required, that is, capacity additional to that provided for silt retention and flood control.
(g) *Flood discharges and spills* means the voluntary or involuntary discharge of water for flood control as distinguished from releases for other purposes.
(h) *Return flow* means the portion of diverted water that eventually finds its way back to the source from which it was diverted.
(i) *Release* means the deliberate discharge of stored water for conveyance elsewhere or for direct utilization.
(j) *Consumptive use* means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water diverted less the part thereof which returns to the stream.
(k) *Lowest major international dam or reservoir* means the major international dam or reservoir situated farthest downstream.

(l) *Highest major international dam or reservoir* means the major international dam or reservoir situated farthest upstream.

ARTICLE 2

The International Boundary Commission established pursuant to the provisions of the Convention between the United States and Mexico signed in Washington March 1, 1889[6] to facilitate the carrying out of the principles contained in the Treaty of November 12, 1884[7] and to avoid difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande (Rio Bravo) and the Colorado River shall hereafter be known as the International Boundary and Water Commission, United States and Mexico, which shall continue to function for the entire period during which the present Treaty shall continue in force. Accordingly, the term of the Convention of March 1, 1889 shall be considered to be indefinitely extended, and the Convention of November 21, 1900[8] between the United States and Mexico regarding that Convention shall be considered completely terminated.

The application of the present Treaty, the regulation and exercise of the rights and obligations which the two Governments assume thereunder, and the settlement of all disputes to which its observance and execution may give rise are hereby entrusted to the International Boundary and Water Commission, which shall function in conformity with the powers and limitations set forth in this Treaty.

The Commission shall in all respects have the status of an international body, and shall consist of a United States Section and a Mexican Section. The head of each Section shall be an Engineer Commissioner. Wherever there are provisions in this Treaty for joint action or joint agreement by the two Governments, or for the furnishing of reports, studies or plans to the two Governments, or similar provisions, it shall be understood that the particular matter in question shall be handled by or through the Department of State of the United States and the Ministry of Foreign Relations of Mexico.

The Commission or either or its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary. Each Government shall accord diplomatic status to the Commissioner, designated by the other Government. The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Government as members of its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immunities appertaining to diplomatic officers. The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country.

The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to

[6][Treaty Series 232;26 Stat.1512.]

[7][Treaty Series 226;24 Stat.1011.]

[8][Treaty Series 244;31 Stat.1936.]

works located upon their common boundary, each Section of the Commission retaining jurisdiction over that part of the works located within the limits of its own country. Neither Section shall assume jurisdiction or control over works located within the limits of the country of the other without the express consent of the Government of the latter. The works constructed, acquired or used in fulfillment of the provisions of this Treaty and located wholly within the territorial limits of either country, although these works may be international in character, shall remain, except as herein otherwise specifically provided, under the exclusive jurisdiction and control of the Section of the Commission in whose country the works may be situated.

The duties and powers vested in the Commission by this Treaty shall be in addition to those vested in the International Boundary Commission by the Convention of March 1, 1889 and other pertinent treaties and agreements in force between the two countries except as the provisions of any of them may be modified by the present Treaty.

Each Government shall bear the expenses incurred in the maintenance of its Section of the Commission. The joint expenses, which may be incurred as agreed upon by the Commission, shall be borne equally by the two Governments.

ARTICLE 3

In matters in which the Commission may be called upon to make provision for the joint use of international waters, the following order of preferences shall serve as a guide:

1. Domestic and municipal uses.
2. Agriculture and stock-raising.
3. Electric power.
4. Other industrial uses.
5. Navigation.
6. Fishing and hunting.
7. Any other beneficial uses which may be determined by the Commission.

All of the foregoing uses shall be subject to any sanitary measures or works, which may be mutually agreed upon by the two Governments, which hereby agree to give preferential attention to the solution of all border sanitation problems.

Section I. RIO GRANDE (Rio Bravo)

ARTICLE 4

The waters of the Rio Grande (Rio Bravo) between Fort Quitman, Texas and the Gulf of Mexico are hereby allotted to the two countries in the following manner:

A. to Mexico:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the San Juan and Alamo Rivers, including the return flow from the lands irrigated from the latter two rivers.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(c) Two-thirds of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, subject to the provisions of subparagraph (c) of Paragraph B of this Article.

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

B. to the United States:

(a) All of the waters reaching the main channel of the Rio Grande (Rio Bravo) from the Pecos and Devils Rivers, Goodenough Spring, and Alamito, Terlingua, San Felipe and Pinto Creeks.

(b) One-half of the flow in the main channel of the Rio Grande (Rio Bravo) below the lowest major international storage dam, so far as said flow is not specifically allotted under this Treaty to either of the two countries.

(c) One-third of the flow reaching the main channel of the Rio Grande (Rio Bravo) from the Conchos, San Diego, San Rodrigo, Escondido and Salado Rivers and the Las Vacas Arroyo, provided that this third shall not be less, as an average amount in cycles of five consecutive years, than 350,000 acre-feet (431,721,000 cubic meters) annually. The United States shall not acquire any right by the use of the waters of the tributaries named in this subparagraph, in excess of the said 350,000 acre feet (431,721,000 cubic meters) annually, except the right to use one-third of the flow reaching the Rio Grande (Rio Bravo) from said tributaries, although such one-third may be in excess of that amount.

(d) One-half of all other flows not otherwise allotted by this Article occurring in the main channel of the Rio Grande (Rio Bravo), including the contributions from all the unmeasured tributaries, which are those not named in this Article, between Fort Quitman and the lowest major international storage dam.

In the event of extraordinary drought or serious accident to the hydraulic systems on the measured Mexican tributaries, making it difficult for Mexico to make available the run-off of 350,000 acre feet (431,721,000 cubic meters) annually, allotted in subparagraph (c) of paragraph B of this Article to the United States as the minimum contribution from the

aforesaid Mexican tributaries, any deficiencies existing at the end of the aforesaid five-year cycle shall be made up in the following five-year cycle with water from the said measured tributaries. Whenever the conservation capacities assigned to the United States in at least two of the major international reservoirs, including the highest major reservoir, are filled with waters belonging to the United States, a cycle of five years shall be considered as terminated and all debits fully paid, whereupon a new five-year cycle shall commence.

ARTICLE 5

The two Governments agree to construct jointly, through their respective Sections of the Commission, the following works in the main channel of the Rio Grande (Rio Bravo):

I. The dams required for the conservation, storage and regulation of the greatest

II. The dams and other joint works required for the diversion of the flow of the Rio Grande (Rio Bravo).

One of the storage dams shall be constructed in the section between Santa Helena Canyon and the mouth of the Pecos River; one in the section between Eagle Pass and Laredo, Texas (Piedras Negras and Nuevo Laredo in Mexico); and a third in the section between Laredo and Roma, Texas (Nuevo Laredo and San Pedro de Roma in Mexico). One or more of the stipulated dams may be omitted, and others than those enumerated may be built, in either case as may be determined by the Commission, subject to the approval of the two Governments.

In planning the construction of such dams the Commission shall determine:

(a) The most feasible sites;

(b) The maximum feasible reservoir capacity at each site;

(c) The conservation capacity required by each country at each site, taking into consideration the amount and regimen of its allotment of water and its contemplated uses;

(d) The capacity required for retention of silt;

(e) The capacity required for flood control.

The conservation and silt capacities of each reservoir shall be assigned to each country in the same proportion as the capacities required by each country in such reservoir for conservation purposes. Each country shall have an undivided interest in the flood control capacity of each reservoir.

The construction of the international storage dams shall start within two years following the approval of the approval of the respective plans by the two Governments. The works shall begin with the construction of the lowest major international storage dam, but works in the upper reaches of the river may be constructed simultaneously. The lowest major international storage dam shall be completed within a period of eight years from the date of the entry into force of this Treaty.

The construction of the dams and other joint works required for the diversion of the flows of the river shall be initiated on the dates recommended by the Commission and approved by the two Governments.

The cost of construction, operation and maintenance of each of the international storage dams shall be prorated between the two Governments in proportion to the capacity allotted to each country for conservation purposes in the reservoir at such dam.

The cost of construction, operation and maintenance of each of the dams and other joint works required for the diversion of the flows of the river shall be prorated between the two Governments in proportion to the benefits which the respective countries receive therefrom, as determined by the Commission and approved by the two Governments.

ARTICLE 6

The Commission shall study, investigate, and prepare plans for flood control works, where and when necessary, other than those referred to in Article 5 of this Treaty, on the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. These works may include levees along the river, floodways and grade-control structures, and works for the canalization, rectification and artificial channeling of reaches of the river. The Commission shall report to the two Governments the works which should be built, the estimated cost thereof, the part of the works to be constructed by each Government, and the part of the works to be operated and maintained by each Section of the Commission. Each Government agrees to construct, through its Section of the Commission, such works as may be recommended by the Commission and approved by the two Governments. Each Government shall pay the costs of the works constructed by it and the costs of operation and maintenance of the part of the works assigned to it for such purpose.

ARTICLE 7

The Commission shall study, investigate and prepare plans for plants for generating hydro-electric energy which it may be feasible to construct at the international storage dams on the Rio Grande (Rio Bravo). The Commission shall report to the two Governments in a Minute the works, which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. Each Government agrees to construct, through its Section of the Commission, such works as may be recommended by the Commission and approved by the two Governments. Both Governments, through their respective Sections of the Commission, shall operate and maintain jointly such hydro-electric plants. Each Government shall pay half the cost of the construction, operation and maintenance of such plants, and the energy generated shall be assigned to each country in like proportion.

ARTICLE 8

The two governments recognize that both countries have a common interest in the conservation and storage of waters in the international reservoirs and in the maximum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them. Accordingly, within the year following the placing in operation of the first of the major international storage dams which is constructed, the Commission shall submit to each Government for its approval, regulations for the storage, conveyance and delivery of the waters of the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. Such regulations may be modified, amended or supplemented when necessary by the Commission, subject to the approval of the two Governments. The following general rules shall severally govern until modified or amended by agreement of

the Commission, with the approval of the two Governments:
Storage in all major international reservoirs above the lowest shall be maintained at the maximum possible water level, consistent with flood control, irrigation use and power requirements.

(b) Inflows to each reservoir shall be credited to each country in accordance with the ownership of such inflows.

(c) In any reservoir the ownership of water belonging to the country whose conservation capacity therein is filled, and in excess of that needed to keep it filled, shall pass to the other country to the extent that such country may have unfilled conservation capacity, except that one country may at its option temporarily use the conservation capacity of the other country not currently being used in any of the upper reservoirs; provided that in the event of flood discharge or spill occurring while one country is using the conservation capacity of the other, all of such flood discharge or spill shall be charged to the country using the other's capacity, and all inflow shall be credited to the other country until the flood discharge or spill ceases or until the capacity of the other country becomes filled with its own water.
(d) Reservoir losses shall be charged in proportion to the ownership of water in storage. Releases from any reservoir shall be charged to the country requesting them, except that releases for the generation of electrical energy, or other common purpose, shall be charged in proportion to the ownership of water in storage.
(e) Flood discharges and spills from the upper reservoirs shall be divided in the same proportion as the ownership of the inflows occurring at the time of such flood discharges and spills, except as provided in subparagraph (c) of this Article. Flood discharges and spills from the lowest reservoir shall be divided equally, except that one country, with the consent of the Commission, may use such part of the share of the other country as is not used by the latter country.
(f) Either of the two countries may avail itself, whenever it so desires, of any water belonging to it and stored in the international reservoirs, provided that the water so taken is for direct beneficial use or for storage in other reservoirs. For this purpose the Commissioner of the respective country shall give appropriate notice to the Commission, which shall prescribe the proper measures for the opportune furnishing of the water.

ARTICLE 9
(a) The channel of the Rio Grande (Rio Bravo) may be used by either of the two countries to convey water belonging to it.
(b) Either of the two countries may, at any point on the main channel of the river from Fort Quitman, Texas to the Gulf of Mexico, divert and use the water belonging to it and may for this purpose construct any necessary works. However, no such diversion or use, not existing on the date this Treaty enters into force, shall be permitted in either country, nor shall works be constructed for such purpose, until the Section of the Commission in whose country the diversion or use is proposed has made a finding that the water necessary for such diversion or use is available from the share of that country, unless the Commission has agreed to a greater diversion or use as provided by paragraph (d) of this Article. The proposed use and the plans for the diversion works to be constructed in connection therewith shall be previously made known to the Commission for its information.

(c) Consumptive uses from the main stream and from the unmeasured tributaries below Fort Quitman shall be charged against the share of the country making them.
(d) The Commission shall have the power to authorize either country to divert and use water not belonging entirely to such country, when the water belonging to the other country can be diverted and used without injury to the latter and can be replaced at some other point on the river.
(e) The Commission shall have the power to authorize temporary diversion and use by one country of water belonging to the other, when the latter does not need it or is unable to use it, provided that such authorization or the use of such water shall not establish any right to continue to divert it.
(f) In case of the occurrence of an extraordinary drought in one country with an abundant supply of water in the other country, water stored in the international storage reservoirs and belonging to the country enjoying such abundant water supply may be withdrawn, with the consent of the Commission, for the use of the country undergoing the drought.
(g) Each country shall have the right to divert from the main channel of the river any amount of water, including the water belonging to the other country, for the purpose of generating hydro-electric power, provided that such diversion causes no injury to the other country and does not interfere with the international generation of power and that the quantities not returning directly to the river are charged against the share of the country making the diversion. The feasibility of such diversions not existing on the date this Treaty enters into force shall be determined by the Commission, which shall also determine the amount of water consumed, such water to be charged against the country making the diversion.
(h) In case either of the two countries shall construct works for diverting into the main channel of the Rio Grande (Rio Bravo) or its tributaries waters that do not at the time this Treaty enters into force contribute to the flow of the Rio Grande (Rio Bravo) such water shall belong to the country making such diversion.
(i) Main stream channel losses shall be charged in proportion to the ownership of water being conveyed in the channel at the times and places of the losses.
(j) The Commission shall keep a record of the waters belonging to each country and of those that may be available at a given moment, taking into account the measurement of the allotments, the regulation of the waters in storage, the consumptive uses, the withdrawals, the diversions, and the losses. For this purpose the Commission shall construct, operate and maintain on the main channel of the Rio Grande (Rio Bravo), and each Section shall construct, operate and maintain on the measured tributaries in its own country, all the gaging stations and mechanical apparatus necessary for the purpose of making computations and of obtaining the necessary data for such record. The information with respect to the diversions and consumptive uses on the unmeasured tributaries shall be furnished to the Commission by the appropriate Section. The cost of construction of any new gaging stations located on the main channel of the Rio Grande (Rio Bravo) shall be borne equally by the two Governments. The operation and maintenance of all gaging stations or the cost of such operation and maintenance shall be apportioned between the two Sections in accordance with determinations to be made by the Commission.

Section II. COLORADO RIVER

ARTICLE 10

Of the waters of the Colorado River, from any and all sources, there are allotted to Mexico:

(a) A guaranteed annual quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) to be delivered in accordance with the provisions of Article 15 of this Treaty.

(b) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the Colorado River in excess of the amount necessary to supply uses in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually to Mexico, the United States undertakes to deliver to Mexico, in the manner set out in Article 15 of this Treaty, additional waters of the Colorado River system to provide a total quantity not to exceed 1,700,000 acre-feet (2,096,931,000 cubic meters) a year. Mexico shall acquire no right beyond that provided by this subparagraph by the use of the waters of the Colorado River system, for any purpose whatsoever, in excess of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually.

In the event of extraordinary drought or serious accident to the irrigation system in the United States, thereby making it difficult for the United States to deliver the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) a year, the water allotted to Mexico under subparagraph (a) of this Article will be reduced in the same proportion as consumptive uses in the United States are reduced.

ARTICLE 11

(a) The United States shall deliver all water allotted to Mexico wherever these waters may arrive in the bed of the limitrophe section of the Colorado River, with the exceptions hereinafter provided. Such waters shall be made up of the waters for the said river, whatever their origin, subject to the provisions of the following paragraphs of this Article.
(b) Of the waters of the Colorado River allotted to Mexico by subparagraph (a) of the Article 10 of this Treaty, the United States shall deliver, wherever such waters may arrive in the limitrophe section of the river, 1,000,000 acre-feet (1,233,489,000 cubic meters) annually from the time the Davis dam and reservoir are placed in operation until January 1, 1980 and thereafter 1,125,000 acre-feet (1,387,675,000 cubic meters) annually, except that, should the main diversion structure referred to in subparagraph (a) of Article 12 of this Treaty be located entirely in Mexico and should Mexico so request, the United States shall deliver a quantity of water not exceeding 25,000 acre-feet (30,837,000 cubic meters) annually, unless a larger quantity may be mutually agreed upon, at a point, to be likewise mutually agreed upon, on the international land boundary near San Luis, Sonora, in which event the quantities of 1,000,000 acre-feet (1,233,489,000 cubic meters) and 1,125,000 acre-feet (1,387,675,000 cubic meters) provided hereinabove as deliverable in the limitrophe section of the river shall be reduced by the quantities to be delivered in the year concerned near San Luis, Sonora.

(c) During the period from the time the Davis dam and reservoir are placed in operation until January 1, 1980, the United States shall also deliver to Mexico annually, of the water allotted to it, 500,000 acre-feet (616,745,000 cubic meters), and thereafter the United States shall deliver annually 375,000 acre-feet (462,558,000 cubic meters), at the international boundary line, by means of the All-American Canal and a canal connecting the lower end of the Pilot Knob Wasteway with the Alamo Canal or with any other Mexican canal which may be substituted for the Alamo Canal. In either event the deliveries shall be made at an operating water surface elevation not higher than that of the Alamo Canal at the point where it crossed the international boundary line in the year 1943.

(d) All the deliveries of water specified above shall be made subject to the provisions of Article 15 of this Treaty.

ARTICLE 12

The two Governments agree to construct the following works:

(a) Mexico shall construct at its expense, within a period of five years from the date of the entry into force of this Treaty, a main diversion structure below the point where the northernmost part of the international land boundary line intersects the Colorado River. If such diversion structure is located in the limitrophe section of the river, its location, design and construction shall be subject to the approval of the Commission. The Commission shall thereafter maintain and operate the structure at the expense of Mexico. Regardless of where such diversion structure is located, there shall simultaneously be constructed such levees, interior drainage facilities and other works, or improvements to existing works, as in the opinion of the Commission shall be necessary to protect lands within the United States against damage from such floods and seepage as might result from the construction, operation and maintenance of this diversion structure. These protective works shall be constructed, operated and maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country.

(b) The United States, within a period of five years from the date of the entry into force of this Treaty, shall construct in its own territory and at its expense, and thereafter operate and maintain at its expense, the Davis storage dam and reservoir, a part of the capacity of which shall be used to make possible the regulation at the boundary of the waters to be delivered to Mexico in accordance with the provisions of Article 15 of this Treaty.

(c) The United States shall construct or acquire in its own territory the works that may be necessary to convey a part of the waters of the Colorado River allotted to Mexico to the Mexican diversion points on the international land boundary line referred to in this Treaty. Among these works shall be included: the canal and other works necessary to convey water from the lower end of the Pilot Knob Wasteway to the international boundary, and, should Mexico request it, a canal to connect the main diversion structure referred to in subparagraph (a) of this Article, if this diversion structure should be built in the limitrophe section of the river, with the Mexican system of canals at a point to be agreed upon by the Commission on the international land boundary near San Luis, Sonora. Such works shall be constructed or acquired and operated and maintained by the United States Section at the

expense of Mexico. Mexico shall also pay the costs of any sites or rights of way required for such works.

(d) The Commission shall construct, operate and maintain in the limitrophe section of the Colorado River, and each Section shall construct, operate and maintain in the territory of its own country on the Colorado River below Imperial Dam and on all other carrying facilities used for the delivery of water to Mexico, all necessary gaging stations and other measuring devices for the purpose of keeping a complete record of the waters delivered to Mexico and of the flows of the river. All data obtained as to such deliveries and flows shall be periodically compiled and exchanged between the two Sections.

ARTICLE 13

The Commission shall study, investigate and prepare plans for flood control on the Lower Colorado River between Imperial Dam and the Gulf of California, in both the United States and Mexico, and shall, in a Minute, report to the two Governments the works which should be built, the estimated cost thereof, and the part of the works to be constructed by each Government. The two Governments agree to construct, through their respective Sections of the Commission, such works as may be recommended by the Commission and approved by the two Governments, each Government to pay the costs of the works constructed by it. The Commission shall likewise recommend the parts of the works to be operated and maintained jointly by the Commission and the parts to be operated and maintained by each Section. The two Governments agree to pay in equal shares the cost of joint operation and maintenance, and each Government agrees to pay the cost of operation and maintenance of the works assigned to it for such purpose.

ARTICLE 14

In consideration of the use of the All-American Canal for the delivery to Mexico, in the manner provided in Articles 11 and 15 of this Treaty, of a part of its allotment of the waters of the Colorado River, Mexico shall pay to the United States:

(a) A proportion of the costs actually incurred in the construction of Imperial Dam and the Imperial Dam-Pilot Knob section of the All-American Canal, this proportion and the method and terms of repayment to be determined by the two Governments, which, for this purpose, shall take into consideration the proportionate uses of these facilities by the two countries, these determinations to be made as soon as Davis dam and reservoir are placed in operation.

(b) Annually, a proportionate part of the total costs of maintenance and operation of such facilities, these costs to be prorated between the two countries in proportion to the amount of water delivered annually through such facilities for use in each of the two countries.

In the event that revenues from the sale of hydro-electric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of the facilities named in subparagraph (a) of this Article, the part that Mexico should pay of the costs of said facilities shall be reduced or repaid in the same proportion as the balance of the total

costs are reduced or repaid. It is understood that any such revenue shall not become available until the cost of any works which may be constructed for the generation of hydro-electric power at said location has been fully amortized from the revenues derived therefrom.

ARTICLE 15

A. The water allotted in subparagraph (a) of Article 10 of this Treaty shall be delivered to Mexico at the points of delivery specified in Article 11, in accordance with the following two annual schedules of deliveries by months, which the Mexican Section shall formulate and present to the Commission before the beginning of each calendar year:

Schedule I

Schedule I shall cover the delivery, in the limitrophe section of the Colorado River, of 1,000,000 acre-feet (1,233,498,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 1,125,000 acre-feet (1,387,675,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:
With reference to the 1,000,000 acre-foot (1,233,489,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 600 cubic feet (17.0 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,000 cubic feet (28.3 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

With reference to the 1,125,000 acre-foot (1,387,675,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 675 cubic feet (19.1 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 1,125 cubic feet (31.9 cubic meters) nor more than 4,000 cubic feet (113.3 cubic meters) per second.

Should deliveries of water be made at a point on the land boundary near San Luis, Sonora, as provided for in Article 11, such deliveries shall be made under a sub-schedule to be formulated and furnished by the Mexican Section. The Quantities and monthly rates of deliveries under such sub-schedule shall be in proportion to those specified for Schedule I, unless otherwise agreed upon by the Commission.

Schedule II

Schedule II shall cover the delivery at the boundary line by means of the All-American

Canal of 500,000 acre-feet (616,745,000 cubic meters) of water each year from the date Davis dam and reservoir are placed in operation until January 1, 1980 and the delivery of 375,000 acre-feet (462,558,000 cubic meters) of water each year thereafter. This schedule shall be formulated subject to the following limitations:

With reference to the 500,000 acre-foot (616,745,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 300 cubic feet (8.5 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 500 cubic feet (14.2 cubic meters) nor more than 2,000 cubic feet (56.6 cubic meters) per second.

With reference to the 375,000 acre-foot (462,558,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 225 cubic feet (6.4 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

(b) During the remaining months of the year the prescribed rate of delivery shall be not less than 375 cubic feet (10.6 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

B. The United States shall be under no obligation to deliver, through the All-American Canal, more than 500,000 acre-feet (616,745,000 cubic meters) annually from the date Davis dam and reservoir are placed in operation until January 1, 1980 or more than 375,000 acre-feet (462,558,000 cubic meters) annually thereafter. If, by mutual agreement, any part of the quantities of water specified in this paragraph are delivered to Mexico at points on the land boundary otherwise than through the All-American Canal, the above quantities of water and the rates of deliveries set out under Schedule II of this Article shall be correspondingly diminished.

C. The United States shall have the option of delivering, at the point on the land boundary mentioned in sub-paragraph (c) of Article 11, any part or all of the water to be delivered at that point under Schedule II of this Article during the months of January, February, October, November and December of each year, from any source whatsoever, with the understanding that the total specified annual quantities to be delivered through the All-American Canal shall not be reduced because of the exercise of this option, unless such reduction be requested by the Mexican Section, provided that the exercise of this option shall not have the effect of increasing the total amount of scheduled water to be delivered to Mexico.

D. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-

feet (1,850,234,000 cubic meters) allotted to Mexico, the United States hereby declares its intention to cooperate with Mexico in attempting to supply additional quantities of water through the All-American Canal as such additional quantities are desired by Mexico, if such use of the Canal and facilities will not be detrimental to the United States, provided that the delivery of any additional quantities through the All-American Canal shall not have the effect of increasing the total scheduled deliveries to Mexico. Mexico hereby declares its intention to cooperate with the United States by attempting to curtail deliveries of water through the All-American Canal in years of limited supply, if such curtailment can be accomplished without detriment to Mexico and is necessary to allow full use of all available water supplies, provided that such curtailment shall not have the effect of reducing the total scheduled deliveries of water to Mexico.

E. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States Section shall so inform the Mexican Section in order that the latter may schedule such surplus water to complete a quantity up to a maximum of 1,700,000 acre-feet (2,096,931,000 cubic meters). In this circumstance the total quantities to be delivered under Schedules I and II shall be increased in proportion to their respective total quantities and the two schedules thus increased shall be subject to the same limitations as those established for each under paragraph A of this Article.

F. Subject to the limitations as to rates of deliveries and total quantities set out in Schedules I and II, Mexico shall have the right, upon thirty days notice in advance to the United States Section, to increase or decrease each monthly quantity prescribed by those schedules by not more than 20% of the monthly quantity.

G. The total quantity of water to be delivered under Schedule I of paragraph A of this Article may be increased in any year if the amount to be delivered under Schedule II is correspondingly reduced and if the limitations as to rates of delivery under each schedule are correspondingly increased and reduced.

Section III. TIJUANA RIVER

ARTICLE 16

In order to improve existing uses and to assure any feasible further development, the Commission shall study and investigate, and shall submit to the two Governments for their approval:

(1) Recommendations for the equitable distribution between the two countries of the waters of the Tijuana River system;

(2) Plans for storage and flood control to promote and develop domestic, irrigation and other feasible uses of the waters of this system;

(3) An estimate of the cost of the proposed works and the manner in which the construction of such works or the cost thereof should be divided between the two Governments;

Recommendations regarding the parts of the works to be operated and maintained by the Commission and the parts to be operated and maintained by each Section.

The two Governments through their respective Sections of the Commission shall construct such of the proposed works as are approved by both Governments, shall divide the work to be done or the cost thereof, and shall distribute between the two countries the waters of the Tijuana River system in the proportions approved by the two Governments. The two Governments agree to pay in equal shares the costs of joint operation and maintenance of the works involved, and each Government agrees to pay the cost of operation and maintenance of the works assigned to it for such purpose.

GENERAL PROVISIONS

ARTICLE 17

The use of the channels of the international rivers for the discharge of flood or other excess waters shall be free and not subject to limitation by either country, and neither country shall have any claim against the other in respect of any damage caused by such use. Each Government agrees to furnish the other Government, as far in advance as practicable, any information it may have in regard to such extraordinary discharges of water from reservoirs and flood flows on its own territory as may produce floods on the territory of the other.

Each Government declares its intention to operate its storage dams in such manner, consistent with the normal operations of its hydraulic systems, as to avoid, as far as feasible, material damage in the territory of the other.

ARTICLE 18

Public use of the water surface of lakes formed by international dams shall, when not harmful to the services rendered by such dams, be free and common to both countries, subject to the police regulations of each country in its territory, to such general regulations as may appropriately be prescribed and enforced by the Commission with the approval of the two Governments for the purpose of the application of the provisions of this Treaty, and to such regulations as may appropriately be prescribed and enforced for the same purpose

by each Section of the Commission with respect to the areas and borders of such parts of those lakes as lie within its territory. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments.

ARTICLE 19

The two Governments shall conclude such special agreements as may be necessary to regulate the generation, development and disposition of electric power at international plants, including the necessary provisions for the export of electric current.

ARTICLE 20

The two Governments shall, through their respective Sections of the Commission, carry out the construction of works allotted to them. For this purpose, the respective Sections of the Commission may make use of any competent public or private agencies in accordance with the laws of the respective countries. With respect to such works as either Section of the Commission may have to execute on the territory of the other, it shall, in the execution of such works, observe the laws of the place where such works are located or carried out, with the exceptions hereinafter stated.

All materials, implements, equipment and repair parts intended for the construction, operations and maintenance of such works shall be exempt from import and export customs duties. The whole of the personnel employed either directly or indirectly on the construction, operation or maintenance of the works may pass freely from one country to the other for the purpose of going to and from the place of location of the works, without any immigration restrictions, passports or labor requirements. Each Government shall furnish, through its own Section of the Commission, convenient means of identification to the personnel employed by it on the aforesaid works and verification certificates covering all materials, implements, equipment and repair parts intended for the works.

Each Government shall assume responsibility for and shall adjust exclusively in accordance with its own laws all claims arising within its territory in connection with the construction, operation or maintenance of the whole or of any part of the works herein agreed upon, or of any works which may, in the execution of this Treaty, be agreed upon in the future.

ARTICLE 21

The construction of the international dams and the formation of artificial lakes shall produce no change in the fluvial international boundary, which shall continue to be governed by existing treaties and conventions in force between the two countries.

The Commission shall, with the approval of the two Governments, establish in the artificial lakes, by buoys or by other suitable markers, a practicable and convenient line to provide for the exercise of the jurisdiction and control vested by this Treaty in the Commission and its respective Sections. Such line shall also mark the boundary for the application of the customs and police regulations of each country.

ARTICLE 22

The provisions of the Convention between the United States and Mexico for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juarez Valley signed on February 1, 1933[9], shall govern, so far as delimitation of the boundary, distribution of jurisdiction and sovereignty, and relations with private owners are concerned, in any places where works for the artificial channeling, canalization or rectification of the Rio Grande (Rio Bravo) and the Colorado River are carried out.

ARTICLE 23

The two Governments recognize the public interest attached to the works required for the execution and performance of this Treaty and agree to acquire, in accordance with their respective domestic laws, any private property that may be required for the construction of the said works, including the main structures and their appurtenances and the construction materials therefor, and for the operation and maintenance thereof, at the cost of the country within which the property is situated, except as may be otherwise specifically provided in this Treaty.

Each Section of the Commission shall determine the extent and location of any private property to be acquired within its own country and shall make the necessary requests upon its Government for the acquisition of such property.

The Commission shall determine the cases in which it shall become necessary to locate works for the conveyance of water or electrical energy and for the servicing of any such works, for the benefit of either of the two countries, in the territory of the other country, in order that such works can be built pursuant to agreement between the two Governments. Such works shall be subject to the jurisdiction and supervision of the Section of the Commission within whose country they are located.

Construction of the works built in pursuance of the provisions of this Treaty shall not confer upon either of the two countries any rights either of property or of jurisdiction over any part whatsoever of the territory of the other. These works shall be part of the territory and be the property of the country wherein they are situated. However, in the case of any incidents occurring on works constructed across the limitrophe part of a river and with supports on both banks, the jurisdiction of each country shall be limited by the center line of such works, which shall be marked by the Commission, without thereby changing the international boundary.

Each Government shall retain, through its own Section of the Commission and within the limits and to the extent necessary to effectuate the provisions of this Treaty, direct ownership, control and jurisdiction within its own territory and in accordance with its own laws, over all real property including that within the channel of any river -rights of way and rights *in rem*, that it may be necessary to enter upon and occupy for the construction, operation or maintenance of all the works constructed, acquired or used pursuant to this

[9][Treaty Series 864;48 Stat. 1621.]

Treaty. Furthermore, each Government shall similarly acquire and retain in its own possession the titles, control and jurisdiction over such works.

ARTICLE 24

The International Boundary and Water Commission shall have, in addition to the powers and duties otherwise specifically provided in this Treaty, the following powers and duties:

(a) To initiate and carry on investigations and develop plans for the works which are to be constructed or established in accordance with the provisions of this and other treaties or agreements in force between the two Governments dealing with boundaries and international waters; to determine, as to such works, their location, size, kind and characteristic specifications; to estimate the costs of such works; and to recommend the division of such costs between the two Governments, the arrangements for the furnishing of the necessary funds, and the dates for the beginning of the works, to the extent that the matters mentioned in this subparagraph are not otherwise covered by specific provisions of this or any other Treaty.

(b) To construct the works agreed upon or to supervise their construction and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the respective domestic laws of each country. Each Section shall have, to the extent necessary to give effect to the provisions of this Treaty, jurisdiction over the works constructed exclusively in the territory of its country whenever such works shall be connected with or shall directly affect the execution of the provisions of this Treaty.

(c) In general to exercise and discharge the specific powers and duties entrusted to the Commission by this and other treaties and agreements in force between the two countries, and to carry into execution and prevent the violation of the provisions of those treaties and agreements. The authorities of each country shall aid and support the exercise and discharge of these powers and duties, and each Commissioner shall invoke when necessary the jurisdiction of the courts or other appropriate agencies of his country to aid in the execution and enforcement of these powers and duties.

(d) To settle all differences that may arise between the two Governments with respect to the interpretation or application of this Treaty, subject to the approval of the two Governments. In any case in which the Commissioners do not reach an agreement, they shall so inform their respective governments reporting their respective opinions and the grounds therefor and the points upon which they differ, for discussion and adjustment of the difference through diplomatic channels and for application where proper of the general or special agreements which the two Governments have concluded for the settlement of controversies.

(e) To furnish the information requested of the Commissioners jointly by the two Governments on matters within their jurisdiction. In the event that the request is made by one Government alone, the Commissioner of the other Government must have the express authorization of his Government in order to comply with such request.

(f) The Commission shall construct, operate and maintain upon the limitrophe parts of the international streams, and each Section shall severally construct, operate and maintain upon the parts of the international streams and their tributaries within the boundaries of its own country, such stream gaging stations as may be needed to provide the hydrographic data necessary or convenient for the proper functioning of this Treaty. The data so obtained shall be compiled and periodically exchanged between the two Sections.

(g) The Commission shall submit annually a joint report to the two Governments on the matters in its charge. The Commission shall also submit to the two Governments joint reports on general or any particular matters at such other times as it may deem necessary or as may be requested by the two Governments.

ARTICLE 25

Except as otherwise specifically provided in this Treaty, Articles III and VII of the Convention of March 1, 1889 shall govern the proceedings of the Commission in carrying out the provisions of this Treaty. Supplementary thereto the Commission shall establish a body of rules and regulations to govern its procedure, consistent with the provisions of this Treaty and of Articles III and VII of the Convention of March 1, 1889 and subject to the approval of both Governments.

Decisions of the Commission shall be recorded in the form of Minutes done in duplicate in the English and Spanish languages, signed by each Commissioner and attested by the Secretaries, and copies thereof forwarded to each Government within three days after being signed. Except where the specific approval of the two Governments is required by any provision of this Treaty, if one of the Governments fails to communicate to the Commission its approval or disapproval of a decision of the Commission within thirty days reckoned from the date of the Minute in which it shall have been pronounced, the Minute in question and the decisions which it contains shall be considered to be approved by that Government. The Commissioners, within the limits of their respective jurisdictions, shall execute the decisions of the Commission that are approved by both Governments.

If either Government disapproves a decision of the Commission the two Governments shall take cognizance of the matter, and if an agreement regarding such matter is reached between the two Governments, the agreement shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

TRANSITORY PROVISIONS

ARTICLE 26

During a period of eight years from the date of the entry into force of this Treaty, or until the beginning of operation of the lowest major international reservoir on the Rio Grande (Rio Bravo), should it be placed in operation prior to the expiration of said period, Mexico will cooperate with the United States to relieve, in times of drought, any lack of water needed to irrigate the lands now under irrigation in the Lower Rio Grande Valley in the United States, and for this purpose Mexico will release water from El Azucar reservoir on the San Juan River and allow that water to run through its systems of canals back into the San Juan River in order that the United States may divert such water from the Rio Grande (Rio Bravo). Such releases shall be made on condition that they do not affect the Mexican irrigation system, provided that Mexico shall, in any event, except in cases of extraordinary drought or serious accident to its hydraulic works, release and make available to the United States for its use the quantities requested, under the following conditions: that during the said eight years there shall be made available a total of 160,000 acre-feet (197,358,000 cubic meters) and up to 40,000 acre-feet (49,340,000 cubic meters) in any one year; that the water shall be made available as requested at rates not exceeding 750 cubic feet (21.2 cubic meters) per second; that when the rates of flow requested and made available have been more than 500 cubic feet (14.2 cubic meters) per second the period of release shall not extend beyond fifteen consecutive days; and that at least thirty days must elapse between any two periods of release during which rates of flow in excess of 500 cubic feet (14.2 cubic meters) per second have been requested and made available. In addition to the guaranteed flow, Mexico shall release from El Azucar reservoir and conduct through its canal system and the San Juan River, for use in the United States during periods of drought and after satisfying the needs of Mexican users, any excess water that does not in the opinion of the Mexican Section have to be stored and that may be needed for the irrigation of lands which were under irrigation during the year 1943 in the Lower Rio Grande Valley in the United States.

ARTICLE 27

The provisions of Article 10, 11, and 15 of this Treaty shall not be applied during a period of five years from the date of the entry into force of this Treaty, or until the Davis dam and the major Mexican diversion structure on the Colorado River are placed in operation, should these works be placed in operation prior to the expiration of said period. In the meantime Mexico may construct and operate at its expense a temporary diversion structure in the bed of the Colorado River in territory of the United States for the purpose of diverting water into the Alamo Canal, provided that the plans for such structure and the construction and operation thereof shall be subject to the approval of the United States Section. During this period of time the United States will make available in the river at such diversion structure river flow not currently required in the United States, and the United States will cooperate with Mexico to the end that the latter may satisfy its irrigation requirements within the limits of those requirements for lands irrigated in Mexico from the Colorado River during the year 1943.

FINAL PROVISIONS

ARTICLE 28

This Treaty shall be ratified and the ratifications thereof shall be exchanged in Washington. It shall enter into force on the day of the exchange of ratifications and shall continue in force until terminated by another Treaty concluded for that purpose between the two Governments.

In witness whereof the respective Plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate in the English and Spanish languages, in Washington on this third day of February, 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NAJERA..... (SEAL)

CORDELL HULL ..... (SEAL)

GEORGE S. MESSERSMITH..... (SEAL)

LAWRENCE M. LAWSON ..... (SEAL)

RAFAEL FERNANDEZ MACGREGOR ..... (SEAL)

PROTOCOL

The Government of the United States of America and the Government of the United Mexican States agree and understand that:

Wherever, by virtue of the provisions of the Treaty between the United States of America and the United Mexican States, signed in Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, specific functions are imposed on, or exclusive jurisdiction is vested in, either of the Sections of the International Boundary and Water Commission, which involve the construction or use of works for storage or conveyance of water, flood control, stream gaging, or for any other purpose, which are situated wholly within the territory of the country of that Section, and which are to be used only partly for the performance of treaty provisions, such jurisdiction shall be exercised, and such functions, including the construction, operation and maintenance of the said works, shall be performed and carried out by the Federal agencies of that country which now or hereafter may be authorized by domestic law to construct, or to operate and maintain, such works. Such functions or jurisdictions shall be exercised in conformity with the provisions of the Treaty and in cooperation with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

The works to be constructed or used on or along the boundary, and those to be constructed or used exclusively for the discharge of treaty stipulations, shall be under the jurisdiction of the Commission or of the respective Section, in accordance with the provisions of the Treaty. In carrying out the construction of such works the Sections of the Commission may utilize the services of public or private organizations in accordance with the laws of their respective countries.

This Protocol, which shall be regarded as an integral part of the aforementioned Treaty signed in Washington on February 3, 1944, shall be ratified and the ratifications thereof shall be exchanged in Washington. This Protocol shall be effective beginning with the day of the entry into force of the Treaty and shall continue effective so long as the Treaty remains in force.

In witness whereof the respective Plenipotentiaries have signed this Protocol and have hereunto affixed their seals.

Done in duplicate, in the English and Spanish languages, in Washington, this fourteenth day of November, 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

E.R. STETTINIUS, JR. (SEAL)
Acting Secretary of State of the
United States of America.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NAJERA (SEAL)
Ambassador Extraordinary and Plenipotentiary
of the United Mexican States in Washington.

[Source: The Hoover Dam Documents 1948, Appendix 1405, pgs. A821-A885]

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Chapter 8 - Minute 242

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
Mexico, D.F., August 30, 1973

Preface
Permanent and Definitive Solution to the International Problem of the Salinity of the Colorado River

The Commission met at the Secretariat of Foreign Relations, at Mexico, D.F., at 5:00 p.m. on August 30, 1973, pursuant to the instructions received by the two Commissioners from their respective Governments, in order to incorporate in a Minute of the Commission the joint recommendations which were made to their respective Presidents by the Special Representative of President Richard Nixon, Ambassador Herbert Brownell, and the Secretary of Foreign Relations of Mexico, Lic. Emilio O. Rabasa, and which have been approved by the Presidents, for a permanent and definitive solution of the international problem of the salinity of the Colorado River, resulting from the negotiations which they, and their technical and juridical advisers, held in June, July and August of 1973, in compliance with the references to this matter contained in the Joint Communique of Presidents Richard Nixon and Luis Echeverria of June 17, 1972.

Accordingly, the Commission submits for the approval of the two Governments the following Resolution:

Part 1.
Referring to the annual volume of Colorado River waters guaranteed to Mexico under the Treaty of 1944, of 1,500,000 acre-feet (1,850,234,000 cubic meters):

a) The United States shall adopt measures to assure that not earlier than January 1, 1974, and no later than July 1, 1974, the approximately 1,360,000 acre-feet (1,677,545,000 cubic meters) delivered to Mexico upstream of Morelos Dam, have an annual average salinity of no more than 115 p.p.m. +/- 30 p.p.m. U.S. count (121 p.p.m. +/- 30 p.p.m. Mexican count) over the annual average salinity of Colorado River waters which arrive at Imperial Dam, with the understanding that any waters that may be delivered to Mexico under the Treaty of 1944 by means of the All American Canal shall be considered as having been delivered upstream of Morelos Dam for the purpose of computing this salinity.

b) The United States will continue to deliver to Mexico on the land boundary at San Luis and in the limitrophe section of the Colorado River downstream from Morelos Dam approximately 140,000 acre-feet (172,689,000 cubic meters) annually with a salinity substantially the same as that of the waters customarily delivered there.

c) Any decrease in deliveries under point 1(b) will be made up by an equal increase in deliveries under point 1(a).

d) Any other substantial changes in the aforementioned volumes of water at the stated locations must be agreed to by the Commission.

e) Implementation of the measures referred to in point 1(a) above is subject to the requirement in point 10 of the authorization of the necessary works.

Part 2.

The life of Minute No. 241 shall be terminated upon approval of the present Minute. From September 1, 1973, until the provisions of point 1(a) become effective, the United States shall discharge to the Colorado River downstream from Morelos Dam volumes of drainage waters from the Wellton-Mohawk District at the annual rate of 118,000 acre-feet (145,551,000 cubic meters) and substitute therefor an equal volume of other waters to be discharged to the Colorado River above Morelos Dam; and, pursuant to the decision of President Echeverria expressed in the Joint Communique of June 17, 1972, the United States shall discharge to the Colorado River downstream from Morelos Dam the drainage waters of the Wellton-Mohawk District that do not form a part of the volumes of drainage waters referred to above, with the understanding that this remaining volume will not be replaced by substitution waters. The Commission shall continue to account for the drainage waters discharged below Morelos Dam as part of those described in the provisions of Article 10 of the Water Treaty of February 3, 1944.

Part 3.

As a part of the measures referred to in point 1(a), the United States shall extend in its territory the concrete-lined Wellton-Mohawk bypass drain from Morelos Dam to the Arizona-Sonora international boundary, and operate and maintain the portions of the Wellton-Mohawk bypass drain located in the United States.

Part 4.

To complete the drain referred to in point 3, Mexico, through the Commission and at the expense of the United States, shall construct, operate and maintain an extension of the concrete-lined bypass drain from the Arizona-Sonora international boundary to the Santa Clara Slough of a capacity of 353 cubic feet (10 cubic meters) per second. Mexico shall permit the United States to discharge through this drain to the Santa Clara Slough all or a portion of the Wellton-Mohawk drainage waters, the volumes of brine from such desalting operations in the United States as are carried out to implement the Resolution of this Minute, and any other volumes of brine which Mexico may agree to accept. It is understood that no radioactive material or nuclear wastes shall be discharged through this drain, and that the United States shall acquire no right to navigation, servitude or easement by reason of the existence of the drain, nor other legal rights, except as expressly provided in this point.

Part 5.

Pending the conclusion by the Governments of the United States and Mexico of a comprehensive agreement on groundwater in the border areas, each country shall limit pumping of groundwaters in its territory within five miles (eight kilometers) of the Arizona-Sonora boundary near San Luis to 160,000 acre-feet (197,358,000 cubic meters) annually.

Part 6.

With the objective of avoiding future problems, the United States and Mexico shall consult with each other prior to undertaking any new development of either the surface or the groundwater resources, or undertaking substantial modifications of present developments, in its own territory in the border area that might adversely affect the other country.

Part 7.

The United States will support efforts by Mexico to obtain appropriate financing on favorable terms for the improvement and rehabilitation of the Mexicali Valley. The United States will also provide nonreimbursable assistance on a basis mutually acceptable to both countries exclusively for those aspects of the Mexican rehabilitation program of the Mexicali Valley relating to the salinity problem, including tile drainage. In order to comply with the above-mentioned purposes, both countries will undertake negotiations as soon as possible.

Part 8.

The United States and Mexico shall recognize the undertakings and understandings contained in this Resolution as constituting the permanent and definitive solution of the salinity of the salinity problem referred to in the joint Communique of President Richard Nixon and President Luis Echeverria dated June 17, 1972.

Part 9.

The measures required to implement this Resolution shall be undertaken and completed at the earliest practical date.

Part 10.

This Minute is subject to the express approval of both Governments by exchange of Notes. It shall enter into force upon such approval; provided, however, that the provisions which are dependent for their implementation on the construction of works or on other measures which require expenditure of funds by the United States, shall become effective upon the notification by the United States to Mexico of the authorization by the United States Congress of said funds, which will be sought promptly.

Conclusion
Thereupon, the meeting adjourned.

(signed) J.F. Friedkin	(signed) D. Herrera J.
Commissioner of the United States	Commissioner of Mexico
(signed) F.H. Sacksteder, Jr.	(signed) Fernando Rivas S.
Secretary of the United States Section	Secretary of the Mexican Section

[Source: Updating the Hoover Dam Documents 1978, Appendix XIII, pgs. XIII-10-XIII-12]

Chapter 9 - Upper Colorado River Basin Compact, 1948

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona
Clifford H. Stone for the State of Colorado
Fred E. Wilson for the State of New Mexico,
Edward H. Watson for the State of Utah, and
L.C. Bishop for the State of Wyoming,

Preface
after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United State of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligations of each signatory State respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

ARTICLE I
(a) The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each State of the Upper Division with respect to the deliveries of water required to be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

ARTICLE II
As used in this Compact:

(a) The term *Colorado River System* means that portion of the Colorado River and its tributaries within the United States of America.

The term *Colorado River Basin* means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

The term *States of the Upper Division* means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term *States of the Lower Division* means the State of Arizona, California and Nevada.

(e) The term *Lee Ferry* means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term *Upper Basin* means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System above Lee Ferry.

(g) The term *Lower Basin* means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System below Lee Ferry.

(h) The term *Colorado River Compact* means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the State of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the President of the United States of America, June 25, 1929.

(i) The term *Upper Colorado River System* means that portion of the Colorado River System above Lee Ferry.

(j) The term *Commission* means the administrative agency created by Article VIII of this Compact.

(k) The term *water year* means that period of twelve months ending September 30 of each year.

(l) The term *acre-foot* means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

(m) The term *domestic use* shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

(n) The term *virgin flow* means the flow of any stream undepleted by the activities of man.

ARTICLE III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and

in this Compact, there is hereby apportioned from the Upper Colorado River System in perpetuity to the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

(1) To the State of Arizona the consumptive use of 50,000 acre-feet of water per annum.

(2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use per annum of the quantities resulting from the application of the following percentages of the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by Upper Basin under the Colorado River Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the State of Arizona. State of Colorado, 51.75 per cent; State of New Mexico, 11.25 per cent; State of Utah, 23.00 per cent; State of Wyoming, 14.00 per cent.

(b) The apportionment made to the respective States by paragraph (a) of this Article is based upon, and shall be applied in conformity with, the following principles and each of them:

The apportionment is of any and all man-made depletions;

(2) Beneficial use is the basis, the measure and the limit of the right to use;

(3) No State shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another signatory State of its apportioned use during that water year; provided, that this subparagraph (b) (3) shall not be construed as:

(i) Altering the apportionment of use, or obligations to make deliveries as provided in Articles XI, XII, XIII or XIV of this Compact:

(ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or
(iii) Countenancing average uses by any signatory State in excess of its apportionment.

(4) The apportionment to each State includes all water necessary for the supply of any rights which now exist.

(c) No apportionment is hereby made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact.

(d) The apportionment made by this Article shall not be taken as any basis for the allocation among the signatory States of any benefits resulting from the generation of power.

ARTICLE IV

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

The extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;

If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft of the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(c) Except as provided in subparagraph (b) of this Article, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

ARTICLE V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this Compact shall be charged to the State in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the State in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this Compact shall be charged as follows:

(1) If the Commission finds that the reservoir is used, in whole or in part, to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that portion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir or reservoir capacity

utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b) (1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b) (2) shall be earmarked for and charged to the State in which the water will be used
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(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State, provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact.

ARTICLE VI

The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination.

ARTICLE VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall charged as a use by the State in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State.

ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission." The Commission shall be composed of one Commissioner, representing each of the States of the Upper Division, namely, the States of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such State and, if designated by the President, one Commissioner representing the United States of America. The President is hereby requested to designate a Commissioner. If so designated the Commissioner representing the United States of America shall be the

presiding officer of the Commission and shall be entitled to the same power and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government, which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact, and which are not paid by the United States of America, shall be borne by the four States according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount payable by each State. Each State shall pay the amount due by it to the Commission on or before April 1 of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States; however, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, or an employee of any signatory State or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the Commissioner may direct. The Commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission, so far as consistent with this Compact, shall have the power to:
(1) Adopt rules and regulations;
(2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
(3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;
(4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
(5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;
(6) Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each State thereof;
(7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;
(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;
(9) Make findings to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;
(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin

of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such treaty may be reduced in accordance with the terms of such Treaty;
(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;
(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperative with any state or federal agency;
(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.
(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting the Commission shall be held within four months from the effective date of this Compact.

ARTICLE IX
(a) No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users, in a State in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact.

(b) Any signatory State, any person or any entity of any signatory State shall have the right

to acquire such property rights as are necessary to the use of water in conformity with this compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of another signatory State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located, except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by findings of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the State, and in lieu of any and all taxes on said property, improvements and rights. The signatory States recommend to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or its water users, provision be made for like payment in reimbursement of loss of taxes.

ARTICLE X

(a) The signatory States recognize La Plata River Compact entered into between the States of Colorado and New Mexico, dated November 27, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged

under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XI

Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the States of Colorado and Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) Water used under rights existing prior to the signing of this Compact.

(1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any down-stream points.

(2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective States.

(b) Water used under rights initiated subsequent to the signing of this Compact.

(1) Direct flow diversions shall be so administered that, in time of shortage, the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the States.

(2) The storage of water by projects located in either State, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both States.

(c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The States of Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact.

(e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the States of Colorado and Wyoming on the Commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the Basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.

(g) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XII

Subject to the provisions of this Compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in the State of Utah and flowing into the State of Wyoming and thence into the Green River in the State of Utah; Beaver Creek, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Burnt Fork, a tributary of Henry's Fork, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming, Birch Creek, a tributary of Henry's Fork, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; and Sheep Creek, a tributary of Green River in the State of Utah, and their tributaries are hereby apportioned between the States of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures.

(a) Waters used under rights existing prior to the signing of this Compact.
Waters diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the States affected and approved by the Commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Waters used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this Compact shall be divided fifty percent to the State of Wyoming and fifty percent to the State of Utah and each State may use said waters as and where it deems advisable.

(c) The State of Wyoming assents to the exclusive use by the State of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the State of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the State of Utah.

(d) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the States of Utah and Wyoming on the Commission, it is otherwise provided.

(e) All consumptive use of waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

(f) The States of Utah and Wyoming each assent to the diversion and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact. It shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. It either the State of Utah or the State of Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(g) In order to measure the flow of water diverted, each State shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(h) The State Engineers of the two States jointly shall appoint a Special Water Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article. The salary and expense of such Special Water Commissioner shall be paid, thirty percent by the State of Utah and seventy percent by the State of Wyoming.

ARTICLE XIII

Subject to the provisions of this Compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the State of Colorado, are hereby apportioned between the States of Colorado and Utah in accordance with the following principles:

(a) The State of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this Compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the State of Utah, then the gross amount of all such diversions for use in the State of Utah, less any returns from such diversions to the River above Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or

conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XIV

Subject to the provisions of this Compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the States of Colorado and New Mexico as follows:

The State of Colorado agrees to deliver to the State of New Mexico from the San Juan River and its tributaries which rise in the State of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan Basin in the State of New Mexico, to enable the State of New Mexico to make full use of the water apportioned to the State of New Mexico by Article III of this Compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:
(1) All uses of water made in either State at the time of the signing of this Compact, and
(2) All uses of water contemplated by projects authorized, at the time of the signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The State of Colorado assents to diversions and storage of water in the State of Colorado for use in the State of New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of the waters of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each State will bear the same proportionate relation to the consumptive use made in each State during times of average water supply as determined by the Commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either State in order to make deliveries at Lee Ferry as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provisions of this Article.

(e) All consumptive use of the waters of the San Juan River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

ARTICLE XV

(a) Subject to the provisions of the Colorado River Compact and of this Compact, water of the Upper Colorado River System may be impounded and used for the generation of

electrical power, buy such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact.

ARTICLE XIV

The failure of any State to use the water, or any part hereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

ARTICLE XVII

The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any State under the apportionment of consumptive use made by this Compact.

ARTICLE XVIII

(a) The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

(b) The State of New Mexico and the State of Utah reserve their respective rights and interests under the Colorado River Compact as States of the Lower Basin.

ARTICLE XIX

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States of America, its agencies or

instrumentalities, to the laws of any State to any extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE XX

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XXI

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

In WITNESS WHEREOF, the Commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States of America, and one of which shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, State of New Mexico, this 11th day of October 1948

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Conclusion

CHARLES A. CARSON
Commissioner for the State of Arizona
CLIFFORD H. STONE
Commissioner for the State of Colorado
FRED E. WILSON
Commissioner for the State of New Mexico
EDWARD H. WATSON
Commissioner for the State of Utah
L.C. BISHOP
Commissioner for the State of Wyoming
GROVER A. GILES
Secretary
Approved:
HARRY W. BASHORE
Representative of the United States of America

[Source: Updating the Hoover Dam Documents 1978, Appendix I, pgs. I-88-I-97]

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Chapter 10 - Colorado River Storage Project

AUTHORITY TO CONSTRUCT, OPERATE AND MAINTAIN
Chapter 203-Public Law 485

Preface
An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 1.
In order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with provisions of the Colorado River Compact, the apportionment made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes, the Secretary of the Interior is hereby authorized (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: Curecanti, Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon: *Provided*, That the Curecanti Dam shall be constructed to a height which will impound not less than nine hundred and forty thousand acre-feet of water or will create a reservoir of such greater capacity as can be obtained by a high waterline located at seven thousand five hundred and twenty feet above mean sea level, and that construction thereof shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, re-examined the economic justification of such unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgement, the benefits of such unit will exceed its costs; and (2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase); Emery County, Florida, Hammond, LaBarge, Lyman, Paonia (including the Minnesota unit, a dam and reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Pine River Extension, Seedskadee, Silt and Smith Fork: *Provided further*, That as a part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument.

Section 2.
In carrying out further investigations of projects under the Federal reclamation laws in the Upper Colorado River Basin, the Secretary shall give priority to completion of planning reports on the Gooseberry, San Juan-Chama, Navajo, Parshall, Troublesome, Rabbit Ear, Eagle Divide, San Miguel, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savery-Pot Hook, Dolores, Fruit Growers Extension, Animas-La Plata, Yellow Jacket, and Sublette participating projects. Said reports shall be completed as expeditiously as funds are made available therefor and shall be submitted promptly to the affected States, which in the case of the San Juan-Chama project shall include the State of Texas, and thereafter to the President and the Congress: *Provided* That with reference to the plans and specifications for the San Juan-Chama project, the storage for control and regulation of water imported from the San Juan River shall (1) be limited to a single offstream dam and reservoir on a tributary of the Chama River, (2) be used solely for control and regulation and no power facilities shall be established, installed or operated thereat, and (3) be operated at all times by the Bureau of Reclamation of the Department of the Interior in strict compliance with the Rio Grande Compact as administered by the Rio Grande Compact Commission. The preparation of detailed designs and specifications for the works proposed to be constructed in connection with projects shall be carried as far forward as the investigations thereof indicate is reasonable in the circumstances.

The Secretary, concurrently with the investigations directed by the preceding paragraph, shall also give priority to completion of a planning report on the Juniper project.

Section 3.
It is not the intention of Congress, in authorizing only those projects designated in section 1 of this Act, and in authorizing priority in planning only those additional projects designated in section 2 of this Act, to limit, restrict, or otherwise interfere with such comprehensive development as will provide for the consumptive use by States of the Upper Colorado River Basin of waters, the use of which is apportioned to the Upper Colorado River Basin by the Colorado River Compact and to each State thereof by the Upper Colorado River Basin Compact, nor to preclude consideration and authorization by the Congress of additional projects under the allocations in the compacts as additional needs are indicated. It is the intention of Congress that no dam or reservoir constructed under the authorization of this Act shall be within any national park or monument.

Section 4.
Except as otherwise provided in this Act, in constructing, operating, and maintaining the units of the Colorado River storage project and the participating projects listed in section 1 of this Act, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388,[10] and Acts amendatory thereof or supplementary thereto): *Provided*, That (a) irrigation repayment contracts shall be entered into which, except as otherwise provided for the Paonia and Eden projects, provide for repayment of the

[10]43 U.S.C.A. 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 476, 491, 498.

obligation assumed thereunder with respect to any project contract unit over a period of not more than fifty years exclusive of any development period authorized by law; (b) prior to construction of irrigation distribution facilities, repayment contracts shall be made with an organization as defined in paragraph 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187)[11] which has the capacity to levy assessments upon all taxable real property located within its boundaries to assist in making repayments, except where a substantial proportion of the lands to be served are owned by the United States; (c) contracts relating to municipal water supply may be made without regard to the limitations of the last sentence of section 9(c) of the Reclamation Project Act of 1939;[12] and (d), as to Indian lands within, under or served by any participating project, payment of construction costs within the capability of the land to repay shall be subject to the Act of July 1, 1932 (47 Stat. 564):[13] *Provided further*, That for a period of ten years from the date of enactment of this Act, no water from any participating project authorized by this Act by shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b) (10) of the Agricultural Adjustment Act of 1938, as amended,[14] unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. All units and participating projects shall be subject to the apportionments of the use of water between the Upper and Lower Basins of the Colorado River and among the States of the Upper Basin fixed in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, and to the terms of the treaty with the United Mexican States (Treaty Series 994).

Section 5.

(a) There is hereby authorized a separate fund in the Treasury of the United States to be known as the Upper Colorado River Basin Fund (hereinafter referred to as the Basin Fund) which shall remain available until expended, as hereafter provided, for carrying out provisions of this Act other than section 8.

(b) All appropriations made for the purpose of carrying out the provisions of this Act, other than section 8, shall be credited to the Basin Fund as advances from the general fund of the Treasury.

(c) All revenues collected in connection with the operation of the Colorado River storage project and participating projects shall be credited to the Basin Fund, and shall be available, without further appropriation, for (1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the

[11] 43 U.S.C.A. 485a (g).

[12] 43 U.S.C.A. 485h (c).

[13] 25 U.S.C.A. 386a.

[14] 7 U.S.C.A. 130(b) (10).

Colorado River storage project and participating projects, within such separate limitations as may be included in annual appropriation acts: *Provided*, That with respect to each participating project, such costs shall be paid from revenues received from each such project; (2) payment as required by subsection (d) of this section; and (3) payment as required by subsection (e) of this section. Revenues credited to the Basin Fund shall not be available for appropriation for construction of the units and participating projects authorized by or pursuant to this Act.

Revenues in the Basin Fund in excess of operating needs shall be paid annually to the general fund of the Treasury to return-

(1) the costs of each unit, participating project, or any separable feature thereof which are allocated to power pursuant to section 6 of this Act, within a period not exceeding fifty years from the date of completion of such unit, participating project, or separable feature thereof;

(2) the costs of each unit, participating project, or any separable feature thereof which are allocated to municipal water supply pursuant to section 6 of this Act, within a period not exceeding fifty years from the date of completion of such unit, participating project, or separable feature thereof;

(3) interest in the unamortized balance of the investment (including interest during construction) in the power and municipal water supply features of each unit, participating project, or any separable feature thereof, at a rate determined by the Secretary of the Treasury as provided in subsection (f), and interest due shall be a first charge; and

(4) the costs of each storage unit which are allocated to irrigation pursuant to section 6 of this Act within a period not exceeding fifty years.

(e) Revenues in the Basin Fund in excess of the amounts needed to meet the requirements of clause (1) subsection (c) of this section, and to return to the general fund of the Treasury the costs set out in subsection (d) of this section, shall be apportioned among the States of the Upper Division in the following percentages: Colorado, 46 per centum; Utah, 21.5 per centum; Wyoming, 15.5 per centum; and New Mexico, 17 per centum; *Provided*, That prior to the application of such percentages, all revenues remaining in the Basin Fund from each participating project (or part thereof), herein or hereinafter authorized, after payments, where applicable, with respect to such projects, to the general fund of the Treasury under subparagraphs (1), (2), and (3) of subsection (d) of this section shall be apportioned to the State in which such participating project, or part thereof, is located.

Revenues so apportioned to each State shall be used for the repayment of construction costs of participating projects or parts of such projects in the State to which such revenues are apportioned and shall not be used for such purpose in any other State without the consent, as expressed through its legally constituted authority, of the State

to which such revenues are apportioned. Subject to such requirement, there shall be paid annually into the general fund of the Treasury from the revenues apportioned to each State (1) the costs of each participating project herein authorized (except Paonia) or any separable feature thereof, which are allocated to irrigation pursuant to section 6 of this Act, within a period not exceeding fifty years, in addition to any development period authorized by law, from the date of completion of such participating project or separable feature thereof, or, in the case of Indian lands, payment in accordance with section 4 of this Act; (2) costs of the Paonia project, which are beyond the ability of the water users to repay, within a period prescribed in the Act of June 25, 1947 (61 Stat. 181); and (3) costs in connection with the irrigation features of the Eden project as specified in the Act of June 28, 1949 (63 Stat. 277).

(f) The interest rate applicable to each unit of the storage project and each participating project shall be determined by the Secretary of the Treasury as of the time the first advance is made for initiating construction of said unit or project. Such interest rate shall be determined by calculating the average yield to maturity on the basis of daily closing market bid quotations during the month of June next preceding the fiscal year in which said advance is made, on all interest-bearing marketable public debt obligations of the United States having a maturity date of fifteen or more years from the first day of said month, and by adjusting such average annual yield to the nearest one-eight of 1 per centum.

(g) Business-type budgets shall be submitted to the Congress annually for all operations financed by the Basin Fund.

Section 6.
Upon completion of each unit, participating project or separable feature thereof, the Secretary shall allocate the total costs (excluding any expenditures authorized by section 8 of this Act) of constructing said unit, project or feature to power, irrigation, municipal water supply, flood control, navigation, or any other purposes authorized under reclamation law. Allocations of construction, operation and maintenance costs to authorized nonreimbursable purposes shall be non-returnable under the provisions of this Act. In the event that the Navajo participating project is authorized, the costs allocated to irrigation of Indian-owned tribal or restricted lands within, under, or served by such project, and beyond the capacity of such lands to repay, shall be determined, and, in recognition of the fact that assistance to the Navajo Indians is the responsibility of the entire nation, such costs shall be nonreimbursable. On January 1 of each year the Secretary shall report to the Congress for the previous fiscal year, beginning with the fiscal year 1957, upon the status of the revenues from, and the cost of, constructing, operating, and maintaining the Colorado River storage project and the participating projects. The Secretary s report shall be prepared to reflect accurately the Federal investment allocated at that time to power, to irrigation, and to other purposes, the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment.

Section 7.
The hydroelectric power plants and transmission lines authorized by this Act to be

constructed, operated, and maintained by the Secretary shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates, but in the exercise of the authority hereby granted he shall not affect or interfere with the operation of the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Adjustment Act and any contract lawfully entered unto under said Compacts and Acts. Subject to the provisions of the Colorado River Compact, neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River storage project shall preclude or impair the appropriation of water for domestic or agricultural purposes pursuant to applicable State law.

Section 8.
In connection with the development of the Colorado River storage project and of the participating projects, the Secretary is authorized and directed to investigate, plan, construct, operate, and maintain (1) public recreational facilities on lands withdrawn or acquired for the development of said project or of said participating projects, to conserve the scenery, the natural, historic, and archaeological objects, and the wildlife on said lands, and to provide for public use and enjoyment of the same and of the water areas created by these projects by such means as are consistent with the primary purposes of said projects; and (2) facilities to mitigate losses of, and improve conditions for, the propagation of fish and wildlife. The Secretary is authorized to acquire lands and to withdraw public lands from entry or other disposition under the public land laws necessary for the construction, operation, and maintenance of the facilities herein provided, and to dispose of them to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. All costs incurred pursuant to the section shall be nonreimbursable and nonreturnable.

Section 9.
Nothing contained in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057),[15] the Boulder Canyon Project Adjustment Act (54 Stat. 774),[16] the Colorado River Compact, the Upper Colorado River Basin Compact, the Rio Grande Compact of 1938, or the Treaty with the United Mexican States (Treaty Series 994).

Section 10.
Expenditures for the Flaming Gorge, Glen Canyon, Curecanti, and Navajo initial units of the Colorado River storage project may be made without regard to the soil survey and land classification requirements of the Interior Department Appropriation Act, 1954.[17]

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[15] 43 U.S.C.A. 617 et seq.

[16] 43 U.S.C.A. 618 et seq

[17] 16 U.S.C.A. 17b-1, 460c note; 43 U.S.C.A. 50, 377a, 390a, 775; 48 U.S.C.A. 1401f, 1409 note, 1423l, 1434-1437, 1439.

Section 11.
The Final Judgement, Final Decree and stipulations incorporated therein in the consolidated cases of United States of America v. Northern Colorado Water Conservancy District, et al., Civil Nos. 2782, 5016 and 5017, in the United States District Court for the District of Colorado, are approved, shall become effective immediately, and the proper agencies of the United States shall act in accordance therewith.

Section 12.
There are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be required to carry out the purposes of this Act, but not to exceed $760,000,000.

Section 13.
In planning the use of, and in using credits from, net power revenues available for the purpose of assisting in the pay-out of costs of participating projects herein and hereafter authorized in the States of Colorado, New Mexico, Utah, and Wyoming, the Secretary shall have regard for the achievement within each of said States of the fullest practicable use of the waters of the Upper Colorado River system, consistent with the apportionment thereof among such States.

Section 14.
In the operation and maintenance of all facilities, authorized by Federal law and under the jurisdiction and supervision of the Secretary of the Interior, in the basin of the Colorado River, the Secretary of the Interior is directed to comply with the applicable provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Treaty with the United Mexican States, in the storage and release of water from reservoirs in the Colorado River Basin. In the event of the failure of the Secretary of the Interior to so comply, any State of the Colorado River Basin may maintain an action in the Supreme Court of the United States to enforce the provisions of this section, and consent is given to the joinder of the United States as a party in such suit or suits as a defendant or otherwise.

Section 15.
The Secretary of the Interior is directed to continue studies and to make a report to the Congress and to the States of the Colorado River Basin on the quality of water of the Colorado River.

Section 16. - Definitions
As used in this Act-

The terms *Colorado River Basin*, *Colorado River Compact*, *Colorado River System*, Lee *Ferry*, *States of the Upper Division*, *Upper Basin*, and *domestic use* shall have the meaning ascribed to them in article II of the Upper Colorado River Basin Compact;

The term *States of the Upper Colorado River Basin* shall mean the States of Arizona, Colorado, New Mexico, Utah, and Wyoming;

The term *Upper Colorado River Basin* shall have the same meaning as the term *Upper Basin*;

The term *Upper Colorado River Basin Compact* shall mean that certain compact executed on October 11, 1948 by commissioners representing the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, and consented to by the Congress of the United States of America by Act of April 6, 1949 (63 Stat. 31);[18]

The term *Rio Grande Compact* shall mean that certain compact executed on March 18, 1938, by commissioners representing the States of Colorado, New Mexico, and Texas and consented to by the Congress of the United States of America by Act of May 31, 1939 (53 Stat. 785);

The term *Treaty with the United Mexican States* shall mean that certain treaty between the United States of America and the United Mexican States, signed at Washington, District of Columbia, February 3, 1944, relating to the utilization of the waters of the Colorado River and other rivers, as amended and supplemented by the protocol dated November 14, 1944, and the understandings recited in the Senate resolution of April 18, 1945, advising and consenting to ratification thereof.

Conclusion

Approved April 11, 1956.

[Source: Updating the Hoover Dam Documents 1978, Appendix I, pgs. I-99-I-104]

[18] 43 U.S.C.A. 617l note.

Chapter 11 - Arizona v. California, Decree, March 9, 1964

No. 8, ORIGINAL
STATE OF ARIZONA, PLAINTIFF
v.
STATE OF CALIFORNIA, ET AL., DEFENDANTS

It is ORDERED, ADJUDGED AND DECREED that

Article I.
For the purposes of this decree:

(A) *Consumptive use* means diversions from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation;

(B) *Mainstream* means the mainstream of the Colorado River downstream from Lee Ferry within the United States, including the reservoir thereon;

(C) *Consumptive use* from the mainstream within a state shall include all consumptive uses of water of the mainstream, including water drawn from the mainstream by underground pumping, and including but not limited to, consumptive uses made by persons, by agencies of that state, and by the United States for the benefit of Indian reservations and other federal establishments within the state;

(D) *Regulatory structures controlled by the United States* refers to Hoover Dam, Davis Dam, Parker Dam, Headgate Rock Dam, Palo Verde Dam, Imperial Dam, Laguna Dam and all other dams and works on the mainstream now or hereafter controlled or operated by the United States which regulate the flow of water in the mainstream or the diversion of water from the mainstream;

(E) *Water controlled by the United States* refers to the water in Lake Mead, Lake Mohave, Lake Havasu and all other water in the mainstream below Lee Ferry and within the United States;

(F) *Tributaries* means all stream systems the waters of which naturally drain into the mainstream of the Colorado River below Lee Ferry;

(G) *Perfected right* means a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition shall include water rights created by the reservation of mainstream water for the use of federal establishments under federal law whether or not the water has been applied to beneficial use;

(H) *Present perfected rights* means perfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act'

(I) *Domestic use* shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power;

(J) *Annual* and *Year*, except where the context may otherwise require, refer to calendar years;

(K) Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed.

Article II.

The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined:

(A) From operating regulatory structures controlled by the United States and from releasing water controlled by the United States other than in accordance with the following order of priority:

(1) For river regulation, improvement of navigation, and flood control;
(2) For irrigation and domestic uses, including the satisfaction of present perfected rights; and
(3) For power;
Provided, however, that the United States may release water in satisfaction of its obligations to the United States of Mexico under the treaty dated February 3, 1944, without regard to the priorities specified in this subdivision (A);

(B) From releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California and Nevada, except as follows:

(1) If sufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy 7,500,000 acre-feet of annual consumptive use in the aforesaid three states, then of such 7,500,000 acre-feet of consumptive use, there shall be apportioned 2,800,000 acre-feet for use in Arizona, 4,400,000 acre-feet for use in California, and 300,000 acre-feet for use in Nevada;

(2) If sufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use in the aforesaid states in excess of 7,500,000 acre-feet, such excess consumptive use is surplus, and 50% thereof shall be apportioned for use in Arizona and 50% for use in California; provided, however, that if the United States so contracts with Nevada, then 46% of such surplus shall be apportioned for use in Arizona and 4% for use in Nevada;

(3) If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three states, then the Secretary of the Interior, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective states may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes, but in no event shall more than 4,400,000 acre-feet be apportioned for use in California including all present perfected rights;

(4) Any mainstream water consumptively used with a state shall be charged to its apportionment, regardless of the purpose for which it was released:

(5) Notwithstanding the provisions of Paragraphs (1) through (4) of this subdivision (B), mainstream water shall be released or delivered to water users (including but not limited to, public and municipal corporations and other public agencies) in Arizona, California, and Nevada only pursuant to valid contracts therefor made with such users by the Secretary of the Interior, pursuant to Section 5 of the Boulder Canyon Project Act or any other applicable federal statute;

(6) If, in any one year, water apportioned for consumptive use in a state will not be consumed in that state, whether for the reason that delivery contracts for the full amount of the state's apportionment are not in effect or that users cannot apply all of such water to beneficial uses, or for any other reason, nothing in this decree shall be construed as prohibiting the Secretary of the Interior from releasing such apportioned but unused water during such year for consumptive use in the other states. No rights to the recurrent use of such water shall accrue by reason of the use thereof;

(C) From applying the provisions of Article 7 (d) of the Arizona water delivery contract dated February 9, 1944, and the provisions of Article 5 (a) of the Nevada water delivery contract dated March 30, 1942, as amended by the contract dated January 3, 1944, to reduce the apportionment or delivery of mainstream water to users within the States of Arizona and Nevada by reason of any uses in such states from the tributaries flowing therein;

(D) From releasing water controlled by the United States for use in the States of Arizona, California, and Nevada for the benefit of any federal establishment named in this subdivision (D) except in accordance with the allocations made herein; provided, however, that such release may be made notwithstanding the provisions of Paragraph (5) of subdivision (B) of this Article; and provided further that nothing herein shall prohibit the United States from making future additional reservations of mainstream water for use in any of such States as may be authorized by law and subject to present perfected rights and rights under contracts theretofore made with water users in such State under Section 5 of the Boulder Canyon Project Act or any other applicable federal statute:

(1) The Chemehuevi Indian Reservation in annual quantities not to exceed (i) 11,340 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,900 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of February 2, 1907;

(2) The Cocopah Indian Reservation in annual quantities not to exceed (i) 2,744 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 431 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of September 27, 1917;

(3) The Yuma Indian Reservation in annual quantities not to exceed (i) 51,616 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 7,743 acres and for the satisfaction of related uses, whichever of (i) or (ii), is less, with a priority date of January 9, 1884;

(4) The Colorado River Indian Reservation in annual quantities not to exceed (i) 717,148 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,588 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1865 (13 Stat. 541, 559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16, 1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date;

(5) The Fort Mojave Indian Reservation in annual quantities not to exceed (i) 122,648 acre feet-of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 18,974 acres and for the satisfaction of related uses, which ever (i) or (ii) is less, and, subject to the next succeeding proviso, with priority dates of September 18, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date; provided, however, that lands conveyed to the State of California pursuant to the Swamp and Overflowed Lands Act [9 Stat. 519 (1850)] as well as any accretions thereto to which the owners of such land may be entitled, and lands patented to the Southern Pacific Railroad pursuant to the Act of July 27, 1866 (14 Stat. 292) shall not be included as irrigable acreage within the Reservation and that the above specified diversion requirement shall be reduced by 6.4 acre-feet per acre of such land that is irrigable; provided that the quantities fixed in this paragraph and paragraph (4) shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined;

(6) The Lake Mead National Recreation Area in annual quantities reasonably necessary to

fulfill the purposes of the Recreation Area, with priority dates of March 3, 1929, for lands reserved by the Executive Order of said date (No. 5105), and April 25, 1930, for lands reserved by the Executive Order of said date (No. 5339);

(7) The Havasu Lake National Wildlife Refuge in annual quantities reasonably necessary to fulfill the purposes of the Refuge, not to exceed (i) 41,839 acre-feet of water diverted from the mainstream or (ii) 37,339 acre-feet of consumptive use of mainstream water, whichever of (i) or (ii) is less, with a priority date of January 22, 1941, for lands reserved by the Executive Order of said date (No. 8647), and a priority date of February 11, 1949, for land reserved by the Public Land Order of said date (No. 559);

(8) The Imperial National Wildlife Refuge in annual quantities reasonably necessary to fulfill the purposes of the Refuge not to exceed (i) 28,000 acre-feet of water diverted from the mainstream or (ii) 23,000 acre-feet of consumptive use of mainstream water, whichever of (i) or (ii) is less, with a priority date of February 14, 1941;

(9) Boulder City, Nevada, as authorized by the Act of September 2, 1958, 72 Stat. 1726, with a priority date of May 15, 1931;

Provided further, that consumptive uses from the mainstream for the benefit of the above-named federal establishments shall, except as necessary to satisfy present perfected rights in the order of their priority dates without regard to state lines, be satisfied only out of water available, as provided in subdivision (B) of this Article, to each state wherein such uses occur and subject to, in the case of each reservation, such rights as have been created prior to the establishment of such reservation by contracts executed under Section 5 of the Boulder Canyon Project Act or any other applicable federal statute.

Article III.

The States of Arizona, California and Nevada, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego, and all other users of water from the mainstream in said states, their officers, attorneys, agents and employees, be and they are hereby severally enjoined:

(A) From interfering with the management and operation, in conformity with Article II of this decree, of regulatory structures controlled by the United States;

(B) From interfering with or purporting to authorize the interference with releases and deliveries, in conformity with Article II of this decree, of water controlled by the United States;

(C) From diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective states; and provided further that no party named in this Article and no other user of water in said states shall divert or purport to authorize the diversion of water from

the mainstream the diversion of which has not been authorized by the United States for its particular use;

(D) From consuming or purporting to authorize the consumptive use of water from the mainstream in excess of the quantities permitted under Article II of this decree.

Article IV.

The State of New Mexico, its officers, attorneys, agents and employees, be and they are after four years from the date of this decree hereby severally enjoined:

(A) From diverting or permitting the diversion of water from San Simon Creek, its tributaries and underground water sources for the irrigation of more than a total of 2,900 acres during any one year, and from exceeding a total consumptive use of such water, for whatever purpose, of 72,0000 acre-feet during any period of ten consecutive years; and from exceeding a total consumptive use of such water, for whatever purpose, of 8,220 acre-feet during any one year;

(B) From diverting or permitting the diversion of water from the San Francisco River, its tributaries and underground water sources for the irrigation within each of the following areas of more than the following number of acres during any one year:

Luna Area	225
Apache Creek-Aragon Area	316
Reserve Area	725
Glenwood Area	1,003

and from exceeding a total consumptive use of such water for whatever purpose, of 31,870 acre-feet during any period of ten consecutive years; and from exceeding a total consumptive use of such water, for whatever purpose, of 4,112 acre-feet during any one year;

(C) From diverting or permitting the diversion of water from the Gila River, its tributaries (exclusive of the San Francisco River and San Simon Creek and their tributaries) and underground water sources for the irrigation within each of the following areas of more than the following number of acres during any one year:

Upper Gila Area	287
Cliff-Gila and Buckhorn-Duck Creek Area	5,314
Red Rock Area	1,456

and from exceeding a total consumptive use of such water (exclusive of uses in Virden Valley, New Mexico), for whatever purpose, of 136,620 acre-feet during any period of ten consecutive years; and from exceeding a total consumptive use of such water (exclusive of uses in Virden Valley, New Mexico), for whatever purpose, of 15,895 acre-feet during any one year;

(D) From diverting or permitting the diversion of water from the Gila River and its underground water sources in the Virden Valley, New Mexico, except for use on lands determined to have the right to the use of such water by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in *United States v. Gila Valley Irrigation District, et al.* (Globe Equity No. 59) (herein referred to as the Gila Decree), and except pursuant to and in accordance with the terms and provisions of the Gila Decree; *provided, however*, that:

(1) This decree shall not enjoin the use of underground water on any of the following lands:

Owner	Subdivisions & Legal Description	Sec.	Twp	Rng.	Acreage
Marvin Arnett	Part Lot 3	6	19S	21W	33.84
and	Part Lot 4	6	19S	21W	52.33
J.C. O'Dell.	NW1/4SW1/4	5	19S	21W	38.36
	SW1/4SW1/4	5	19S	21W	39.80
	Part Lot 1	7	19S	21W	50.68
	NW1/4NW1/4	8	19S	21W	38.03
Hyrum M. Pace,					
Ray Richardson,	SW1/4NE1/4	12	19S	21W	8.00
Harry Day and	SW1/4NE1/4	12	19S	21W	15.00
N.O. Pace, Est.	SE1/4NE1/4	12	19S	21W	7.00
C.C. Martin	S. part SE1/4SW1/4SE1/4	1	19S	21W	0.93
	W1/2W1/2W1/2NE1/4NE1/4	12	19S	21W	0.51
	NW1/4NE1/4	12	19S	21W	18.01
A.E. Jacobson	SW part Lot 1	6	19S	21W	11.58

W. LeRoss Jones	E. Central part:			
	E1/2E1/2E1/2NW1/4NW1/4 12	19S	21W	0.70
	SW part NE1/4NW1/4 12	19S	21W	8.93
	N. Central part:			
	N1/2N1/2NW1/4SE1/4NW1/4 12	19S	21W	0.51
Conrad and James R. Donaldson	N1/2N1/2N1/2SE1/4 18	19S	20W	8.00
James D. Freestone	Part W 1/2NW1/4.....33	18S	21W	7.79
Virgil W. Jones	N1/2SE1/4NW1/4;			
	SE1/4NE1/4NW1/4.....12	19S	21W	7.40
Darrell Brooks	SE1/4SW1/4 32	18S	21W	6.15
Floyd Jones	Part N1/2SE1/4NE1/4.....13	19S	21W	4.00
	Part NW1/4SW1/4NW1/4.....18	19S	20W	1.70
L.M.Hatch	SW1/4SW1/4.....32	18S	21W	4.40
	Virden Townsite.....---	---		3.90
Carl M. Donaldson	SW1/4SE1/4 12	19S	21W	3.40
Mack Johnson	Part NW1/4NW1/4NE1/4 10	19S	21W	2.80
	Part NE1/4NW1/4NE1/4 10	19S	21W	0.30
	Part N1/2N1/2S1/2NW1/4NE1/4 .10	19S	21W	0.10
Chris Dotz	SE1/4SE1/4;SW1/4SE1/4 3	19S	21W	
	NW1/4NE1/4;NE1/4NE1/4.....10	19S	21W	2.66
Roy A. Johnson	NE1/4SE1/4SE1/4 4	19S	21W	1.00
Ivan and Antone Thygerson	NE1/4SE1/4SE1/4 32	18S	21W	1.00
John W. Bonine	SW1/4SE1/4SW1/4.....34	18S	21W	1.00
Marion K. Mortenson	SW1/4SW1/4SE1/4 33	18S	21W	1.00
Total	.....		380.81	

or on lands or for other uses in the Virden Valley to which such use may be transferred or substituted on retirement from irrigation of any of said specifically described lands, up to a

maximum total consumptive use of such water of 838.2 acre-feet per annum, unless and until such uses are adjudged by a court of competent jurisdiction to be an infringement or impairment of rights confirmed by the Gila Decree; and

(2) This decree shall not prohibit domestic use of water from the Gila River and its underground water sources on lands with rights confirmed by the Gila Decree, or on farmsteads located adjacent to said lands, or in the Virden Townsite, up to a total consumptive use of 265 acre-feet per annum in addition to the uses confirmed by the Gila Decree, unless and until such use is adjudged by a court of competent jurisdiction to be an infringement or impairment of rights confirmed by the Gila Decree;

(E) *Provided, however,* that nothing in this Article IV shall be construed to affect rights as between individual water users in the State of New Mexico, nor shall anything in this Article be construed to affect possible superior rights of the United States asserted on behalf of National Forests, Parks, Memorials, Monuments and lands administered by the Bureau of Land Management; and provided further that in addition to the diversions authorized herein the United States has the right to divert water from the mainstream of the Gila and San Francisco Rivers in quantities reasonably necessary to fulfill the purposes of the Gila National Forest with priority dates as of the date of withdrawal for forest purposes of each area of the forest within which the water is used.

(F) *Provided, further,* that no diversion from a stream authorized in Articles IV (A) through (D) may be transferred to any of the other streams, nor may any use for irrigation purposes within any area on one of the streams be transferred for use for irrigation purposes to any other area on that stream.

Section V.

The United States shall prepare and maintain, or provide for the preparation and maintenance of, and shall make available, annually and at such shorter intervals as the Secretary of the Interior shall deem necessary or advisable, for inspection by interested persons at all reasonable times and at a reasonable place or places, complete, detailed and accurate records of:

(A) Releases of water through regulatory structures controlled by the United States;

(B) Diversions of water from the mainstream, return flow of such water to the stream as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation, and consumptive use of such water. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;

(C) Releases of mainstream water pursuant to orders therefor but not diverted by the party ordering the same, and the quantity of such water delivered to Mexico in satisfaction of the Mexican Treaty or diverted by others in satisfaction of rights decreed herein. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;

(D) Deliveries to Mexico of water in satisfaction of the obligations of Part III of the Treaty of February 3, 1944, and, separately stated, water passing to Mexico in excess of treaty requirements;

(E) Diversions of water from the mainstream of the Gila and San Francisco Rivers and the consumptive use of such water, for the benefit of the Gila National Forest.

Section VI.

Within two years from the date of this decree, the States of Arizona, California, and Nevada shall furnish to this Court and to the Secretary of the Interior a list of the present perfected rights, with their claimed priority dates, in waters of the mainstream within each state, respectively, in terms of consumptive use, except those relating to federal establishments. Any named party to this proceeding may present its claim of present perfected rights or its opposition to the claims of others. The Secretary of the Interior shall supply similar information, within a similar period of time, with respect to the claims of the United States to present perfected rights within each state. If the parties and the Secretary of the Interior are unable at that time to agree on the present perfected rights to the use of mainstream water in each state, and their priority dates, any party may apply to the Court for the determination of such rights by the Court.

Section VII.

The State of New Mexico shall, within four years from the date of this decree, prepare and maintain, or provide for the preparation and maintenance of, and shall annually thereafter make available for inspection at all reasonable times and at a reasonable place or places, complete, detailed and accurate records of:

(A) The acreages of all lands in New Mexico irrigated each year from the Gila River, the San Francisco River, San Simon Creek and their tributaries and all of their underground water sources, stated by legal description and component acreages and separately as to each of the areas designated in Article IV of this decree and as to each of the three streams;

(B)Annual diversions and consumptive uses of water in New Mexico, from the Gila River, the San Francisco River and San Simon Creek and their tributaries, and all their underground water sources, stated separately as to each of the three streams.

Section VIII.

This decree shall not affect:

(A) The relative rights *inter sese* of water users within any one of the states, except as otherwise specifically provided herein;

(B) The rights or priorities to water in any of the Lower Basin tributaries of the Colorado River in the States of Arizona, California, Nevada, New Mexico and Utah except the Gila River System;

(C) The rights or priorities, except as specific provision is made herein, of any Indian Reservation, National Forest, Park, Recreation Area, Monument or Memorial, or other lands of the United States;

(D) Any issue of interpretation of the Colorado River Compact.

Section IX.

Any of the parties may apply at the foot of this decree for its amendment or for further relief. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy.

Conclusion

MR. JUSTICE DOUGLAS dissents.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART dissent to the extent that the decree conflicts with views expressed in the dissenting opinion of MR. JUSTICE HARLAN, 373 U.S. 546, 603.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

[Source: Updating the Hoover Dam Documents 1978, Appendix IX, pgs. IX-27-IX-33]

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Chapter 12 - Arizona v. California, Supplemental Decree, Jan. 9, 1979

SUPREME COURT OF THE UNITED STATES
No. 8, ORIGINAL
STATE OF ARIZONA, Plaintiff
v.
STATE OF CALIFORNIA et al., DEFENDANTS

Former decision, 98 S.Ct. 3139; 99 S.Ct. 70.

Preface

On Joint Motion to Enter Supplemental Decree and Motions for Leave to Intervene. Jan. 9, 1979. PER CURIAM and SUPPLEMENTAL DECREE.

Decree

The United States of America, Intervenor, State of Arizona, Complainant, the California Defendants (State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, the Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, County of San Diego), and State of Nevada, Intervenor, pursuant to Art. VI of the Decree entered in the case on March 9, 1964, at 376 U.S. 340, and amended on February 28, 1966, at 383 U.S. 268, have agreed to the present perfected rights to the use of mainstream water in each State and their priority dates as set forth herein. Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that the joint motion of the United States, the State of Arizona, the California Defendants, and the State of Nevada to enter a supplemental decree is granted and that said present perfected rights in each State and their priority dates are determined to be as set forth below, subject to the following:

(1) The following listed present perfected rights relate to the quantity of water which may be used by each claimant and the list is not intended to limit or redefine the type of use otherwise set forth in said Decree.

(2) This determination shall in no way affect future adjustments resulting from determinations relating to settlement of Indian reservation boundaries referred to in Art. II(D)(5) of said Decree.

(3) Article IX of said Decree is not affected by this list of present perfected rights.

(4) Any water right listed herein may be exercised only for beneficial uses.

(5) In the event of a determination of insufficient mainstream water to satisfy present perfected rights pursuant to Art. II(B)(3) of said Decree, the Secretary of the Interior shall, before providing for the satisfaction of any of the other present perfected rights except for those listed herein as "MISCELLANEOUS PRESENT PERFECTED RIGHTS" (rights numbered 7-21 and 29-80 below) in the order of their priority dates without regard to State lines, first provide for the satisfaction in full of all rights of the Chemehuevi Indian

Reservation, Cocopah Indian Reservation, Fort Yuma Indian Reservation, Colorado River Indian Reservation, and the Fort Mojave Indian Reservation as set forth in Art. II(D)(1)-(5) of said Decree, provided that the quantities fixed in paragraphs (1) through (5) of Art. II(D) of said Decree shall continue to be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined. Additional present perfected rights so adjudicated by such adjustment shall be in annual quantities not to exceed the quantities of mainstream water necessary to supply the consumptive use required for irrigation of the practicably irrigable acres which are included within any area determined to be within a reservation by such final determination of a boundary and for the satisfaction of related uses. The quantities of diversions are to be computed by determining net practicably irrigable acres within each additional area using the methods set forth by the Special Master in this case in his Report to this Court dated December 5, 1960, and by applying the unit diversion quantities thereto, as listed below:

Indian Reservation	Unit Diversion Quantity Acre-Feet Per Irrigable Acre
Cocopah	6.37
Colorado River	6.67
Chemehuevi	5.97
Ft. Mojave	6.46
Ft. Yuma	6.67

The foregoing reference to a quantity of water necessary to supply consumptive use required for irrigation, and as that provision is included within paragraphs (1) through (5) of Art. II(D) of said Decree, shall constitute the means of determining quantity of adjudicated water rights but shall not constitute a restriction of the usage of them to irrigation or other agricultural application. If all or part of the adjudicated water rights of any of the five Indian Reservations is used other than for irrigation or other agricultural application, the total consumptive use, as that term is defined in Art. I(A) of said Decree, for said Reservation shall not exceed the consumptive use that would have resulted if the diversions listed in subparagraph (i) of paragraphs (1) through (5) of Art. II(D) of said Decree and the equivalent portions of any supplement thereto had been used for irrigation of the number of acres specified for that Reservation in said paragraphs and supplement and for the satisfaction of related uses. Effect shall be given to this paragraph notwithstanding the priority dates of the present perfected rights as listed below. However, nothing in this paragraph (5) shall affect the order in which such rights listed below as "MISCELLANEOUS PRESENT PERFECTED RIGHTS" (numbered 7-21 and 29-80 below) shall be satisfied. Furthermore, nothing in this paragraph shall be construed to determine the order of satisfying any other Indian water rights claims not herein specified.

Part I. - ARIZONA

A. Federal Establishments' Present Perfected Rights

The Federal establishments named in Art. II, subdivision (D), paragraphs (2), (4), and (5) of the Decree entered March 9, 1964, in this case, such rights having been decreed in Art. II:

Defined Area of Land	(acre-feet)[19]	Acres[19]	Priority Date
1) Cocopah Indian Reservation	2,744	431	Sept. 27, 1917
2) Colorado River Indian Reservation	358,400	53,768	Mar. 3, 1865
	252,016	37,808	Nov. 22, 1873
	51,986	7,799	Nov. 16, 1874
3) Fort Mojave Indian Reservation	27,969	4,327	Sept. 18, 1890
	68,447	10,589	Feb. 2, 1911

B. Water Projects Present Perfected Rights

(4) *The Valley Division, Yuma Project* in annual quantities not to exceed (i) 254,200 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 43,562 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901.

(5) *The Yuma Auxiliary Project, Unit B* in annual quantities not to exceed (i) 6,800 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,225 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of July 8, 1905.

[19]The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for satisfaction of related uses, whichever of (i) or (ii) is less.

(6) *The North Gila Valley Unit, Yuma Mesa Division, Gila Project* in annual quantities not to exceed (i) 24,500 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 4,030 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of July 8, 1905.

C. Miscellaneous Present Perfected Rights

1. The following miscellaneous present perfected rights in Arizona in annual quantities of water not to exceed the listed acre-feet of diversion from the mainstream to supply the consumptive use required for irrigation and the satisfaction of related uses within the boundaries of the land described and with the priority dates listed:

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
7) 160 acres in Lots 21, 24, and 25, Sec.29 and Lots 15, 16, 17, and 18, and the SW1/4 of the SE1/4, Sec. 30 T.16S., R.22E., San Bernadino Base and Meridian, Yuma County, Arizona. (Powers)[20]	960	1915
8) Lots 11, 12, 13, 19, 20, 22 and S1/2 of SW1/4, Sec. 30, T.16S., R.22E., San Bernadino Base and Meridian, Yuma County, Arizona. (United States)[21]	1140	1915
9) 60 acres within Lot 2, Sec. 15 and Lots 1 and 2, Sec. 22, T.10N., R19W., G&SRBM. (Graham)[20]	360	1910
10) 180 acres within the N1/2 of the S1/2 and the S1/2 of the N1/2 of Sec. 13 and the SW1/4 of the NE1/4 of Sec. 14, T18N., R22W., G&SRBM. (Hulet)[20]	1050	1902
11)45 acres within the NE1/4 of the SW1/4, the SW1/4 of the SW1/4 and the SE1/4 of the SW1/4 of Sec. 11, T18N., R.22W., G&SRBM. 80 acres within the N1/2 of the SW1/4 of Sec. 11, T.18N., R.22W., G&SRBM. 10 acres within the NW1/4 of the NE1/4 of the NE1/4 of Sec. 15, T.18N., R.22W., G&SRBM. 40 acres within the SE1/4 of the SE1/4 of Sec. 15, T.18N., R.22W., G&SRBM. (Hurschler)[20]	1050	1902
12) 40 acres within Sec. 13, T.17N., R.22W., G&SRBM. (Miller)[20]	240	1902

[20]The name in parentheses following the description of the Defined Area of Land are used for identification of present perfected rights only; the name used is the first name appearing as the Claimants identified with a parcel in Arizona s 1967 list submitted to this Court.

[21]Included as part of the Power s claim in Arizona s 1967 list submitted to this court. Subsequently, the United States and Powers agreed to a Stipulation of Settlement on land ownership whereby title to this property was quieted in favor of the United States.

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
13) 120 acres within Sec. 27, T.18N., R.21W., G&SRBM. 15 acres within the NW1/4 of the NW1/4, Sec, 23, T.18N., R.22W., G&SRBM. (McKellips and Granite Reef Farms)[22]	810	1902
14) 180 acres within the NW1/4 of the NE1/4, the SW1/4 of the NE1/4, the NE1/4 of the SW1/4, the NW1/4 of the SE1/4, the NE1/4 of the SE1/4, the SW1/4 of the SE1/4, and the SE1/4 of the SE1/4, Sec. 31, T.18N., R.21W., G&SRBM. (Sherill & Lafollette)[22]	1080	1902
15) 53.89 acres as follows: Beginning at a point 995.1 feet easterly of the NW corner of the NE1/4 of Sec. 10, T.8S., R.22W., Gila and Salt River Base and Meridian; on the norhterly boundary of the said NE1/4, which is the true point of beginning, then in a southerly direction to a point on the southerly boundary of the said NE1/4 which is 991.2 feet E. of the SW corner of said NE1/4 thence easterly along the S. line of the NE1/4, a distance of 807.3 feet to a point, thence N. 0"7' W., 768.8 feet to a point, thence E. 124.0 feet to a point, thence northerly 0"14' W., 1,067.6 feet to a point, thence E. 130 feet to a point, thence northerly 0"20' W., 405.2 feet to a point, thence northerly 63"10' W., 506.0 feet to a point, thence norhterly 90"15' W., 562.9 feet to a point on the northerly boundary of the said NE1/4, thence easterly along the said northerly boundary of the said NE1/4, 116.6 feet to the true point of beginning containing 53.89 acres. All as more particularly described and set forth in that survey executed by Thomas A. Yowell, Land Surveyor on June 24, 1969. (Molina)[22]	318	1928
16) 60 acres within the NW1/4 of the NW1/4 and the north half of the SW1/4 of the NW1/4 of Sec. 14, T.8S., R.22W., G&SRBM. (Sturges)[22]	780	1925
17) 120 acres within the N1/2 NE1/4, NE1/4 NW1/4, Section 23, T.18N., R.22W., G&SRBM. (Zozoya)[22]	720	1912
18) 40 acres in the W1/2 of the NE1/4 of Section 30, and 60 acres in the W1/2 of the SE1/4 of Section 30, and 60 in the E1/2 of the NW1/4 of Section 31, comprising a total of 160 acres all in Township 18 North, Range 22 West of the G&SRBM. (Swan)[22]	960	1902
19) 7 acres in the East 300 feet of the W1/2 of Lot 1 (Lot 1, being the		

[22]The names in parentheses following the description of the Defined Area of Land are the names of claimants, added since the 1967 list, upon whose water use these present perfected rights are predicated.

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
SE1/4 SE1/4, 40 acres more or less), Section 28, Township 16 South, Range 22 East, San Bernardino Meridian, lying North of U.S. Bureau of Reclamation levee right of way. EXCEPT that portion conveyed to the United States of America by instrument recorded in Docket 417, page 150 EXCEPTING any portion of the East 300 feet of the W1/2 of Lot 1 within the natural bed of the Colorado River below the line of ordinary high water and also EXCEPTING any artificial accretions westward of said line of ordinary high water, all of which comprises approximately seven (7) acres. (Milton and Jean Phillips)[2]	42	1900
20) City of Parker[20]	630	400	1905
21) City of Yuma[20]	2,333	1,478	1893

Part II. - California

A. Federal Establishments Present Perfected Rights

The federal establishments named in Art. II, subdivision (D), paragraphs (1), (3), (4), and (5) of the decree entered March 9, 1964, in this case such rights having been decreed by Art. II:

Defined Area of Land	Annual Diversions[23] (acre-feet)	Net Acres[23]	Priority Date
22) Chemehuevi Indian Reservation	11,340	1,900	Feb. 2, 1907
23) Yuma Indian Reservation	51,616	7,743	Jan. 9, 1884
24) Colorado River Indian Reservation	10,745	1,612	Nov. 22, 1873
	40,241	6,037	Nov. 16, 1874
	3,760	564	May 15, 1876
25) Fort Mojave Indian Reservation	13,698	2,119	Sept. 18, 1890

B. Water Districts and Projects Present Perfected Rights

26) *The Palo Verde Irrigation District* in annual quantities not to exceed (i) 219,780 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 424,145 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1877.

27) *The Imperial Irrigation District* in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 33,604 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901.

28) The Reservation Division, Yuma Project, California (non-Indian portion) in annual quantities not to exceed (i) 38,270 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 6,294 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of July 8, 1905.

[23]The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for satisfaction of related uses, whichever of (i) or (ii) is less.

C. Miscellaneous Present Perfected Rights

1. The following miscellaneous present perfected rights in California in annual quantities of water not to exceed the listed number of acre-feet of diversions from the mainstream to supply the consumptive use required for irrigation and the satisfaction of related uses within the boundaries of the land described and with the priority dates listed:

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
29) 130 acres within Lots 1, 2, and 3, SE1/4 of NE1/4 of Section 27, T.16.S., R.22E., S.B.B. & M. (Wavers)[24]	780	1856
30) 40 acres within W1/2, W1/2 of E1/2 of Section 1, T.9N., R.22E., S.B.B. & M. (Stephenson)[24]	240	1923
31) 20 acres within Lots 1 and 2 Sec. 19, T.13S., R.23E., and Lots 2, 3, and 4 of Sec. 24, T.13S., R.22E., S.B.B. & M.(Mendivil)[24]	120	1893
32) 30 acres within NW1/4 of SE1/4, S1/2 of SE1/4, Sec 24, and NW1/4 of NE1/4, Sec. 25, all in T.9S., R.21E., S.B.B. & M. (Grannis)[24]	180	1928
33) 25 acres within Lot 6, Sec. 5;and Lots 1 and 2, SW1/4 of NE1/4, and NE1/4 of SE1/4 of Sec. 8, and Lots 1 & 2 of Sec. 9, all in T.13S., R.22E., S.B.B. & M. (Morgan)[24]	150	1913
34) 18 acres within E1/2 of NW1/4 and W1/2 of NE1/4 of Sec. 14, T.10S., R.21E., S.B.B. & M. (Milpitas)[24]	108	1918
35) 10 acres within N1/2 of NE1/4, SE1/4 of NE1/4, and NE1/4 of SE1/4, Sec. 30, T.9N., R.23E., S.B.B. & M. (Simons)[24]	60	1889
36) 16 acres within E1/2 of NW1/4 and N1/2 of SW1/4, Sec. 12, T.9N., R.22E., S.B.B. & M. (Colorado River Sportsman League)[24]	96	1921
37) 11.5 acres within E1/2 of NW1/4, Sec. 1, T.10S., R.21E., S.B.B. & M. (Milpitas)[24]	69	1914
38) 11 acres within S1/2 of SW1/4, Sec. 12, T.9N., R.22E., S.B.B. & M. (Andrade)[24]	66	1921
39) 6 acres within Lots 2, 3, and 7 and NE1/4 of SW1/4, Sec. 19, T.9N., R.23E., S.B.B. & M. (Reynolds)[24]	36	1904

[24]The name in parentheses following the description of the Defined Area of Land are used for identification of present perfected rights only; the name used is the first name appearing as the claimant identified with a parcel in California s 1967 list submitted to this Court.

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
40) 10 acres within N1/2 of NE1/4, SE1/4 of NE1/4 and NE1/4 of SE1/4, Sec. 24, T.9N., R.22E., S.B.B.&M. (Cooper)[24]	60	1905
41) 20 acres within SW1/4 of SW1/4 (Lot 8), Sec. 19 T.9N., R.23E., S.B.B.&M. (Chagnon)[25]	120	1925
42) 20 acres within NE1/4 of SW1/4, N1/2 of SE1/4, SE1/4 of SE1/4, Sec. 14, T.9S., R.21E., S.B.B.&M. (Lawrence)[25]	120	1915

2. The following miscellaneous present perfected rights in California in annual quantities not to exceed the listed number of acre-feet of (i) diversions from the mainstream of (ii) the quantity of mainstream water necessary to supply the consumptive use, whichever of (i) or (ii) is less, for domestic, municipal, and industrial purposes within the boundaries of the land described and with the priority dates listed:

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
43) City of Needles[24]	1,500	950	1855
44) Portions of Secs. 5, 6, 7, and 8 T.7N., R.24E.,: Sec. 1, T.7N., R.23E.,: Secs. 4, 5, 9, 10, 15, 22, 23, 25, 26, 35, & 36, T.8N., R.23E.,: Secs. 19, 29, 30, 32, & 33, T.9N., R.23E., S.B.B.&M. (Atchison, Topeka and Santa Fe Railway Co.)[24]	1,260	273	1896
45) Lots 1, 2, 3, 4, 5, & SW1/4 NW1/4 of Sec. 5, T.13S., R.22E., S.B.B.&M. (Conger)[25]	1.0	0.6	1921
46) Lots 1, 2, 3, 4 of Sec. 32, T.11S., R.22E., S.B.B.&M. (G. Draper)[25]	1.0	0.6	1923
47) Lots 1, 2, 3, 4 and SE1/4 SW1/4 of Sec. 20, T.11S., R.22E., S.B.B.&M. (McDonough)[25]	1.0	0.6	1919
48) SW1/4 of Sec. 25, T.8S., R.22E., S.B.B.&M. (Faubion)[25]	1.0	0.6	1925
49) W1/2 NW1/4 of Sec. 12, T.9N., R.22E.,			

[25]The names in parentheses following the description of the Defined Area of Land are the names of the homesteaders upon whose water use these present perfected rights, added since the 1967 list submitted to this Court, are predicated.

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
S.B.B.&M. (Dudley)[25]	1.0	0.6	1922
50) N1/2 SE1/4 and Lots 1 and 2 of Sec. 13, T.8S., R.22E., S.B.B.&M. (Douglas)[25]	1.0	0.6	1916
51) N1/2 SW1/4, NW1/4 SE1/4, Lots 6 and , Sec. 5, T.9S., R.22E., S.B.B.&M. (Beauchamp)[25]	1.0	0.6	1924
52) NE1/4 SE1/4, SE1/4 NE1/4, Lot 1, Sec. 26, T.8S., R.22E., S.B.B.&M. (Clark)[25]	1.0	0.6	1916
53) N1/2 SW1/4, NW1/4 SE1/4, SW1/4 NE1/4, Sec. 13, T.9S., R.21E., S.B.B.&M. (Lawrence)[25]	1.0	0.6	1915
54) N1/2 NE1/4, E1/2 NW1/4, Sec. 13, T.9S., R.21E., S.B.B.&M. (J. Graham)[25]	1.0	0.6	1914
55) SE1/4, Sec. 1, T.9S., R.21E., S.B.B.&M. (Geiger)[25]	1.0	0.6	1910
56) Fractional W1/2 of SW1/4 (Lot 6) Sec. 6, T.9S., R.22E., S.B.B.&M. (Schneider)[25]	1.0	0.6	1917
57) Lot 1, Sec. 15; Lots 1 & 2, Sec. 14; Lots 1 & 2, Sec. 23; all in T.13S., R.22E., S.B.B.&M. (Martinez)[25]	1.0	0.6	1895
58) NE1/4, Sec. 22, T.9S., R.21E., S.B.B.&M. (Earle)[25]	1.0	0.6	1925
59) NE1/4 SE1/4, Sec. 22, T.9S., R.21E., S.B.B.& M. (Diehl)[25]	1.0	0.6	1928
60) N1/2 NW1/4, N1/2 NE1/4, Sec. 23, T.9S., R.21E., S.B.B.&M. (Reid)[25]	1.0	0.6	1912
61) W1/2 SW1/4, Sec. 23, T.9S., R.21E., S.B.B.& M. (Graham)[25]	1.0	0.6	1916
62) S1/2 NW1/4, NE1/4 SW1/4, SW1/4 NE1/4, Sec. 23, T.9S., R.21E., S.B.B.&M. (Cate)[25]	1.0	0.6	1919
63) SE1/4 NE1/4, N SE1/4, SE1/4 SE1/4, Sec. 23, T.9S., R.21E., S.B.B.&M. (McGee)[25]	1.0	0.6	1924
64) SW1/4 SE1/4, SE1/4 SW1/4, Sec. 23, NE1/4 NW1/4, NW1/4 NE1/4, Sec. 26; all in T.9S., R.21E,			

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
S.B.B.&M. (Stallard)[25]	1.0	0.6	1924
65) W1/2 SE1/4, SE1/4 SE1/4, Sec. 26, T.9S., R.21E., S.B.B.&M. (Randolph)[25]	1.0	0.6	1926
66) E1/2 NE1/4, SW1/4 NE1/4, SE1/4 NW1/4, Sec. 26, T.9S., R.21E., S.B.B.&M. (Stallard)[25]	1.0	0.6	1928
67) S1/2 SW1/4, Sec. 13, N1/2 NW1/4, Sec. 24; all in T.9S., R.21E., S.B.B.&M. (Keefe)[25]	1.0	0.6	1926
68) SE1/4 NW1/4, NW1/4 SE1/4, Lots 2, 3, 4, Sec. 25, T.13S., R.23E., S.B.B.&M. (C. Ferguson)[25]	1.0	0.6	1903
69) Lots 4 & 7, Sec. 6; Lots 1 & 2, Sec. 7; all in T.14S., R.24E., S.B.B.&M. (W. Ferguson)[25]	1.0	0.6	1903
70) SW1/4 SE1/4, Lots 2, 3, and 4, Sec. 24, T.12S., R.21E., Lot 2, Sec. 19, T.12S., R.22E., S.B.B.&M. (Vaulin)[25]	1.0	0.6	1920
71) Lots 1, 2, 3 and 4, Sec. 25, T.12S., R.21E., S.B.B.&M. (Salisbury)[25]	1.0	0.6	1920
72) Lots 2, 3, SE1/4 SE1/4, Sec. 15, NE1/4 NE1/4, Sec. 22; all in T.13S., R.22E., S.B.B.&M. (Hadlock)[25]	1.0	0.6	1924
73) SW1/4 NE1/4, SE1/4 NW1/4 and Lots 7 & 8, Sec. 6, T.9S., R.22E., S.B.B.&M. (Streeter)[25]	1.0	0.6	1903
74) Lot 4, Sec. 5; Lots 1 & 2, Sec. 7; Lots 1 & 2, Sec. 8; Lot 1, Sec. 18; all in T.12S., R.22E., S.B.B.&M. (J. Draper)[25]	1.0	0.6	1903
75) SW1/4 NW1/4, Sec. 5; SE1/4 NE1/4 and Lot 9, Sec. 6; all in T.9S., R.22E., S.B.B.&M. (Fitz)[25]	1.0	0.6	1912
76) NW1/4 NE1/4, Sec. 26; Lots 2 & 3, W1/2 SE1/4, Sec. 23, all in T.8S., R.22E.,S.B.B.&M. (Williams)[25]	1.0	0.6	1909
77) Lots 1, 2, 3, 4, & 5, Sec. 25, T.8S., R.22E., S.B.B.&M. (Estrada)[25]	1.0	0.6	1928
78) S1/2 NW1/4, Lot 1, frac. NE1/4 SW1/4, Sec. 25, T.9S., R.21E., S.B.B.&M. (Whittle)[25]	1.0	0.6	1925

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
79) N1/2 NW1/4, Sec. 25; S1/2 SW1/4, Sec. 24; all in T9S., R.21E., S.B.B.&M. (Corington)[25]	1.0	0.6	1928
80) S1/2 NW1/2, N1/2 SW1/4, Sec. 24, T.9S., R.21E., S.B.B.&M. (Tolliver)[25]	1.0	0.6	1928

Part III: NEVADA

A. Federal Establishments' Present Perfected Rights

The federal establishments named in Art. II, subdivision (D), paragraphs (5) and (6) of the Decree entered on March 9, 1964, in this case, such rights having been decreed by Art. II:

Defined Area of Land	Annual Diversions (acre-feet)	Net Acres	Priority Date
81) Fort Mojave Indian Reservation	12,534[26]	1,939[26]	Sept. 18,1890
82) Lake Mead National Recreation Area (The Overton Area of Lake Mead N.R.A. provided in Executive Order 5105)	500	300[27]	May 3, 1929[28]

[26]The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for satisfaction of related uses, whichever of (i) or (ii) is less.

[27]Refers to acre-feet of annual consumptive use, not to net acres.

[28]Article II (D) (6) of said Decree specifies a priority date of March 3, 1929. Executive Order 5105 is dated May 3, 1929 (see C. F. R. 1964 Cumulative Pocket Supplement, p.276, and the Findings of Fact and Conclusions of Law of the Special Master's Report in this case, pp. 294-295).

Conclusion

It is ordered that Judge Elbert P. Tuttle be appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings, and with authority to summon witnesses, issue subpoenas, and take such evidence as may be introduced and such as he may deem necessary to call for. The Master is directed to submit such reports as he may deem appropriate.

The Master shall be allowed his actual expenses. The allowances to him, the compensation paid to his technical, stenographic, and clerical assistants, the cost of printing his report, and all other proper expenses shall be charged against and borne by the parties in such proportion as the Court may hereafter direct.

It is further ordered that if the position of Special Master in this case becomes vacant during a recess of the Court, THE CHIEF JUSTICE shall have authority to make a new designation which shall have the same effect as if originally made by the Court.

It is further ordered that the motion of Fort Mojave Indian Tribe et al. for leave to intervene, insofar as it seeks intervention to oppose entry of the supplemental decree, is denied. In all other respects, this motion and the motion of Colorado River Indian Tribes et al. for leave to intervene are referred to the Special Master.

Mr. Justice MARSHALL took no part in the consideration or decision of this case.
[Source: Updating the Hoover Dam Documents 1978, Appendix X, pgs.X-66-X-70]

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Chapter 13 - Arizona v. California, Second Supplemental Decree, April 16, 1984

State OF ARIZONA, Plaintiff, v State
of CALIFORNIA et al. No. 8 Orig.

Former Decision, 456 U.S. 912, 102 S.Ct. 1764; 459 U.S. 811, 103 S.Ct. 36; 459 U.S. 940, 103 S.Ct. 249; 459 U.S. 1012, 103 S.Ct. 368; 460 U.S. 605, 103 S.Ct. 1382; 462 U.S. 1146, 103 S.Ct. 3131; 464 U.S. 888, 104 S.Ct 227.

Preface

On exceptions to Special Master's Report and Recommended Decree.
April 16, 1984. SECOND SUPPLEMENTAL DECREE.
Decree
The Court having, on March 30, 1983, rendered its decision on the several Exceptions to the Final Report of the Special Master herein, approving the recommendation that the Fort Mojave Indian Tribe, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Quechan Indian Tribe, and the Cocopah Indian Tribe be permitted to intervene, approving some of his further recommendations and disapproving others, all as specified in this Court's opinion, 460 U.S. 605, 103 S.Ct. 1382, 75 L.Ed.2d 318 (1983), the following supplemental decree is now entered to implement the decision of March 30, 1983.

Decree

IT IS ORDERED, ADJUDGED, AND DECREED:

A. Paragraphs (2) and (5) of Article II(D) of the Decree in this case entered on March 9, 1964 (376 U.S. 340, 344-345, 84 S.Ct. 755, 757-758, 11 L.Ed.2d 757), are hereby amended to read as follows:

(2) The Cocopah Indian Reservation in annual quantities not to exceed (i) 9,707 acre-feet of diversions from the mainstream or (ii) the quantity of water necessary to supply the consumptive use required for irrigation of 1,524 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of September 27, 1917, for lands reserved by the Executive Order of said date; June 24, 1974, for lands reserved by the Act of June 24, 1974 (88 Stat. 266, 269);

(5) The Fort Mojave Indian Reservation in annual quantities not to exceed (i) 129,767 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 20,076 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of September 19, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date; provided that the quantities fixed in this paragraph, and in paragraphs 1, 2, 3, and 4 shall be subject to appropriate adjustments by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined.

B. Paragraph I(A) of the Decree of January 9, 1979 (439 U.S. 419, 423, 99 S.Ct. 995, 996, 58 L.Ed.2d 627) is hereby amended to read as follows:

Table I: ARIZONA

A. Federal Establishments' Present Perfected Rights

The federal establishments named in Art. II, subdivision (D), paragraphs (2), (4), and (5) of the Decree entered March 9, 1964, in this case:

Defined Area of Land	Annual Diversions (acre-feet)*	Net Acres*	Priority Date
1) Cocopah Indian Reservation	7,681	1,205	Sept. 27, 1917
2) Colorado River Indian Reservation	358,400	53,768	March 3, 1865
	252,016	37,808	Nov. 22, 1873
	51,986	7,799	Nov. 16, 1874
3) Fort Mojave Indian Reservation	27,969	4,327	Sept. 18, 1890
	75,566	11,691	Feb. 2, 1911

* The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for satisfaction of related uses, whichever of (i) or (ii) is less.

C. In addition to the mainstream diversion rights in favor of the Indian Reservations specified in Paragraph I(A) of the Decree of January 9, 1979, as amended by Paragraph B of this decree, a mainstream diversion right of 2,026 acre-feet for the Cocopah Reservation shall be charged against the State of Arizona with a priority date of June 24, 1974.

D. Except as otherwise provided herein, the Decree entered on March 9, 1964, and the Supplemental Decree entered on January 9, 1979, shall remain in full force and effect.

E. The allocation of costs previously made by the Special Master is approved and no further costs shall be taxed in this Court, absent further proceedings after entry of this Decree.

F. The Special Master appointed by the Court is discharged with the thanks of the Court.

G. The Court shall retain jurisdiction herein to order such further proceedings and enter such supplemental decree as may be deemed appropriate.

Justice MARSHALL took no part in the consideration or decision of this matter.
[Source: Supreme Court of the United States]

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Chapter 14 - Colorado River Basin Project

UNITED STATES CODE ANNOTATED
Title 43 Public Lands, Chapter 32

Subchapter I-OBJECTIVES

§1501. Congressional declaration of purpose and policy

(a) It is the object of this chapter to provide a program for the further comprehensive development of the water resources of the Colorado River Basin and for the provision of additional and adequate water supplies for use in the Upper as well as in the lower Colorado River Basin. This program is declared to be for the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and the generation and sale of electrical power as an incident of the foregoing purposes.

(b) It is the policy of the Congress that the Secretary of the Interior (hereinafter referred to as the "Secretary") shall continue to develop, after consultation with affected States and appropriate Federal agencies, a regional water plan, consistent with the provisions of this chapter and with future authorizations, to serve as the framework under which projects in the Colorado River Basin may be coordinated and constructed with proper timing to the end that an adequate supply of water may be made available for such projects, whether heretofore, herein, or hereafter authorized.

(Pub.L. 90-537, Title I, 102, Sept. 30, 1968, 82 Stat. 886)

Historical Note
References in Text. This chapter, referred to in text, was in the original "this Act", meaning Pub.L. 90-537, Sept. 30, 1968, 82 Stat. 885, as amended, known as the Colorado River Basin Project Act, which enacted this chapter and sections 616aa-1, 620a-1, 620a-2, 620c-1, and 620d-1 of this title, amended sections 616hh, 620, and 620a of this title, and enacted provisions set out as notes under sections 620, 620k, and 1501 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables volume.
Short Title. Section 101 of Pub.L. 90-537 provided: "That this Act [enacting this chapter and sections 616aa-1, 620a-1, 620a-2, 620c-1, and 620d-1 of this title, amending sections 616hh, 620, and 620a of this title, and enacting provisions set out as notes under this section and sections 620 and 620k of this title] may be cited as the 'Colorado River Basin Project Act'."
Legislative History. For legislative history and purpose of Pub.L. 90-537, see 1968 U.S. Code Cong. and Adm.News, p. 3666.

Subchapter II-INVESTIGATIONS AND PLANNING

Cross References
Allocation of costs for lower Colorado River Basin projects, see section 1541 of this title.

§1511. Reconnaissance investigations by Secretary of the Interior; reports; 10-year moratorium on water importation studies

Pursuant to the authority set out in the Reclamation Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto, and the provisions of the Water Resources Planning Act of July 22, 1965, 79 Stat. 244, as amended [42 U.S.C.A. 1962 et. seq.], with respect to the coordination of studies, investigations and assessments, the Secretary of the Interior shall conduct full and complete reconnaissance investigations for the purpose of developing a general plan to meet the future water needs of the Western United States. Such investigations shall include the long-range water supply available and the long-range water requirements in each water resource region of the Western United States. Progress reports in connection with these investigations shall be submitted to the President, the National Water Commission (while it is in existence), the Water Resources Council, and to the Congress every two years. The first of such reports shall be submitted on or before June 30, 1971, and a final reconnaissance report shall be submitted not later than June 30, 1977: *Provided,* That for a period of ten years from November 2, 1978, any Federal official shall not undertake reconnaissance studies of any plan for the importation of water into the Colorado River Basin from any other natural river drainage basin lying outside the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are in the natural drainage basin of the Colorado River. (Pub.L. 90-537, Title II, 201, Sept. 30, 1968, 82 Stat. 886; Pub.L. 95-578, 10, Nov. 2, 1978, 92 Stat. 2472; Pub.L. 96-375, 10, Oct. 3, 1980, 94 Stat. 1507.)

Historical Note
References in Text. The Reclamation Act of June 17, 1902, 32 Stat. 388, referred to in text, is classified generally to chapter 12 (section 371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables volume.
The Water Resources Planning Act, as amended, referred to in text, is Pub.L. 89-80, July 22, 1965, 79 Stat. 244, as amended, which is classified generally to chapter 19B (section 1962 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1962 of Title 42 and Tables volume.
1980 Amendment. Pub.L. 96-375 substituted "any Federal official" for "the Secretary" in the proviso.
1978 Amendment. Pub.L. 95-578 substituted "November 2, 1978" for "September 30, 1968".
Termination of National Water Commission. The National Water Commission, established by Pub.L. 90-515, Sept. 26, 1968, 82 Stat. 868, terminated on Sept. 26, 1973.
Legislative History. For legislative history and purpose of Pub.L. 90-537, see 1968 U.S. Code Cong. and Adm.News, p. 3666. See, also, Pub.L. 95-578, 1978 U.S. Code Cong. and Adm.News, p. 5542.

Cross References
Importation of water from sources outside river system, protection of exporting area, see section 1513 of this title.
Mexican Water Treaty, obligation of water augmentation project to satisfy its requirements, see section 1512 of this title.
Repayment of costs for units below Lee Ferry from lower Colorado River Basin Development Fund, see section 1543 of this title.

§1511a. Cooperation and participation by Secretary of Army with Federal, State, and local agencies

The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate and participate with concerned Federal, State, and local agencies in preparing the general plan for the development of the water resources of the western United States authorized by the Colorado River Basin Project Act [43 U.S.C.A. 1501 et seq.].
(Pub.L. 91-611, Title II, 203, Dec. 31, 1970, 84 Stat. 1828.)

Historical Note
References in Text. The Colorado River Basin Project Act, referred to in text, is Pub.L. 90-537, Sept. 30, 1968, 82 Stat. 885, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables volume.
Codification. Section was not enacted as part of the Colorado River Basin project Act which comprises this chapter.

§1512.Mexican Water Treaty

The Congress declares that the satisfaction of the requirements of the Mexican Water Treaty from the Colorado River constitutes a national obligation, which shall be the first obligation of any water augmentation project planned pursuant to section 1511 of this title and authorized by the Congress. Accordingly, the States of the Upper Division (Colorado, New Mexico, Utah, and Wyoming) and the States of the Lower Division (Arizona, California, and Nevada) shall be relieved from all obligations which may have been imposed upon them by article III(c) of the Colorado River Compact so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to satisfy the requirements of the Mexican Water Treaty together with any losses of water associated with the performance of that treaty: *Provided*, That the satisfaction of the requirements of the Mexican Water Treaty (Treaty Series 994, 59 Stat. 1219), shall be from the waters of the Colorado River pursuant to the treaties, laws, and compacts presently relating thereto, until such time as a feasibility plan showing the most economical means of augmenting the water supply available in the Colorado River below Lee Ferry by two and one-half million acre-feet shall be authorized by the Congress and is in operation as provided in this chapter.
(Pub.L. 90-537, Title II, 202, Sept. 30, 1968, 82 Stat. 887)

Cross References
Measures necessary to replace certain waters resulting from desalting plants undertaken independently from national obligation under this section, see section 1571 of this title.
Release of water from Lake Powell to supply deficiency described in Colorado River Compact unnecessary if proclamation issued under this section, see section 1552 of this title.

§1513. Importation of water; protection of exporting areas

(a) In the event that the Secretary shall, pursuant to section 1511 of this title, plan works to import water into the Colorado River system from sources outside the natural drainage areas of the system, he shall make provision for adequate and equitable protection of the interests of the States and areas of origin, including assistance from funds specified in this chapter, to the end that water supplies may be available for use in such States and areas of origin adequate to satisfy their ultimate requirements at prices to users not adversely affected by the exportation of water to the Colorado River system.

(b) All requirements, present or future, for water within any State lying wholly or in part within the drainage area of any river basin from which water is exported by works planned pursuant to this chapter shall have a priority of right in perpetuity to the use of the waters of that river basin, for all purposes, as against the uses of the water delivered by means of such exportation works, unless otherwise provided by interstate agreement.

§1514. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are required to carry out the purposes of this subchapter.
(Pub.L. 90-537, Title II, 204, Sept. 30, 1968, 82 Stat. 887.)

Subchapter III-AUTHORIZED UNITS; PROTECTION OF EXISTING USES

Cross References
Eligibility to receive irrigation water for ten-year period upon terms and conditions established pursuant to provisions of reclamation law, see section 390rr of this title.
Fish and wildlife conservation and recreational opportunity development, see section 1527 of this title.
Lower Colorado River Basin Development Fund, appropriations and revenues credited to and units subject to return of costs from general funds, see section 1543 of this title.

§1521. Central Arizona Project

(a) Construction and operation; Granite-Reef aqueduct and pumping plants; Orme Dam and Reservoir; Buttes Dam and Reservoir; Hooker Dam and Reservoir; Charleston Dam and Reservoir; Tucson aqueducts and pumping plants; Salt-Gila aqueducts; related and appurtenant works

For the purposes of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central Arizona Project, consisting of the following

principal works: (1) a system of main conduits and canals, including a main canal and pumping plants (Granite-Reef aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to Orme Dam or suitable alternative, which system may have a capacity of 3,000 cubic feet per second or whatever lesser capacity is found to be feasible: *Provided*, That any capacity in the aqueduct in excess of 2,500 cubic feet per second shall be utilized for the conveyance of Colorado River water only when Lake Powell is full or releases of water are made from Lake Powell to prevent the reservoir from exceeding elevation 3,700 feet above mean sea level or when releases are made pursuant to the proviso in section 1552(a)(3) of this title: *Provided further*, That the costs of providing any capacity in excess of 2,500 cubic feet per second shall be repaid by those funds available to Arizona pursuant to the provision of section 1543(f) of this title, or by funds from sources other than the development fund;

(2) Orme Dam and Reservoir and power-pumping plant or suitable alternative; (3) Buttes Dam and Reservoir, which shall be so operated as not to prejudice the rights of any user in and to the waters of the Gila River as those rights are set forth in the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59); (4) Hooker Dam and Reservoir or suitable alternative, which shall be constructed in such a manner as to give effect to the provisions of subsection (f) of section 1524 of this title; (5) Charleston Dam and Reservoir; (6) Tucson aqueducts and pumping plants; (7) Salt-Gila aqueducts; (8) related canals, regulating facilities, hydroelectric powerplants, and electrical transmission facilities required for the operation of said principal works; (9) related water distribution and drainage works; and (10) appurtenant works.

(b) Limitation on water diversions in years of insufficient main stream Colorado River water

Article II (B)(3) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340) shall be so administered that in any year in which, as determined by the Secretary, there is insufficient main stream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada, diversions from the main stream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works heretofore constructed, and by other existing Federal reservations in that State, of four million four hundred thousand acre-feet of mainstream water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of this subsection. This subsection shall not affect the relative priorities, among themselves, of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project, or amend any provisions of said decree.

(c) Augmentation of water supply of the Colorado River system

The limitation stated in subsection (b) of this section shall not apply so long as the Secretary

shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient mainstream water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada.
(Pub.L. 90-537, Title III, 301, Sept. 30, 1968, 82 Stat. 887.)

§1522. Orme Dam and Reservoir

(a) Acquisition of lands of the Salt River Pima-Maricopa Indian Community and the Fort McDowell-Apache Indian Community; relocation; eminent domain
The Secretary shall designate the lands of the Salt River Pima-Maricopa Indian Community, Arizona, and the Fort McDowell-Apache Indian Community, Arizona, or interests therein, and any allotted lands or interests therein within said communities which he determines are necessary for use and occupancy by the United States for the construction, operation, and maintenance of Orme Dam and Reservoir, or alternative. The Secretary shall offer to pay the fair market value of the lands and interests designated, inclusive of improvements. In addition, the Secretary shall offer to pay toward the cost of relocating or replacing such improvements not to exceed $500,000 in the aggregate, and the amount offered for the actual relocation or replacement of a residence shall not exceed the difference between the fair market value of the residence and $8,000. Each community and each affected allottee shall have six months in which to accept or reject the Secretary's offer. If the Secretary's offer is rejected, the United State may proceed to acquire the property interests involved through eminent domain proceedings in the United States District Court for the District of Arizona under 40 U.S.C.A., Sections 257 and 258a. Upon acceptance in writing of the Secretary's offer, or upon the filing of a declaration of taking in eminent domain proceedings, title to the lands or interests involved, and the right to possession thereof, shall vest in the United States. Upon a determination by the Secretary that all or any part of such lands or interests are no longer necessary for the purpose for which acquired, title to such lands or interests shall be restored to the appropriate community upon repayment to the Federal Government of the amounts paid by it for such lands.

(b) Rights of former owners to use or lease land
Title to any land or easement acquired pursuant to this section shall be subject to the right of the former owner to use or lease the land for purposes not inconsistent with the construction, operation, and maintenance of the project, as determined by, and under terms and conditions prescribed by, the Secretary. Such right shall include the right to extract and dispose of minerals. The determination of fair market value under subsection (a) of this section shall reflect the right to extract and dispose of minerals and all other uses permitted by this section.

Addition of land to Fort McDowell Indian Reservation:
In view of the fact that a substantial portion of the lands of the Fort McDowell Mojave-Apache Indian Community will be required for Orme Dam and Reservoir, or alternative, the Secretary shall, in addition to the compensation provided for in subsection (a) of this section, designate and add to the Fort McDowell Indian Reservation twenty-five hundred

acres of suitable lands in the vicinity of the reservation that are under the jurisdiction of the Department of the Interior in township 4 north, range 7 east; township 5 north, range 7 east; and township 3 north, range 7 east, Gila and Salt River base meridian, Arizona. Title to lands so added to the reservation shall be held by the United States in trust for the Fort McDowell Mojave-Apache Indian Community.

(d) Recreational facilities developed and operated by Indian communities along Orme Reservoir shoreline
Each community shall have a right, in accordance with plans approved by the Secretary, to develop and operate recreational facilities along the part of the shoreline of the Orme Reservoir located on or adjacent to its reservation, including land added to the Fort McDowell Reservation as provided in subsection (b) of this section, subject to rules and regulations prescribed by the Secretary governing the recreation development of the reservoir. Recreation development of the entire reservoir and federally owned lands under the jurisdiction of the Secretary adjacent thereto shall be in accordance with a master recreation plan approved by the Secretary. The members of each community shall have nonexclusive personal rights to hunt and fish on or in the reservoir without charge to the same extent they are now authorized to hunt and fish, but no community shall have the right to exclude others from the reservoir except by control of access through its reservation or any right to require payment by members of the public except for the use of community lands or facilities.

(e) Exemption of funds State and Federal income taxes
All funds paid pursuant to this section, and any per capita distribution thereof, shall be exempt from all forms of State and Federal income taxes.
(Pub.L. 90-537, Title III, 302, Sept. 30, 1968, 82 Stat. 888.)

Cross References
Fish and wildlife conservation and recreational opportunity development, see section 1527 of this title.

§1523. Power requirements of Central Arizona Project and augmentation of Lower Colorado River Basin Development Fund.

(a) Engineering and economic studies.
The Secretary is authorized and directed to continue to a conclusion appropriate engineering and economic studies and to recommend the most feasible plan for the construction and operation of hydroelectric generating and transmission facilities, the purchase of electrical energy, the purchase of entitlement to electrical plant capacity, or any combination thereof, including participation, operation, or construction by non-Federal entities, for the purpose of supplying the power requirements of the Central Arizona Project and augmenting the Lower Colorado River Basin Development Fund: *Provided,* That nothing in this section or in this chapter contained shall be construed to authorize the study or construction of any dams on the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam.

(b) Construction of thermal generating powerplants; agreements for acquisition by United States of portions of plant capacity.
If included as a part of the recommended plan, the Secretary may enter into agreements with non-Federal interests proposing to construct thermal generating powerplants whereby the United States shall acquire the right to such portions of their capacity, including delivery of power and energy over appurtenant transmission facilities to mutually agreed upon delivery points, as he determines is required in connection with the operation of the Central Arizona Project. When not required for the Central Arizona Project, the power and energy acquired by such agreements may be disposed of intermittently by the Secretary for other purposes at such prices as he may determine, including its marketing in conjunction with the sale of power and energy from Federal powerplants in the Colorado River system so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates. The agreements shall provide, among other things, that-
(1) the United States shall pay not more than that portion of the total construction cost, exclusive of interest during construction, of the powerplants, and of any switchyards and transmission facilities serving the United States, as is represented by the ratios of the respective capacities to be provided for the United States therein to the total capacities of such facilities. The Secretary shall make the Federal portion of such costs available to the non-Federal interests during the construction period, including the period of preparation of designs and specifications, in such installments as will facilitate a timely construction schedule, but no funds other than for preconstruction activities shall be made available by the Secretary until he determines that adequate contractual arrangements have been entered into between all the affected parties covering land, water, fuel supplies, power (its availability and use), rights -of-way, transmission facilities and all other necessary matters for the thermal generating powerplants;

(2) annual operation and maintenance costs shall be apportioned between the United States and the non-Federal interests on an equitable basis taking into account the ratios determined in accordance with the foregoing clause (1): *Provided, however,* That the United States shall share on the foregoing basis in the depreciation component of such costs only to the extent of provision for depreciation on replacements financed by the non-Federal interests;

(3) the United States shall be given appropriate credit for any interests in Federal lands administered by the Department of the Interior that are made available for the powerplants and appurtenances;

(4) costs to be borne by the United States under clauses (1) and (2) shall not include (a) interest and interest during construction, (b) financing charges, (c) franchise fees, and (d) such other costs as shall be specified in the agreement.

(c) Recommended plan; submission to Congress
No later than one year from September 30, 1968, the Secretary shall submit his recommended plan to the Congress. Except as authorized by subsection (b) of this section, such plan shall not become effective until approved by the Congress.

(d) Apportionment of water for Arizona plants diverted above Lee Ferry

If any thermal generating plant referred to in subsection (b) of this section is located in Arizona, and if it is served by water diverted from the drainage area of the Colorado River system above Lee Ferry, other provisions of existing law to the contrary notwithstanding, such consumptive use of water shall be a part of the fifty thousand acre-feet per annum apportioned to the State of Arizona by article III (a) of the Upper Colorado River Basin Compact (63 Stat. 31).
(Pub.L. 90-537, Title III, 303, Sept. 30, 1968, 82 Stat. 889).

Notes of Decisions
1. Construction with other laws
Section 485h of this title requiring that preference be given to certain public entities in governmental sales or leases of electric power or power privileges applied to federal sales of thermally generated electrical power under this section. Arizona Power Pooling Ass'n v. Morton, C.A.Ariz.1975, 527 F.2d 721, certiorari denied 96 S.Ct. 1506, 425 U.S. 911, 47 L.Ed.2d 761.
2. Injunction
District court did not abuse its discretion in refusing to issue preliminary injunction to require Secretary of Interior to sell excess power supplies generated pursuant to this chapter to cities where evidence showed that cities did not offer to buy federal power until approximately three years after government had contracted to sell power, even though one of cities sat on committee soliciting offers and was therefore aware of impending sale. City of Anaheim, Cal. v. Kleppe, C.A. Ariz. 1978, 590 F.2d 285.
3. Review
Decision of Secretary of the Interior not to offer preference to public entities in sales of electric power in connection with Central Arizona Project was reviewable under Administrative Procedure Act, section 551 et seq. and 701 et seq. of Title 5. Arizona Power Pooling Ass'n v. Morton, C.A.Ariz. 1975, 527 F.2d 721, certiorari denied 96 S.Ct. 1506, 425 U.S. 911, 47 L.Ed.2d 761.

§1524. Water furnished from Central Arizona Project

(a) Restriction on use of water for Irrigation
Unless and until otherwise provided by Congress, water from the Central Arizona Project shall not be made available directly or indirectly for the irrigation of lands not having a recent irrigation history as determined by the Secretary, except in the case of Indian lands, national wildlife refuges, and, with the approval of the Secretary, State-administered wildlife management areas.

(b) Contracts with municipal and industrial users

(1) Irrigation and municipal and industrial water supply under the Central Arizona Project within the State of Arizona may, in the event the Secretary determines that it is necessary to effect repayment, be pursuant to master contracts with organizations which have power to levy assessments against all taxable real property within their boundaries. The terms and conditions of contracts or other arrangements whereby each such organization makes water from the Central Arizona Project available to users within its boundaries shall be subject to the Secretary's approval, and the United States shall, if the Secretary determines such action is desirable to facilitate carrying out the provisions of this chapter, have the right to require that it be a party to such contracts or that contracts subsidiary to the master contracts be entered into between the United States and any user. The provisions of this clause (1) shall not apply to the supplying of water to an Indian tribe for use within the boundaries of an Indian reservation.

(2) Any obligation assumed pursuant to section 485h(d) of this title with respect to any project contract unit or irrigation block shall be repaid over a basic period of not more than fifty years; any water service provided pursuant to section 485h(e) of this title may be on the basis of delivery of water for a period of fifty years and for the delivery of such water at an identical price per acre-foot for water of the same class at the several points of delivery from the main canals and conduits and from such other points of delivery as the Secretary may designate; and long-term contracts relating to irrigation water supply shall provide that water made available thereunder may be made available by the Secretary for municipal or industrial purposes if and to the extent that such water is not required by the contractor for irrigation purposes.

(3) Contracts relating to municipal and industrial water supply under the Central Arizona Project may be made without regard to the limitations of the last sentence of section 485h(c) of this title; may provide for the delivery of such water at an identical price per acre-foot for water of the same class at the several points of delivery from the main canals and conduits; and may provide for repayment over a period of fifty years if made pursuant to clause (1) of said section and for the delivery of water over a period of fifty years if made pursuant to clause (2) thereof.

(c) Water conservation
Each contract under which water is provided under the Central Arizona Project shall require that (1) there be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by the irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the Untied States to the contractors shall be provided and maintained with linings adequate in his judgment to prevent excessive conveyance losses; and (3) neither the contractor nor the Secretary shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a contractor receiving water from the Central Arizona Project for any use outside said contractor's service area unless the Secretary and such contractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required. Such contracts shall be subordinate at all times to the satisfaction of all existing contracts between the Secretary and users in Arizona heretofore made pursuant to the Boulder Canyon Project Act (45 Stat. 1057) [43 U.S.C.A. 617 et. seq.].

(d) Water exchanges
The Secretary may require in any contract under which water is provided from the Central Arizona Project that the contractor agree to accept main stream water in exchange for or in replacement of existing supplies from sources other than the main stream. The Secretary shall so require in the case of users in Arizona who also use water from the Gila River system to the extent necessary to make available to users of water from the Gila River system in New Mexico additional quantities of water as provided in and under the conditions specified in subsection (f) of this section: *Provided*, That such exchanges and replacements shall be accomplished without economic injury or cost to such Arizona contractors.

(e) Water shortage priorities
In times of shortage or reduction of main stream Colorado River water for the Central Arizona Project, as determined by the Secretary, users which have yielded water from other sources in exchange for main stream water supplied by that project shall have a first priority to receive main stream water, as against other users supplied by that project which have not so yielded water from other sources, but only in quantities adequate to replace the water so yielded.

(f) New Mexico users; water exchange contracts

(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in New Mexico for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of ten consecutive years of eighteen thousand acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340). Such increased consumptive uses shall not begin until, and shall continue only so long as, delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this chapter, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose full consideration shall be given to any differences in the quality of the waters involved.

(2) The Secretary shall further offer to contract with water users in New Mexico for water from the Gila River, its tributaries, and underground water sources in amounts that will permit consumptive uses of water in New Mexico of not to exceed an annual average in any period of ten consecutive years of an additional thirty thousand acre-feet, including reservoir evaporation. Such further increases in consumptive use shall not begin until, and shall continue only so long as, works capable of augmenting the water supply of the Colorado River system have been completed and water sufficiently in excess of two million eight hundred thousand acre-feet per annum is available from the main stream of the Colorado River for consumptive use in Arizona to provide water for the exchanges herein authorized and provided. In determining the amount required for this purpose full consideration shall be given to any differences in the quality of the waters involved.

(3) All additional consumptive uses provided for in clauses (1) and (2) of this subsection shall be subject to all rights in New Mexico and Arizona as established by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59) and to all other rights existing on September 30, 1968, in New Mexico and Arizona to water from the Gila River, its tributaries, and underground water sources, and shall be junior thereto and shall be made only to the extent possible without economic injury or cost to the holders of such rights.
(Pub.L. 90-537, Title III, 304, Sept. 30, 1968, 82 Stat. 891.)

Historical Note
References in Text. This chapter, referred to in subsecs. (b)(1) and (f)(1), was in the original "this Act", meaning Pub.L. 90-537, Sept. 30, 1968, 82 Stat. 885, as amended, known as the Colorado River Basin Project Act, which enacted this chapter and sections 616aa-1, 620a-1, 620a-2, 620c-1, and 620d-1 of this title, amended sections 616hh, 620, and 620a of this title, and enacted provisions set out as notes under sections 620, 620k, and 1501 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables volume.
The Boulder Canyon Project Act, referred to in subsec. (c), is Act Dec. 21, 1928, c. 42, 45 Stat. 1057, as amended, which is classified generally to subchapter I (section 617 et seq.) of chapter 12A of this title. For complete classification of this Act to the Code, see section 617t of this title and Tables volume.
Codification. Subsec. (g) of this section, which restricted the use of water from the projects authorized by this chapter for the production of basic agricultural commodities on newly irrigated lands for a period of ten years from Sept. 30, 1968, was omitted.

Cross References
Hooker Dam and Reservoir constructed to give effect to provision of this section on consumptive use of water users in New Mexico, see section 1521 of this title.
Use of Lower Colorado River Basin Development Fund to reimburse water users in State of Arizona, see section 1543 of this title.

§1525. Cost of main stream water of the Colorado River

To the extent that the flow of the main stream of the Colorado River is augmented in order to make sufficient water available for release, as determined by the Secretary pursuant to article II (b)(1) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340), to satisfy annual consumptive use of two million eight hundred thousand acre-feet in Arizona, four million four hundred thousand acre-feet in California, and three hundred thousand acre-feet in Nevada, respectively, the Secretary shall make such water available to users of main stream water in those States at the same costs (to the extent that such costs can be made comparable through the nonreimbursable allocation to the replenishment of the deficiencies occasioned by satisfaction of the Mexican Treaty burden as herein provided and financial assistance from the development fund established by section 1543 of this title) and on the same terms as would be applicable if main stream water were available for release in the quantities required to supply such consumptive use.
(Pub.L. 90-537, Title III, 305, Sept. 30, 1968, 82 Stat. 893.)

§1526. Water salvage programs

The Secretary shall undertake programs for water salvage and ground water recovery along and adjacent to the main stream of the Colorado River. Such programs shall be consistent with maintenance of a reasonable degree of undisturbed habitat for fish and wildlife in the area, as determined by the Secretary.
(Pub.L. 90-537, Title III, 306, Sept. 30, 1968, 82 Stat. 893).

§1527. Fish and wildlife conservation and development

The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the project works authorized pursuant to this subchapter shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213) [16 U.S.C.A. 460*l*-12 et seq.], except as provided in section 1522 of this title.
(Pub.L. 90-537, Title III, 308, Sept. 30, 1968, 82 Stat. 893)

Historical Note
References in Text. The Federal Water Project Recreation Act, referred to in text, is Pub.L. 89-72, July 9, 1965, 79 Stat. 213, as amended, which is classified principally to part C (section 460*l*-12 et. seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*-12 of Title 16 and Tables volume.

§1528. Authorization of appropriations

(a) There is hereby authorized to be appropriated for construction of the Central Arizona Project, including prepayment for power generation and transmission facilities but exclusive of distribution and drainage facilities for non-Indian lands, $832,180,000 plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein and, in addition thereto, such sums as may be required for operation and maintenance of the project.

(b) There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering and cost indices applicable to the types of construction involved therein from September 30, 1968: *Provided*, That the Secretary shall enter into agreements with non-Federal interests to provide not less than 20 per centum of the total cost of such facilities during the construction of such facilities. Notwithstanding the provisions of section 1543 of this title, neither appropriations made pursuant to the authorization contained in this subsection nor revenues collected in connection with the operation of such facilities shall be credited to the Lower Colorado River Basin Development Fund and payments shall not be made from that fund to the general fund of the Treasury to return any part of the costs of construction, operation, and maintenance of such facilities.
(Pub.L. 90-537, Title III, 309, Sept. 30, 1968, 82 Stat. 893; Pub.L. 97-373, Dec. 20, 1982, 96 Stat. 1817.)

Historical Note
1982 Amendment. Subsec. (b). Pub.L. 97-373 substituted "There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering and cost indices applicable to the types of construction involved therein from September 30, 1968: *Provided*, That the Secretary shall enter into agreements with non-Federal interests to provide not less than 20 per centum of the total cost of such facilities during the construction of such facilities" for "There is also authorized to be appropriated $100,000,000 for construction of distribution and drainage facilities for non-Indian lands".
Legislative History. For legislative history and purpose of Pub.L. 90-537, see 1968 U.S. Code Cong. and Adm.News, p. 3666. See, also, Pub.L. 97-373, 1982 U.S. Code Cong. and Adm.News, p. 3432.

Subchapter IV-LOWER COLORADO RIVER BASIN DEVELOPMENT FUND

§1541. Allocation of costs; repayment

Upon completion of each lower basin unit of the project herein or hereafter authorized, or separate feature thereof, the Secretary shall allocate the total costs of constructing said unit or features to (1) commercial power, (2) irrigation, (3) municipal and industrial water supply, (4) flood control, (5) navigation, (6) water quality control, (7) recreation, (8) fish and wildlife, (9) the replenishment of the depletion of Colorado River flows available for use in the United States occasioned by performance of the Water Treaty of 1944 with the United Mexican States (Treaty Series 994; 59 Stat. 1219), and (10) any other purposes authorized under the Federal reclamation laws. Costs of construction, operation, and maintenance allocated to the replenishment of the depletion of Colorado River flows available for use in the United States occasioned by compliance with the Mexican Water Treaty (including losses in transit, evaporation from regulatory reservoirs, and regulatory losses at the Mexican boundary, incurred in the transportation, storage, and delivery of water in discharge of the obligations of that treaty) shall be nonreimbursable: *Provided*, That the nonreimbursable allocation shall be made on a pro rata basis to be determined by the ratio between the amount of water required to comply with the Mexican Water Treaty and the total amount of water by which the Colorado River is augmented pursuant to the investigations authorized by subchapter II of this chapter and any future Congressional authorization. The repayment of costs allocated to recreation and fish and wildlife enhancement shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213) [16 U.S.C.A. 460-12 et seq.]: *Provided*, That all of the separable and joint costs allocated to recreation and fish and wildlife enhancement as a part of the Dixie project, Utah, shall be nonreimbursable. Costs allocated to nonreimbursable purposes shall be nonreturnable under the provisions of this chapter.
(Pub.L. 90-537, Title IV, 401, Sept. 30, 1968, 82 Stat. 894.)

Historical Note
References in Text. The Federal reclamation laws, referred to in text, include the Act of June 17, 1902, c. 1093, 32 Stat. 388, popularly known as the Reclamation Act, and Act amendatory thereof and supplementary thereto, classified generally to chapter 12 (section 371 et. seq.) of this title. For complete classification of Act June 17, 1902, to the Code, see Short Title note set out under section 371 of this title and Tables volume.
The Federal Water Project Recreation Act, referred to in text, is Pub.L. 89-72, July 9, 1965, 79 Stat. 213, as amended, which is classified principally to part C (section 460*l*-12 et. seq.) of subchapter LXIX of chapter 1 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 460l-12 of Title 16 and Tables volume.

§1542. Repayment capability of Indian lands

The Secretary shall determine the repayment capability of Indian lands within, under, or served by any unit of the project. Construction costs allocated to irrigation of Indian lands (including provision of water for incidental domestic and stock water uses) and within the repayment capability of such lands shall be subject to section 386a of Title 25, and such costs that are beyond repayment capability of such lands shall be nonreimbursable.

(Pub.L. 90-537, Title IV, 402, Sept. 30, 1968, 82 Stat. 894.)

§1543. Lower Colorado River Basin Development Fund

(a) Establishment
There is hereby established a separate fund in the Treasury of the United States to be known as the Lower Colorado River Basin Development Fund (hereafter called the "development fund"), which shall remain available until expended as hereafter provided.

(b) Appropriations

(1) All appropriations made for the purpose of carrying out the provisions of subchapter III of this chapter shall be credited to the development fund as advances from the general fund of the Treasury, and shall be available for such purpose.

(2) Except as provided in section 1528(b) of this title, sums advanced by non-Federal entities for the purpose of carrying out the provisions of subchapter III of this chapter shall be credited to the development fund and shall be available without further appropriation for such purpose.

(c) Revenues credited to fund
There shall also be credited to the development fund -

(1) all revenues collected in connection with the operation of facilities authorized in subchapter III of this chapter in furtherance of the purposes of this chapter (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), until completion of repayment requirements of the Central Arizona project;

(2) any Federal revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis projects, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of those projects: *Provided, however,* That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 1521(a) of this title, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 41/2 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 21/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* That after the repayment period for said Central Arizona project, the equivalent of 21/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section: *Provided, however,* That the Secretary is authorized and directed to continue the in-lieu-of-tax payments to the States of Arizona and Nevada

provided for in section 618a(c) of this title so long as revenues accrue from the operation of the Boulder Canyon project; and

(3) any Federal revenues from that portion of the Pacific Northwest-Pacific Southwest intertie located in the States of Nevada and Arizona which, after completion of repayment requirements of the said part of the Pacific Northwest-Pacific Southwest intertie located in the States of Nevada and Arizona, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of said portion of the Pacific Northwest-Pacific Southwest intertie and related facilities.

(d) Use of revenue funds
All moneys collected and credited to the development fund pursuant to subsection (b) and clauses (1) and (3) of subsection (c) of this section and the portion of revenues derived from the sale of power and energy for use in Arizona pursuant to clause (2) of subsection (c) of this section shall be available, without further appropriation, for--

(1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the projects, within such separate limitations as may be included in annual appropriation Acts; and

(2) payments to reimburse water users in the State of Arizona for losses sustained as a result of diminution of the production of hydroelectric power at Coolidge Dam, Arizona, resulting from exchanges of water between users in the States of Arizona and New Mexico as set forth in section 1524(f) of this title.

(e) Appropriation by Congress required for construction of works
Revenues credited to the development fund shall not be available for construction of the works comprised within any unit of the project herein or hereafter authorized except upon appropriation by the Congress.

(f) Return of costs and interest
Moneys credited to the development fund pursuant to subsection (b) and clauses (1) and (3) of subsection (c) of this section and the portion of revenues derived from the sale of power and energy for use in Arizona pursuant to clause (2) of subsection (c) of this section in excess of the amount necessary to meet the requirements of clauses (1) and (2) of subsection (d) of this section shall be paid annually to the general fund of the Treasury to return--

(1) the costs of each unit of the projects or separable feature thereof authorized pursuant to subchapter III of this chapter which are allocated to irrigation, commercial power, or municipal and industrial water supply, pursuant to this chapter within a period not exceeding fifty years from the date of completion of each such unit or separable feature, exclusive of any development period authorized by law: *Provided,* That return of the costs, if any, required by section 616aa-1 of this title shall not be made until after the payout period of the Central Arizona Project as authorized herein; and

(2) interest (including interest during construction) on the unamortized balance of the

investment in the commercial power and municipal and industrial water supply features of the project at a rate determined by the Secretary of the Treasury in accordance with the provisions of subsection (h) of this section, and interest due shall be a first charge.

(g) Repayment of costs
All revenues credited to the development fund in accordance with clause (c)(2) of this section (excluding only those revenues derived from the sale of power and energy for use in Arizona during the payout period of the Central Arizona Project as authorized herein) and such other revenues as remain in the development fund after making the payments required by subsections (d) and (f) of this section shall be available (1) to make payments, if any, as required by sections 616aa-1 and 620d-1 of this title, (2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures payable from the Lower Colorado River Basin Development Fund in accordance with sections 1595(a)(2), 1595(a)(3), and 1595(b) of this title and (3) upon appropriation by the Congress, to assist in the repayment of reimbursable costs incurred in connection with units hereafter constructed to provide for the augmentation of the water supplies of the Colorado River for use below Lee Ferry as may be authorized as a result of the investigations and recommendations made pursuant to sections 1511 and 1513(a) of this title.

(h) Interest rate
The interest rate applicable to those portions of the reimbursable costs of each unit of the project which are properly allocated to commercial power development and municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the first advance is made for initiating construction of such unit, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issue.

(i) Annual budgets; submission to Congress
Business-type budgets shall be submitted to the Congress annually for all operations financed by the development fund.
(Pub.L. 90-537, Title IV, 403, Sept. 30, 1968, 82 Stat. 894; Pub.L. 93-320, Title II, 205(b)(2), June 24, 1974, 88 Stat. 273; Pub.L. 98-381, Title I, 102, Aug. 17, 1984, 98 Stat. 1333; Pub.L. 98-569, 4(f)(2), Oct. 30, 1984, 98 Stat. 2939.)

1984 Amendments Subsec. (b). Pub.L. 98-381, 102(a), designated existing provisions as par. (1) and added par. (2).
Subsec. (c)(1). Pub.L. 98-381, 102(b), substituted "until completion of repayment requirements of the Central Arizona project;" for "including revenues which, after completion of payout of the Central Arizona project as required herein are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of said project;".
Subsec. (c)(2). Pub.L. 98-381, 102(c), added two provisos, the first relating to the inclusion of the equivalent of 41/2 mills per kilowatthour in the rates charged to purchaser

in Arizona for application to the purposes specified in subsection (f) of this section and to the inclusion of the equivalent 21/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented, and the second providing that, after the repayment period for said Central Arizona project, the equivalent of 21/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section.

Subsec. (g). Pub.L. 98-569 added "the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures" before "payable from".

1974 Amendment. Subsec. (g). Pub.L. 93-320 added cl. (2), and redesignated former cl. (2), authorizing the use of revenues to assist in the repayment of reimbursable costs incurred in connection with units constructed after Sept. 30, 1968, to provide for the augmentation of water supplies of the Colorado River for use below Lee Ferry, as cl. (3).

Legislative History. For legislative history and purpose of Pub.L. 90-537, see 1968 U.S. Code Cong. and Adm.News, p. 3666. See, also, Pub.L. 93-320, 1974 U.S. Code Cong. and Adm.News, p. 3327; Publ. L. 98-381, 1984 U.S. Code Cong. and Adm.News, p. 2479; Pub.L. 98-569, 1984 U.S. Code Cong. and Adm. News, p. 4901.

Cross References

Availability of main stream water at same cost to all users to satisfy stated amount of consumptive use, see section 1525 of this title.

Credit of certain appropriations to Lower Colorado River Basin Development Fund, see section 1528 of this title.

Repayment of costs from Development fund of each salinity control unit as modifying provisions for salinity control of Colorado River Basin, see section 1597 of this title.

Funds available to Arizona under this section for cost of excess capacity in Granite Reef aqueduct, see section 1521 of this title.

Salinity control unit costs payable from Lower Colorado River Basin Development Fund, see section 1595 of this chapter.

Transfers to Upper Colorado River Basin Fund from Lower Colorado River Basin Development Fund, see section 620d-1 of this title.

§1544. Annual report to Congress

On January 1 of each year the Secretary shall report to the Congress, beginning with the fiscal year ending June 30, 1969, upon the status of the revenues from and the cost of constructing, operating, and maintaining each lower basin unit of the project for the preceding fiscal year. The report of the Secretary shall be prepared to reflect accurately the Federal investment allocated at that time to power, to irrigation, and to other purposes, the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment.

(Pub.L. 90-537, Title IV, 404, Sept. 30, 1968, 82 Stat. 896.)

Subchapter V- GENERAL PROVISIONS

§1551. Construction of Colorado River Basin Act

(a) Effect on other laws
Nothing in this chapter shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (treaty Series 994; 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), or, except as otherwise provided herein, the Boulder Canyon Project Act (45 Stat. 1057) [43 U.S.C.A. 617 et seq.], the Boulder Canyon Project Adjustment Act (54 Stat. 774) [43 U.S.C.A. 618 et seq.], or the Colorado River Storage Project Act (70 Stat. 105) [43 U.S.C.A. 620 et. seq.].

(b) Reports to Congress
The Secretary is directed to ---

(1) make reports as to the annual consumptive uses and losses of water from the Colorado River system after each successive five-year period, beginning with the five-year period starting on October 1, 1970. Such reports shall include a detailed breakdown of the beneficial consumptive use of water on a State-by-State basis. Specific figures on quantities consumptively used from the major tributary streams flowing into the Colorado River shall also be included on a State-by-State basis. Such reports shall be prepared in consultation with the States of the lower basin individually and with the Upper Colorado River Commission, and shall be transmitted to the President, the Congress, and to the Governors of each State signatory to the Colorado River Compact; and

(2) condition all contracts for the delivery of water originating in the drainage basin of the Colorado River system upon the availability of water under the Colorado River Compact.

(c) Compliance of Federal officers and agencies
All Federal officers and agencies are directed to comply with the applicable provisions of this chapter, and of the laws, treaty, compacts, and decree referred to in subsection (a) of this section, in the storage and release of water from all reservoirs and in the operation and maintenance of all facilities in the Colorado River system under the jurisdiction and supervision of the Secretary, and in the operation and maintenance of all works which may be authorized hereafter for the augmentation of the water supply of the Colorado River system. In the event of failure of any such officer or agency to so comply, and affected State may maintain an action to enforce the provisions of this section in the Supreme Court of the United States and consent is given to the joinder of the United States as a party in such suit or suits, as a defendant or otherwise.
(Pub.L. 90-537, Title VI, 601, Sept. 30, 1968, 82 Stat. 899.)

§1552. Criteria for long-range operation of reservoirs

(a) Promulgation by Secretary; order of priorities
In order to comply with and carry out the provisions of the Colorado River Compact, the upper Colorado River Basin Compact, and the Mexican Water Treaty, the Secretary shall propose criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act [43 U.S.C.A. 620 et seq.], the Boulder Canyon Project Act [43 U.S.C.A. 617 et seq.], and the Boulder Canyon Project Adjustment Act [43 U.S.C.A. 618 et seq.]. To effect in part the purposes expressed in this paragraph, the criteria shall make provision for the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell in the following listed order of priority:

(1) releases to supply one-half the deficiency described in article III(c) of the Colorado River Compact, if any such deficiency exists and is chargeable to the States of the Upper Division, but in any event such releases, if any, shall not be required in any year that the Secretary makes the determination and issues the proclamation specified in section 1512 of this title;

(2) releases to comply with article III(d) of the Colorado River Compact, less such quantities of water delivered into the Colorado River below Lee Ferry to the credit of the States of the Upper Division from other sources; and

(3) storage of water not required for the releases specified in clauses (1) and (2) of this subsection to the extent that the Secretary, after consultation with the Upper Colorado River Commission and representatives of the three Lower Division States and taking into consideration all relevant factors (including, but not limited to, historic streamflows, the most critical period of record, and probabilities of water supply), shall find this to be reasonably necessary to assure deliveries under clauses (1) and (2) without impairment of annual consumptive uses in the upper basin pursuant to the Colorado River Compact: *Provided*, That water not so required to be stored shall be released from Lake Powell: (i) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead, (ii) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and (iii) to avoid anticipated spills from Lake Powell.

(b) Submittal of criteria for review and comment; publication; report to Congress
Not later than January 1, 1970, the criteria proposed in accordance with the foregoing subsection (a) of this section shall be submitted to the Governors of the seven Colorado River Basin States and to such other parties and agencies as the Secretary may deem appropriate for their review and comment. After receipt of comments on the proposed criteria, but not later than July 1, 1970, the Secretary shall adopt appropriate criteria in accordance with this section and publish the same in the Federal Register. Beginning January 1, 1972, and yearly thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation

under the adopted criteria for the preceding compact water year and the projected operation for the current year. As a result of actual operating experience or unforeseen circumstances, the Secretary may thereafter modify the criteria to better achieve the purposes specified in subsection (a) of this section, but only after correspondence with the Governors of the seven Colorado River Basin States and appropriate consultation with such State representatives as each Governor may designate.

(c) Powerplant operations
Section 7 of the Colorado River Storage Project Act [43 U.S.C.A. 620f] shall be administered in accordance with the foregoing criteria.
(Pub.L. 90-537, Title VI, 602, Sept. 30, 1968, 82 Stat. 900.)

§1553. Upper Colorado River Basin; rights to consumptive uses not to be reduced or prejudiced; duties and powers of Commission not impaired

(a) Rights of the upper basin to the consumptive use of water available to that basin from the Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin.

(b) Nothing in this chapter shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission.
(Pub.L. 90-537, Title VI, 603, Sept. 30, 1968, 82 Stat. 901.)

Cross References
Construction of Grand Canyon National Park Enlargement Act with this section, see section 228h of Title 16, Conservation.

§1554. Federal reclamation laws

Except as otherwise provided in this chapter, in constructing, operating, and maintaining the units of the projects herein and hereafter authorized, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) to which laws this chapter shall be deemed a supplement.
(Pub.L. 90-537, Title VI, 604, Sept. 30, 1968, 82 Stat. 901.)

Notes of Decisions
1. Sales of excess power-
Under section 1523 of this title, direction to Secretary of the Interior to recommend the most feasible plan for acquiring power does not comprehend right to sell excess power in manner that is in conflict with Reclamation Act, as amended, section 371 et seq. of this title, even though Secretary may seek to de-nominate such sales as part of the most feasible plan which he otherwise has authority to put into effect. Arizona Power Pooling Ass'n v. Morton, C.A.Ariz.1975, 527 F.2d 721, certiorari denied 96 S.CT. 1506, 425 U.S. 911, 47 L.Ed.2d 761.

§1555. Federal Power Act inapplicable to Colorado River between Hoover Dam and Glen Canyon Dam

Part I of the Federal Power Act [16 U.S.C.A. 791a et seq.] shall not be applicable to the reaches of the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam until and unless otherwise provided by Congress.
(Pub.L. 90-537, Title VI, 605, Sept. 30, 1968, 82 Stat. 901.)

Historical Note
References in Text. The Federal Power Act, referred to in text, is Act June 10, 1920, c. 285, 41 Stat. 1063, as amended. Part I of the Federal Power Act is classified generally to subchapter I (section 791a et seq.) of chapter 12 of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables volume.

§1556. Definitions

As used in this chapter, (a) all terms which are defined in the Colorado River Compact shall have the meanings therein defined;

(b) *Main stream* means the main stream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon;

(c) *User* or *water user* in relation to main stream water in the lower basin means the United States or any person or legal entity entitled under the decree of the Supreme Court of the United States in Arizona against California, and others (376 U.S. 340), to use main stream water when available thereunder;

(d) *Active storage* means that amount of water in reservoir storage, exclusive of bank storage, which can be released through the existing reservoir outlet works;

(e) *Colorado River Basin States* means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(f) *Western United States* means those States lying wholly or in part west of the Continental Divide; and

(g) *Augment* or *augmentation*, when used herein with reference to water, means to increase the supply of the Colorado River or its tributaries by the introduction of water into the Colorado River system, which is in addition to the natural supply of the system.
(Pub.L. 90-537, Title VI 606, Sept. 30, 1968, 82 Stat. 901.)
[Source: United States Code Annotated, Title 43, Chapter 32]

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Chapter 15 - Long-Range Operating Criteria

CRITERIA FOR COORDINATED LONG-RANGE OPERATION OF COLORADO RIVER RESERVOIRS PURSUANT TO THE COLORADO RIVER BASIN PROJECT ACT OF SEPTEMBER 30, 1968 (P.L. 90-537)

Preface

These Operating Criteria are promulgated in compliance with Section 602 of Public Law 90-537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Act (hereinafter "Upper Basin Storage Reservoirs") and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the "Secretary") may modify the Operating Criteria from time to time in accordance with Section 602(b) of P.L. 90-537. The Secretary will sponsor a formal review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

Section I. Annual Report

(1) On January 1, 1972, and on January 1 of each year thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States shall be advised of any changes by June of each year.

Section II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of that year to be in storage as required by Section 602(a) of P.L. 90-537 (hereinafter "602(a) Storage"). The quantity of

602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;

b) The most critical period of record;

(c) Probabilities of water supply;

(d) Estimated future depletions of the upper basin, including the effects of recurrence of critical periods of water supply;

(e) The "Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River, "dated October 30, 1969, and such additional studies as the Secretary deems necessary;

(f) The necessity to assure that upper basin consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under Section 602(a)(1) and (2) of P.L. 90.537.

(2) If in the plan of operation, either:

(a) the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or

(b) the Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date:
the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.

(3) If, in the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,

(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and

(c) to avoid anticipated spills from Lake Powell.

In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(4) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

Section III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;

(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;

(c) Net river losses;

(d) Net reservoir losses;

(e) Regulatory wastes.

(2) Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500,000 acre-feet of annual consumptive use in accordance with the decree in *Arizona v. California,* 376 U.S. 340 (1964).

(b) *Surplus:* The Secretary shall determine from time to time when water in quantities greater than "Normal" is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona v. California* after consideration of all relevant factors, including, but not limited to, the following:
(i) the requirements stated in Article III(1) of these Operating Criteria;
(ii) requests for water by holders of water delivery contracts with the United States, and of

other rights recognized in the decree in *Arizona v. California*;
(iii) actual and quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and
(iv) estimated net inflow to Lake Mead.

(c) *Storage:* The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:
(i) the requirements stated in Article III(1) of these Operating Criteria;
(ii) actual and forecast quantities of active storage in Lake Mead;
(iii) estimate of net inflow to Lake Mead for the current year;
(iv) historic streamflows, including the most critical period of record;
(v) priorities set forth in Article II(A) of the decree in *Arizona v. California*; and
(vi) the purposes stated in Article I(2) of these Operating Criteria.

The storage provisions of Article II(B)(3) of the decree in *Arizona v. California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required by Section 301(b) of Public Law 90-537.

Section IV. Definitions

(1) In addition to the definitions in Section 606 of P.L. 90-537, the following shall also apply:

(a) *Spills*, as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the generation of power and energy.

(b) *Surplus*, as used in Article III(3)(b) herein, is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term *surplus* as used in these Operating Criteria is not to be construed as applied to, being interpretive of, or in any manner having reference to the term *surplus* in the Colorado River Compact.

(c) *Net inflow to Lake Mead*, as used in Article III(3) (b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.

(d) *Available capability*, used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physically available for generation.

[Source: Updating the Hoover Dam Documents 1978, Appendix VII, pgs.VII-5-VII-7]

Chapter 16 - Colorado River Basin Salinity Control

UNITED STATES CODE ANNOTATED
Title 43 Public Lands, Chapter 32A

Subchapter I-PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

§1571. Water quality improvement

(a) Authority to proceed with program.
The Secretary of the Interior, hereinafter referred to as the "Secretary", is authorized and directed to proceed with a program of works of improvement for the enhancement and protection of the quality of water available in the Colorado River for use in the United States and the Republic of Mexico, and to enable the United States to comply with its obligations under the agreement with Mexico of August 30, 1973 (Minute No. 242 of the International Boundary and Water Commission, United States and Mexico), concluded pursuant to the Treaty of February 3, 1944 (TS 994), in accordance with the provisions of this chapter.

(b) Desalting complexes and plants.

(1) The Secretary is authorized to construct, operate, and maintain a desalting complex, including (l) a desalting plant to reduce the salinity of drain water from the Wellton-Mohawk division of the Gila project, Arizona (hereinafter referred to as the division), including a pretreatment plant for settling, softening, and filtration of the drain water to be desalted; (2) the necessary appurtenant works including the intake pumping plant system, product waterline, power transmission facilities, and permanent operating facilities; (3) the necessary extension in the United States and Mexico of the existing bypass drain to carry the reject stream from the desalting plant and other drainage waters to the Santa Clara Slough in Mexico, with the part in Mexico, subject to arrangements made Congress, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall be notified of these changes.

(2)
(A) The desalting plant shall be designed to treat approximately one hundred and twenty-nine million gallons a day of drain water using advanced technology commercially available. The plant shall effect recovery initially of not less than 70 per centum of the drain water as product water, and shall effect reduction of not less than 90 per centum of the dissolved solids in the feed water. The Secretary shall use sources of electric power supply for the desalting complex that will not diminish the supply of power to preference customers from Federal power systems operated by the Secretary.

(B) The Secretary is authorized to use electrical power and energy available from the Navajo Generating Station which is in excess of the Central Arizona Project pumping requirements for the purpose of supplying power and energy requirements of the desalting plant and protective pumping well field constructed pursuant to this subchapter: *Provided*, That revenues credited to the Lower Colorado River Basin Development Fund shall not be diminished below those amounts which would have accrued had the power been marketed at the rate determined by the Secretary of Energy for the sale of power from the Navajo Generating Station to utilities and public entities, as a result of the use of power and energy for the desalting, protective pumping works, and other uses authorized by law, and that power and energy from the Navajo Generating Station shall be used first to meet the pumping requirements of the Central Arizona Project and after those needs have been met, for the desalting and protective pumping facilities constructed pursuant to this subchapter, and finally for other uses: *Provided further*, That prior to obtaining power from the Navajo Generating Station under the authority of this subsection, the Secretary shall complete an analysis of alternative sources of supply, including but not limited to the possibility of developing an agreement with the Republic of Mexico whereby the United States (or a non-Federal entity) would enter into contractual arrangements with Mexico for a sufficient supply of power to operate the desalting plant, the regulatory pumping fields and appurtenant facilities.

(C) Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriation Acts, the Secretary of the Interior is authorized to purchase supplemental power and energy as required for the purposes of supplying the power and energy requirements of the desalting plant and protective pumping well field.

(c) Replacement water studies

Replacement of the reject stream from the desalting plant, Colorado River waters used for the mitigation of fish and wildlife habitat losses and of any Wellton-Mohawk drainage water bypassed to the Santa Clara Slough to accomplish essential operation except at such times when there exists surplus water of the Colorado River under the terms of the Mexican Water Treaty of 1944, is recognized as a national obligation as provided in section 1512 of this title. Studies to identify feasible measures to provide adequate replacement water shall be completed not later than June 30, 1980. Said studies shall be limited to potential sources within the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are within the natural drainage basin of the Colorado River. Measures found necessary to replace the reject stream from the desalting plant, Colorado River waters used for the mitigation of fish and wildlife habitat losses and any Wellton-Mohawk drainage bypassed to the Santa Clara Slough to accomplish essential operations may be undertaken independently of the national obligation set forth in section 1512 of this title.

(d) Advancement of funds for that portion of bypass drain within Mexico

The Secretary is hereby authorized to advance funds to the United States section, International Boundary and Water Commission (IBWC), for construction, operation, and maintenance by Mexico pursuant to Minute No.242 of that portion of the bypass drain within Mexico. Such funds shall be transferred to an appropriate Mexican agency, under

arrangements to be concluded by the IBWC providing for the construction, operation, and maintenance of such facility by Mexico.

(e) Desalted water exchange
Any desalted water not needed for the purposes of this subchapter may be exchanged at prices and under terms and conditions satisfactory to the Secretary and the proceeds therefrom shall be deposited in the General Fund of the Treasury. The city of Yuma, Arizona, shall have first right of refusal to any such water.

(f) Return flow reduction
For the purpose of reducing the return flows from the division to one hundred and seventy-five thousand acre-feet or less, annually, the Secretary is authorized to:

(1) Accelerate the cooperative program of Irrigation Management Services with the Wellton-Mohawk Irrigation and Drainage District, hereinafter referred to as the district, for the purpose of improving irrigation efficiency. The district shall bear its share of the cost of such program as determined by the Secretary.

(2) Acquire, by purchase or through eminent domain or exchange, to the extent determined by him to be appropriate, lands or interests in lands to reduce the existing seventy-five thousand developed and undeveloped irrigable acres authorized by the Act of July 30, 1947 (61 Stat. 628), known as the Gila Reauthorization Act [43 U.S.C.A. 613 et seq.]. The initial reduction in irrigable acreage shall be limited to approximately ten thousand acres. If the Secretary determines that the irrigable acreage of the division must be reduced below sixty-five thousand acres of irrigable lands to carry out the purpose of this section, the Secretary is authorized, with the consent of the district, to acquire additional lands, as may be deemed by him to be appropriate.

(g) Disposal of acquired lands
The Secretary is authorized to dispose of the acquired lands and interests therein on terms and conditions satisfactory to him and meeting the objective of this chapter.

(h) Assistance to water users for installation of system improvements
The Secretary is authorized, either in conjunction with or in lieu of land acquisition to assist water users in the division in installing system improvements, such as ditch lining, change of field layouts, automatic equipment, sprinkler systems and bubbler systems, as a means of increasing irrigation efficiencies: *Provided, however*, That all costs associated with the improvements authorized herein and allocated to the water users on the basis of benefits received, as determined by the Secretary, shall be reimbursed to the United States in amounts and on terms and conditions satisfactory to the Secretary.

(i) Contract amendment
The Secretary is authorized to amend the contract between the United States and the district dated March 4, 1952, as amended, to provide that-

(1) the portion of the existing repayment obligation owing to the United States allocable to

irrigable acreage eliminated from the division for the purposes of this subchapter, as determined by the Secretary, shall be nonreimbursable; and

(2) if deemed appropriate by the Secretary, the district shall be given credit against its outstanding repayment obligation to offset any increase in operation and maintenance assessments per acre which may result from the district's decreased operation and maintenance base, all as determined by the Secretary.

(j) Acquisition of land for storage
The Secretary is authorized to acquire through the Corps of Engineers fee title to, or other necessary interests in, additional lands above the Painted Rock Dam in Arizona that are required for the temporary storage capacity needed to permit operation of the dam and reservoir in times of serious flooding in accordance with the obligations of the United States under Minute No. 242. No funds shall be expended for acquisition of land or interests therein until it is finally determined by a Federal court of competent jurisdiction that the Corps of Engineers presently lacks legal authority to use said lands for this purpose. Nothing contained in this subchapter nor any action taken pursuant to it shall be deemed to be a recognition or admission of any obligation to the owners of such land on the part of the United States or a limitation or deficiency in the rights or powers of the United States with respect to such lands or the operation of the reservoir.

(k) Transfer of funds
To the extent desirable to carry out subsections (f)(1) and (h) of this section, the Secretary may transfer funds to the Secretary of Agriculture as may be required for technical assistance to farmers, conduct of research and demonstrations, and such related investigations as are required to achieve higher on-farm irrigation efficiencies.

(l) Nonreimbursable costs
All cost associated with the desalting complex shall be nonreimbursable except as provided in subsections (f) and (h) of this section.

§1572. Canal or canal lining

(a) Authorization of construction
To assist in meeting salinity control objectives of Minute No. 242 during an interim period, the Secretary is authorized to construct a new concrete-lined canal or, to line the presently unlined portion of the Coachella Canal of the Boulder Canyon project, California, from station 2 plus 26 to the beginning of siphon numbered 7, a length of approximately forty-nine miles. The United States shall be entitled to temporary use of a quantity of water, for the purpose of meeting the salinity control objectives of Minute No. 242, during an interim period, equal to the quantity of water conserved by constructing or lining the said canal. The interim period shall commence on completion of construction or lining said canal and shall end the first year that the Secretary delivers main stream Colorado River water to California in an amount less than the sum of the quantities requested by (1) the California agencies under contracts made pursuant to section 617d of this title, and (2) Federal

establishments to meet their water rights acquired in California in accordance with the Supreme Court decree in Arizona against California (376 U.S. 340).

(b) Repayment
The charges for total construction shall be repayable without interest in equal annual installments over a period of forty years beginning in the year following completion of construction: *Provided*, That, repayment shall be prorated between the United States and the Coachella Valley County Water District, and the Secretary is authorized to enter into a repayment contract with Coachella Valley County Water District for that purpose. Such contract shall provide that annual repayment installments shall be nonreimbursable during the interim period, defined in subsection (a) of this section and shall provide that after the interim period, said annual repayment installments or portions thereof, shall be paid by Coachella Valley County Water District.

(c) Acquisition of private lands
The Secretary is authorized to acquire by purchase, eminent domain, or exchange private lands or interests therein, as may be determined by him to be appropriate, within the Imperial Irrigation District on the Imperial East Mesa which receive, or which have been granted rights to receive, water from Imperial Irrigation District's capacity in the Coachella Canal. Costs of such acquisitions shall be nonreimbursable and the Secretary shall return such lands to the public domain. The United States shall not acquire any water rights by reason of this land acquisition.

(d) Credit to Imperial Irrigation District against final payments for relinquished capacity in Coachella Canal
The Secretary is authorized to credit Imperial Irrigation District against its final payments for certain outstanding construction charges payable to the United States on account of capacity to be relinquished in the Coachella Canal as a result of the canal lining program, all as determined by the Secretary: *Provided*, That, relinquishment of capacity shall not affect the established basis for allocating operation and maintenance costs of the main All-American Canal to existing contractors.

(e) Transfer of lands to Cocopah Tribe of Indians
The Secretary is authorized and directed to cede the following land to the Cocopah Tribe of Indians, subject to rights-of-way for existing levees, to be held in trust by the United States for the Cocopah Tribe of Indians:
Township 9 south, range 25 west of the Gila and Salt River meridian, Arizona;
Section 25: Lots 18, 19, 20, 21, 22, and 23;
Section 26: Lots 1, 12, 13, 14, and 15;
Section 27: Lot 3; and all accretion to the above described lands.
The Secretary is authorized and directed to construct three bridges, one of which shall be capable of accommodating heavy vehicular traffic, over the portion of the bypass drain which crosses the reservation of the Cocopah Tribe of Indians. The transfer of lands to the Cocopah Indian Reservation and the construction of bridges across the bypass drain shall constitute full and complete payment to said tribe for the rights-of-way required for construction of the bypass drain and electrical transmission lines for works authorized by

this subchapter.
(Pub L. 93-320, Title I, 102, June 24, 1974, 88 Stat. 268.)

§1573. Construction and maintenance of well fields; land acquisition; land replacement; nonreimbursable costs

(a) The Secretary is authorized to:

(1) Construct, operate, and maintain, consistent with Minute No. 242, well fields capable of furnishing approximately one hundred and sixty thousand acre-feet of water per year for use in the United States and for delivery to Mexico in satisfaction of the 1944 Mexican Water Treaty.

(2) Acquire by purchase, eminent domain, or exchange, to the extent determined by him to be appropriate, approximately twenty-three thousand five hundred acres of lands or interests therein within approximately five miles of the Mexican border on the Yuma Mesa: *Provided, however*, That any such lands which are presently owned by the State of Arizona may be acquired or exchanged for Federal lands.

(3) Any lands removed from the jurisdiction of the Yuma Mesa Irrigation and Drainage District pursuant to clause (2) of this subsection which were available for use under the Gila Reauthorization Act (61 Stat. 628) [43 U.S.C.A. 613 et seq.], shall be replaced with like lands within or adjacent to the Yuma Mesa division of the project. In the development of these substituted lands or any other lands within the Gila project, the Secretary may provide for full utilization of the Gila Gravity Main Canal in addition to contracted capacities.

(4) Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts under the terms and conditions of the Act of June 17, 1902 (43 U.S.C. 371 et seq.) as amended and supplemented for the delivery of water from said well field to entities within the United States for municipal and industrial or irrigation purposes: *Provided*, That such contracts for municipal and industrial purposes shall contain terms and conditions as substantially provided in section 485h(c)(1) of this title, and that contracts for replacement irrigation water supplies to prevent damage to existing water users on privately developed lands include water charges no greater than if such water users had continued to pump their own wells without the United States lowering the water table and that the acreage limitation and related provisions of the Reclamation Law [43 U.S.C.A. 371 et seq.] will not be applicable to such privately developed lands: *Provided further*, That no contract shall be entered which will impair the ability of the United States to continue to deliver to Mexico on the land boundary at San Luis and in the Limitrophe Section of the Colorado River downstream from Morelos Dam approximately one hundred and forty thousand acre-feet annually, consistent with the terms contained in Minute No. 242 of the IBWC.

(b) The cost of work provided for in this section, including delivery of water to Mexico, shall be nonreimbursable; except to the extent that the waters furnished are used in the United States.
(Pub.L. 93-320, Title I, 103, June 24, 1974, 88 Stat. 269; Pub.L. 96-336, 3, Sept. 4, 1980, 94 Stat. 1063.)

Historical Note
References in Text. The Gila Reauthorization Act, referred to in subsec. (a)(3), is Act July 30,1947, c. 382, 61 Stat. 628, which was classified generally to subchapter XXI (section 613 et seq.) of chapter 12 of this title, and was omitted from the Code.
Act of June 17, 1902, (43 U.S.C.A. 371 et seq.) as amended and supplemented, and the Reclamation law, referred to in subsec. (a)(4), is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, popularly known as the Reclamation Act, which is classified generally to chapter 12 (section 371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables volume.
1980 Amendment. Subsec. (a)(4). Pub. L. 96-336 added par. (4).

§1574. Modification of projects

The Secretary is authorized to provide for modifications of the projects authorized by this subchapter to the extent he determines appropriate for purposes of meeting the international settlement objective of this subchapter at the lowest overall cost to the United States. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to the appropriate committees of the Congress, unless the Congress approves an earlier date by concurrent resolution. The Secretary shall notify the Governors of the Colorado River Basin States of such modifications.
(Pub.L. 93-320, Title I, 104, June 24, 1974, 88 Stat. 270.)

§1575. Contract authority

The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this subchapter in advance of the appropriation of funds therefor.

§1575a. Administration and disposition of lands and constructed facilities; revenues credited to general fund of the Treasury

The Secretary is hereby authorized to administer and dispose of lands and interests in lands acquired, and facilities constructed under this subchapter, and revenues received in connection with this authority shall be credited to the general fund of the Treasury.
(Pub.L. 93-320, Title I, 106, as added Pub. L. 96-336, 4, Sept. 4, 1980, 94 Stat. 1064.)

§1576. Interagency cooperation

In carrying out the provisions of this subchapter, the Secretary shall consult and cooperate with the Secretary of State, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and other affected Federal, State, and local agencies.
(Pub.L. 93-320, Title I, 107, formerly 106, June 24, 1974, 88 Stat. 270, renumbered

Pub.L. 96-336, 4, Sept. 4, 1980, 94 Stat. 1064.)

§1577. Existing Federal laws not modified

Nothing in this chapter shall be deemed to modify the National Environmental Policy Act of 1969 [42 U.S.C.A. 4321 et seq.], the Federal Water Pollution Control Act, as amended [33 U.S.C.A. 1251 et seq.], or, except as expressly stated herein, the provisions of any other Federal law.
(Pub.L. 93-320, Title I, 108, formerly 107, June 24, 1974, 88 Stat. 270, renumbered Pub.L. 96-336, 4, Sept. 4, 1980, 94 Stat. 1064.)

Historical Note
References in Text. The National Environmental Policy Act of 1969, referred to in text, is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.
The Federal Water Pollution Control Act as amended, referred to in text, probably means Act June 30, 1948, c. 758, as amended generally by Pub.L. 92-500, 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (section 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables volume.
Prior Provisions. A prior section 108 of Pub.L. 93-320 was renumbered section 109 and is classified to section 1578 of this title.

§1578. Authorization of appropriations

There is hereby authorized to be appropriated the sum of $356,400,000 for the construction of the works and accomplishment of the purposes authorized in sections 1571, 1572, 1573, and 1579 of this title, of which $3,579,000 is authorized for mitigation of fish and wildlife losses associated with replacement of the Coachella Canal in California, and $6,960,000 is authorized for mitigation of fish and wildlife losses associated with the Desalting Complex Unit and the Protective and Regulatory Pumping Unit in Arizona, based on January 1979, prices plus or minus such amounts as may be justified by reason of ordinary fluctuation in construction costs involved therein, and such sums as may be required to operate and maintain such works and to provide for such modifications as may be made pursuant to section 1574 of this title. In order to provide for the utilization of significant improvements in desalinization technologies which may have been developed since the Bureau's evaluation, the Secretary is directed to evaluate such cost effective improvements and implement such improved designs into the plant operations when the evaluation indicates that cost savings will result: *Provided, however,* That no more than five percent of the amount authorized to be appropriated is used for these purposes. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C.A. 4601 et seq.].
(Pub.L. 93-320, Title I, 109, formerly 108, June 24, 1974, 88 Stat. 270, renumbered and amended Pub.L. 96-336, 4, 5, Sept. 4, 1980, 94 Stat. 1064.)

Historical Note

References in Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in text, is Pub.L. 91-646, Jan. 2, 1971, 84 Stat. 1894, which is classified principally to chapter 61 (section 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables volume.
1980 Amendment. Pub.L. 96-336, 5, substituted appropriations authorization of $356,400,000 to carry out sections 1571, 1572, 1573, and 1579 of this title for prior authorizations of $121,500,000 and $34,000,000 for purposes of sections 1571 and 1572, and 1573 of this title, and use of January 1979 for April 1973 price basis, authorized sums of $3,579,000 and $6,960,000 for mitigation of fish and wildlife losses in California and Arizona, and provided for cost savings desalinization plant operations limited to five percent of appropriations authorization. Effective Date of 1980 Amendment. Section 5 of Pub.L. 96-336 provided in part that amendment by Pub.L. 96-336 is effective Oct. 1, 1979.

§1579. Fish and wildlife habitat; mitigation of losses

Effective October 1, 1979, and to such extent and in such amounts as are provided in advance in appropriate Acts, in order to provide measures determined by the Secretary of the Interior to be appropriate to mitigate loss of fish and wildlife habitat associated with other measures taken under this subchapter:

(a) Appropriation of funds; acquisition and disposal of lands; facilities undertakings; funds restriction for non-Federal facilities
The Secretary is authorized to-

(1) acquire lands by purchase, eminent domain, or exchange;

(2) dispose of land, facilities, and equipment;

(3) construct, operate, maintain, and make replacements of facilities: *Provided*, *however*, That no funds will be provided for operation, maintenance, or replacement of non-Federal facilities.

(b) Nonreimbursable costs
All costs authorized by this section are nonreimbursable.

§1580. Definitions

As used in this subchapter:
(a) Navajo Generating Station means

(1) the United States entitlement to a portion of the output of power and energy from the Navajo Generating Station, Page, Arizona, pursuant to United States participation in that generating station;

(2) in the event that said United States entitlement is integrated with other generating facilities, then Navajo Generating Station means that amount of power and energy from the integrated system which is attributable to the United States Navajo entitlement;

(3) when the Navajo Generating Station is replaced at the end of its useful life or an alternative resource is established, then Navajo Generating Station means an amount of power and energy equivalent to the present United States entitlement from Navajo, from the replacement resource.

(b) All terms used herein that are defined in the Colorado River Compact shall have the meanings therein defined.
(Pub.L. 93-320, Title I, 111, as added Pub.L. 96-336, 7, Sept. 4, 1980, 94 Stat. 1065.)

Subchapter II-MEASURES UPSTREAM FROM IMPERIAL DAM

§1591. Salinity control policy

(a) Implementation by the Secretary of the Interior
The Secretary of the Interior shall implement the salinity control policy adopted for the Colorado River in the "Conclusions and Recommendations" published in the Proceedings of the Reconvened Seventh Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River and Its Tributaries in the States of California, Colorado, Utah, Arizona, Nevada, New Mexico, and Wyoming, held in Denver, Colorado, on April 26-27, 1972, under the authority of section 10 of the Federal Water Pollution Control Act (33 U.S.C. 1160), and approved by the Administrator of the Environmental Protection Agency on June 9, 1972.

(b) Expeditious investigation, planning, and implementation of salinity control program
The Secretary is hereby directed to expedite the investigation, planning, and implementation of the salinity control program generally as described in chapter VI of the Secretary's report entitled, "Colorado River Water Quality Improvement Program, February 1972". In determining the relative priority of implementing additional units or new self-contained portions of units authorized by section 1592 of this title, the Secretary or the Secretary of Agriculture, as the case may be, shall give preference to those additional units or new self-contained portions of units which reduce salinity of the Colorado River at the least cost per unit of salinity reduction.

(c) Cooperation with other Federal agencies
In conformity with subsection (a) of this section and the authority of the Environmental Protection Agency under Federal laws, the Secretary, the Administrator of the Environmental Protection Agency, and the Secretary of Agriculture are directed to cooperate and coordinate their activities effectively to carry out the objective of this subchapter.
(Pub.L. 93-320, Title II, 201, June 24, 1974, 88 Stat. 270; Pub.L. 98-569, 1 Oct. 30, 1984, 98 Stat. 2933.)

§1592. Authorization to construct, operate, and maintain salinity control units:

(a) Authority of Secretary
The Secretary is authorized to construct, operate, and maintain the following salinity control units as the initial stage of the Colorado River Basin salinity control program.

(1) The Paradox Valley unit, Monitors County, Colorado, consisting of facilities for collection and disposition of saline groundwater of Paradox Valley, including wells, pumps, pipelines, solar evaporation ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities, and consisting of measures to replace incidental fish and wildlife values foregone.

(2) The Grand Valley unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce the seepage of irrigation water from the irrigated lands of Grand Valley into the groundwater and thence into the Colorado River. Measures shall include lining of canals and laterals, replacing canals and laterals with pipe, and the combining of existing canals and laterals into fewer and more efficient facilities implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone. Prior to initiation of construction of the Grand Valley unit, or portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in Grand Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit's facilities to the end that the maximum reduction of salinity inflow to the Colorado River will be achieved.

(3) The Las Vegas Wash unit, Nevada, consisting of facilities for collection and disposition of saline ground water of Las Vegas Wash, including infiltration galleries, pumps, desalter, pipelines, solar evaporation facilities, and all appurtenant works including but not limited to roads, fences, power transmission facilities, and operating facilities, and consisting of measures to replace incidental fish and wildlife values foregone.

(4) Stage I of the Lower Gunnison Basin unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce seepage from canals and laterals in the Uncompahgre Valley, and consisting of measures to replace incidental fish and wildlife values foregone, essentially as described in the feasibility report and final environmental statement dated February 10, 1984. Prior to initiation of construction of stage I of the Lower Gunnison Basin unit, or of a portion of stage I, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Uncompahgre Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit's facilities.

(5) Portions of the McElmo Creek unit, Colorado, as components of the Dolores participating project, Colorado River Storage project, authorized by Public Law 90-537 and Public Law 84 485, consisting of all measures and all necessary appurtenant and associated works to reduce seepage only from the Towaoc-Highline combined canal, Rocky Ford laterals, Lone Pine lateral, and Upper Hermana lateral, and consisting of measures to replace incidental fish and wildlife values foregone. The Dolores participating project shall have salinity control as a project purpose insofar as these specific facilities are concerned: *Provided*, That the costs of construction and replacement of these specific facilities shall be allocated by the Secretary to salinity control and irrigation only after consultation with the State of Colorado, the Montezuma Valley Irrigation District, Colorado, and the Dolores Water Conservancy District, Colorado: *And provided further*, That such allocation of costs to salinity control will include only the separable and specific costs of these specific facilities and will not include any joint costs of any other facilities of the Dolores participating project. Repayment of costs allocated to salinity control shall be subject to this chapter. Repayment of costs allocated to irrigation shall be subject to the Acts which

authorized the Dolores participating project, the Reclamation Act of 1902, and Acts amendatory and supplementary thereto. Prior to initiation of construction of these specific facilities, or a portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Montezuma Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit's facilities.

(b) Implementation of authorized units
In implementing the units authorized to be constructed pursuant to subsection (a) of this section, the Secretary shall carry out the following directions:

(1) As reports are completed describing final implementation plans for the unit, or any portion thereof, authorized by paragraph (5) of subsection (a) of this section, and prior to expenditure of funds for related construction activities, the Secretary shall submit such reports to the appropriate committees of the Congress and to the governors of the Colorado River Basin States.

(2) Non-Federal entities shall be required by the Secretary to contract for the long-term operation and maintenance of canal and lateral systems constructed pursuant to activities provided for in subsection (a) of this section: *Provided*, That the Secretary shall reimburse such non-Federal entities for the costs of such operation and maintenance to the extent the costs exceed the expenses that would have been incurred by them in the thorough and timely operation and maintenance of their canal and lateral systems absent the construction of a unit, said expenses to be determined by the Secretary after consultation with the involved non-Federal entities. The operation and maintenance for which non-Federal entities shall be responsible shall include such repairing and replacing of a unit's facilities as are associated with normal annual maintenance activities in order to keep such facilities in a condition which will assure maximum reduction of salinity inflow to the Colorado River. These non-Federal entities shall not be responsible, nor incur any costs, for the replacement of a unit's facilities, including measures to replace incidental fish and wildlife values foregone. The term replacement shall be defined for the purposes of this subchapter as a major modification or reconstruction of a completed unit, or portion thereof, which is necessitated, through no fault of the non-Federal entity or entities operating and maintaining a unit, by design or construction inadequacies or by normal limits on the useful life of a facility. The Secretary is authorized to provide continuing technical assistance to non-Federal entities to assure the effective and efficient operation and maintenance of a unit's facilities.

(3) The Secretary may, under authority of this subchapter, and limited to the purposes of this chapter, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to organize private canal and lateral owners into formal organizations with which the Secretary may enter into a grant or contract to construct, operate, and maintain a unit's facilities.

(4) In implementing the units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this section, the Secretary shall comply with procedural

and substantive State water laws.

(5) The Secretary may, under authority of this subchapter and limited to the purposes of this chapter, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to operate and maintain measures to replace incidental fish and wildlife values foregone.

(6) In implementing the units authorized to be constructed pursuant to subsection (a) of this section, the Secretary shall implement measures to replace incidental fish and wildlife values foregone concurrently with the implementation of a unit's, or a portion of a unit's, related features.

(c) Voluntary cooperative salinity control program; establishment; improvement of on-farm water management; functions; Secretary; reports; Congressional committees; use of agencies; Commodity Credit Corporation

(1) The Secretary of Agriculture may establish a voluntary cooperative salinity control program with landowners to improve on-farm water management and reduce watershed erosion on non-Federal lands and on lands under the control of the Department of Agriculture for the purpose of assisting in meeting the objectives of this subchapter.

(2) In carrying out such program, the Secretary of Agriculture shall-

(A) identify salt-source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) develop, in consultation with the public and affected governmental interests, plans for implementing measures that will reduce the salt load of the Colorado River by improving on-farm irrigation water management including improvement of related laterals and by improving watershed erosion management practices, such measures to include voluntary replacement of incidental fish and wildlife values foregone;

(C) provide technical and cost-sharing assistance for the voluntary implementation of plans through contracts and agreements with individuals or groups of owners and operators of farms, ranches, and other lands as well as with local governmental and nongovernmental entities such as irrigation districts and canal companies, except that a portion of the costs of implementing such plans shall be shared by the participants on the basis of benefits received and other appropriate factors, as determined by the Secretary of Agriculture, and except that such contracts and agreements shall provide for continuing operation and maintenance of measures installed under this subsection, including measures to replace incidental fish and wildlife values foregone, without additional cost-sharing assistance;

(D) provide continuing technical assistance for irrigation water management as well as monitoring and evaluation of changes in salt contributions to the Colorado River to determine program effectiveness;

(E) carry out related research, demonstration, and education activities; and

(F) in entering into contracts or agreements pursuant to subparagraph C, require a minimum of 30 per centum cost-sharing contribution from individuals or groups of owners and operators of farms, ranches, and other lands as well as from local governmental and nongovernmental entities such as irrigation districts and canal companies, unless the Secretary finds in his discretion that such cost-sharing requirement would result in a failure to proceed with needed on-farm measures.

(3) The measures to be implemented in any particular salt source area shall be described in reports issued by the Secretary of Agriculture. Copies of the reports are to be submitted to-

(A) the committees on Agriculture and Appropriations of the House of Representatives and the committees on Agriculture, Nutrition and Forestry and Appropriations of the Senate;

(B) members of the advisory council established by section 1594(a) of this title; and

(C) the Governor of any State where measures are to be implemented.

No funds for implementation of proposed measures undertaken pursuant to this subsection may be expended until the expiration of sixty days after submission of the report of the Secretary of Agriculture.

(4) The Secretary of Agriculture may use existing agencies as well as the services and facilities of the Commodity Credit Corporation to carry out the provisions of this subsection. The Secretary of Agriculture, in addition, may authorize participating agencies to utilize grants or cooperative agreements with conservation districts, local governmental agencies, colleges and universities, or others as appropriate to carry out the activities identified in this subsection. There is hereby authorized to be appropriated annually, to be available until expended, such funds as may be necessary to carry out the provisions of this subsection: *Provided*, That no disbursement shall be made by the Commodity Credit Corporation unless it has received funds to cover the amount thereof from appropriations available for the purpose of carrying out this chapter.

(5) The Secretary of Agriculture shall submit a report to Congress by January 1, 1988, and at each five-year interval thereafter, concerning the operation of the program authorized by this subsection. Such report shall contain an evaluation of the operation of such program and may include recommendations for such additional legislation as may be necessary to solve identified salinity problems in areas designated by the Secretary of Agriculture and may include recommendations to utilize new technology and research related to such problems.

Historical Note

References in Text. Public Law 90-537, referred to in subsec. (a)(5), is Pub.L. 90-537, Sept. 30, 1968, 82 Stat. 885, as amended, known as the Colorado River Basin Project Act, which enacted chapter 32 (section 1501 et seq.) of this title and sections 616aa-1, 620a-1, 620a-2, 620c-1, and 620d-1 of this title, amended sections 616hh, 620, and 620a of this title, and enacted provisions set out as notes under sections 620, 620k, and 1501 of this title. For complete classification of this

Act to the Code, see Short Title note set out under section 1501 of this title and Tables volume.
Public Law 84-485, referred to in subsec. (a)(5), is Pub.L. 84-485, Apr. 11, 1956, 70 Stat. 105, as amended, known as the Colorado River Storage Project Act, which is classified to chapter 12B (section 620 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume. The Reclamation Act of 1902, referred to in subsec. (a)(5), is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (section 371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables volume.
1984 Amendment. Subsec. (a). Pub.L. 98-569, 2(a) designated existing provisions as subsec. (a).
Subsec. (a)(1). Pub.L. 98-569, 2(b)(1) added ", and consisting of measures to replace incidental fish and wildlife values foregone" at the end thereof.
Subsec. (a)(2). Pub.L. 98-569, 2(b)(2) added "replacing canals and laterals with pipe," after "canals and laterals" and added "implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone" after "efficient facilities" in the second sentence. Pub.L. 98-569, 2(b)(3), added ", or portion thereof," after "Grand Valley unit", substituted "non-Federal entities" for "agencies" before "owning, operating", added "or portions thereof," after "water distribution systems" and substituted "the obligations specified in subsection (b)(2) of this section" for "all obligations" after "related to the continued operation" in the third sentence. Pub.L. 98-569, 2(b)(4) struck out "The Secretary is also authorized to provide, as an element of the Grand Valley unit, for a technical staff to provide information and assistance to water users on means and measures for limiting excess water applications to irrigated lands: *Provided*, That such assistance shall not exceed a period of five years after funds first become available under this subchapter. The Secretary will enter into agreements with the Secretary of Agriculture to develop a unified control plan for the Grand Valley unit. The Secretary of Agriculture is directed to cooperate in the planning and construction of on-farm system measures under programs available to that Department."
Subsec. (a)(3). Pub.L. 98-569, 2(b)(5) redesignated par. (4) as par. (3). Former par. (3), which related to the Crystal Geyser Unit in Utah, was struck out.
Pub.L. 98-569, 2(b)(6) substituted ", and consisting of measures to replace incidental fish and wildlife values foregone." for the period at the end thereof.
Subsec. (a)(4). Pub.L. 98-569, 2(b)(7) added par. (4). Former par. (4) was redesignated par. (3).
Subsec. (a)(5). Pub.L. 98-569, 2(b)(7) added par. (5).
Subsecs. (b), (c). Pub.L. 98-569, 2(c) added subsecs. (b) and (c).

§1593. Planning reports; research and demonstration projects

(a) The Secretary is authorized and directed to-

(1) Expedite completion of the planning reports on the following units, described in the Secretary's report, "Colorado River Water Quality Improvement Program, February 1972":
(i) Irrigation source control:
Lower Gunnison
Uintah Basin
Colorado River Indian Reservation
Palo Verde Irrigation District
(ii) Point source control:
LaVerkin Springs
Littlefield Springs
Glenwood-Dotsero Springs
(iii) Diffuse source control:
Price River
San Rafael River
Dirty Devil River
McElmo Creek
Big Sandy River

(2) Submit each planning report on the units named in paragraph (1) of this subsection promptly to the Colorado River Basin States and to such other parties as the Secretary deems appropriate for their review and comments. After receipt of comments on a unit and careful consideration thereof, the Secretary shall submit each final report with his recommendations, simultaneously, to the President, other concerned Federal departments and agencies, the Congress, and the Colorado River Basin States.

(b) The Secretary is directed

(1) in the investigation, planning, construction, and implementation of any salinity control unit involving control of salinity from irrigation sources, to cooperate with the Secretary of Agriculture in carrying out research and demonstration projects and in implementing on-the-farm improvements and farm management practices and programs which will further the objective of this subchapter;

(2) to undertake research on additional methods for accomplishing the objective of this subchapter, utilizing to the fullest extent practicable the capabilities and resources of other Federal departments and agencies, interstate institutions, States, and private organizations;

(3) to develop a comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management and submit a report which describes the program and recommended implementation actions to the Congress and to the members of the advisory council established by section 1594(a) of this title by July 1,

1987;

(4) to undertake feasibility investigations of saline water use and disposal opportunities, including measures and all necessary appurtenant and associated works, to demonstrate saline water use technology and to beneficially use and dispose of saline and brackish waters of the Colorado River Basin in joint ventures with current and future industrial water users, using, but not limited to, the concepts generally described in the Bureau of Reclamation Special Report of September 1981, entitled "Saline water use and disposal opportunities"; and

(5) to undertake advance planning activities on the Sinbad Valley Unit, Colorado, as described in the Bureau of Land Management Salinity Status Report, covering the period 1978-1979 and dated February 1980.

§1594. Colorado River Basin Salinity Control Advisory Council

(a) There is hereby created the Colorado River Basin Salinity Control Advisory Council composed of no more than three members from each State appointed by the Governor of each of the Colorado River Basin States.

(b) The Council shall be advisory only and shall

(1) act as liaison between both the Secretaries of Interior and Agriculture and the Administrator of the Environmental Protection Agency and the States in accomplishing the purposes of this subchapter;

(2) receive reports from the Secretary on the progress of the salinity control program and review and comment on said reports; and

(3) recommend to both the Secretary and the Administrator of the Environmental Protection Agency appropriate studies of further projects, techniques, or methods for accomplishing the purposes of this subchapter.

§1595. Salinity control units; authority and functions of the Secretary of the Interior

(a) Allocation of costs
The Secretary shall allocate the total costs (excluding costs borne by non-Federal participants pursuant to section 1592(c)(2)(C) of this title) of the on-farm measures authorized by section 1592(c) of this title, of all measures to replace incidental fish and wildlife values foregone, and of each unit or separable feature thereof authorized by section 1592(a) of this title, as follows:

(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the policy embodied in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) [33 U.S.C.A.

1251 et seq.], 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 1592(a)(1), (2), and (3) of this title, including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit, or separable feature thereof authorized by section 1592(a)(4) and (5) of this title, including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 1592(c) of this title, including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone, shall be nonreimbursable. The total costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5) of subsection (a) of this section.

(2) The reimbursable portion of the total costs shall be allocated between the Upper Colorado River Basin Fund established by section 5(a) of the Colorado River Storage Project Act (70 Stat. 107) [43 U.S.C.A. 620d(a)] and the Lower Colorado River Basin Development Fund established by section 1543(a) of this title, after consultation with the Advisory Council
created in section 1594(a) of this title and consideration of the following items:
(i) benefits to be derived in each basin from the use of water of improved quality and the use of works for improved water management;
(ii) causes of salinity; and
(iii) availability of revenues in the Lower Colorado River Basin Development Fund and increased revenues to the Upper Colorado River Basin Fund made available under section 620d(d)(5) of this title: *Provided*, That costs allocated to the Upper Colorado River Basin Fund under this paragraph (2) shall not exceed 15 per centum of the costs allocated to the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund.

(3)Costs of construction and replacement of each unit or separable feature thereof authorized by sections 1592(a)(1), (2), and (3) of this title and costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the units authorized by sections 1592(a)(1), (2), and (3) of this title, allocated to the upper basin and to the lower basin under subsection (a)(2) of this section shall be repaid within a fifty-year period or within a period equal to the estimated life of the unit, separable feature thereof, or replacement, whichever is less, without interest from the date such unit, separable feature, or replacement is determined by the Secretary to be in operation.

(4)
(i) Costs of construction and replacement of each unit or separable feature thereof authorized by section 1592(a)(4) and (5) of this title, costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the on-farm measures authorized by section 1592(c) of this title or of the units authorized by section 1592(a)(4) and (5) of this title, and costs of implementation of the on-farm measures authorized by section 1592(c) of this title allocated to the upper basin and to the lower basin under subsection(a)(2) of this section shall be repaid as provided in subparagraphs (ii) and

(iii), respectively, of this paragraph.
(ii) Costs allocated to the upper basin shall be repaid with interest within a fifty-year period, or within a period equal to the estimated life of the unit, separable feature thereof, replacement, or on-farm measure, whichever is less, from the date such unit, separable feature thereof replacement, or on-farm measure is determined by the Secretary or the Secretary of Agriculture to be in operation.
(iii) Costs allocated to the lower basin shall be repaid without interest as such costs are incurred to the extent that money available from the Lower Colorado River Basin development fund to repay costs allocated to the lower basin. If in any fiscal year the money available from the Lower Colorado River Basin development fund for such repayment is insufficient to repay the costs allocated to the lower basin, as provided in the preceding sentence, the deficiency shall be repaid with interest as soon as money becomes available in the fund for repayment of those costs.
(iv) The interest rates used pursuant to this chapter shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period during the month preceding October 30, 1984, for costs outstanding at that date, or, in the case of costs incurred subsequent to October 30, 1984, during the month preceding the fiscal year in which the costs are incurred.

(5) Costs of operation and maintenance of each unit or separable feature thereof authorized by section 1592(a) of this tide and of measures to replace incidental fish and wildlife values foregone allocated to the upper basin and to the lower basin under subsection (a)(2) of this section shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such costs are incurred. In the event that revenues are not available to repay the portion of operation and maintenance costs allocated to the Upper Colorado River Basin fund and to the Lower Colorado River Basin development fund in the year next succeeding the fiscal year in which such costs are incurred, the deficiency shall be repaid with interest calculated in the same manner as provided in subsection (a)(4)(iv) of this section. Any reimbursement due non-Federal entities pursuant to section 1592(b)(2) of this title shall be repayed without interest in the fiscal year next succeeding the fiscal year in which such operation and maintenance costs are incurred.

(b) Costs payable from the Lower Colorado River Basin Development Fund

(1) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 1592(a) of this title, costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 1592(c) of this title, allocated for repayment by the lower basin under subsection (a)(2) of this section shall be paid in accordance with section 1543(g)(2) of this title, from the Lower Colorado River Basin Development Fund.

(2) Omitted

(c) Costs payable from the Upper Colorado River Basin Fund

Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 1592(a) of this title, costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 1592(c) of this title allocated for repayment by the upper basin under subsection (a)(2) of this section shall be paid in accordance with section 620d(d)(5) of this title from the Upper Colorado River Basin Fund within the limit of the funds made available under subsection (e) of this section.

(d) Omitted

(e) Upward adjustment of rates for electrical energy
The Secretary is authorized to make upward adjustments in rates charged for electrical energy under all contracts administered by the Secretary under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620) [43 U.S.C.A. 620 et seq.] as soon as practicable and to the extent necessary to cover the costs allocated to the Upper Colorado River Basin Fund under subsection (a)(2) of this section and in conformity with subsection (a)(3), (4), and (5) of this section: *Provided*, That revenues derived from said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control units, for the construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and for the implementation of on-farm measures in the Colorado River Basin herein authorized.

§1596. Biennial report to President, Congress, and Advisory Council

Commencing on January 1, 1975 and every two years thereafter, the Secretary shall submit, simultaneously, to the President, the Congress, and the Advisory Council created in section 1594(a) of this title, a report on the Colorado River salinity control program authorized by this subchapter covering the progress of investigations, planning, and construction of salinity control units for the previous fiscal year, the effectiveness of such units, anticipated work needed to be accomplished in the future to meet the objectives of this subchapter, with emphasis on the needs during the five years immediately following the date of each report, and any special problems that may be impeding progress in attaining an effective salinity control program. Said report may be included in the biennial report on the quality of water of the Colorado River Basin prepared by the Secretary pursuant to section 620n of this title, section 615ww of this title, and section 616e of this title.

§1597. Construction of provisions of subchapter

Except as provided in sections 620d(d)(5), 1543(g)(2), and 1595(b) of this title, with respect to the Colorado River Basin Project Act [43 U.S.C.A. 1501 et seq.] and the Colorado River Storage Project Act [43 U.S.C.A. 620 et seq.], respectively, nothing in this subchapter shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994; 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057) [43 U.S.C.A. 617 et seq.], Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a) [43 U.S.C.A. 618 et seq.],section 15 of the Colorado River Storage Project Act (70 Stat. 111; 43 U.S.C. 620n), the Colorado River Basin Project Act (82 Stat. 885), section 6 of the Fryingpan-Arkansas Project Act (76 Stat. 393) [43 U.S.C.A. 616e], section 15 of the Navajo Indian irrigation project and initial stage of the San Juan-Chama Project Act (76 Stat. 102) [43 U.S.C.A. 615ww], the National Environmental Policy Act of 1969 [42 U.S.C.A. 4321 et seq.], and the Federal Water Pollution Control Act, as amended [33 U.S.C.A. 1251 et seq.].
(Pub.L. 93-320, Title II, 207, June 24, 1974, 88 Stat. 274.)

Historical Note

References in Text. Sections 620d(d)(5), 1543(g)(2), and 1595(b) of this title, referred to in text, was in the original a reference to "section 205(b) and 205(d) of this title", meaning section 205(b) and (d) of Title II of Pub.L. 93-320. Section 205(b)(1) is classified to section 1595(b) of this title; section 205(b)(2) amended section 403(g) of the Colorado River Basin Project Act by inserting a new par. (2), which is classified to section 1543(g)(2) of this title; and section 205(d) amended section 5(d) of the Colorado River Storage Project Act by inserting a new par. (5), which is classified to section 620d(d)(5) of this title.

This subchapter, referred to in text, was in the original "this title", meaning Title II of Pub.L. 93-320, which enacted this subchapter and amended sections 620d(d) and 1543(g) of this title. For complete classification of Title II to the Code, see Tables volume.

The Colorado River Basin Project Act, referred to in text, is Pub.L. 90-537, Sept. 30, 1968, 82 Stat. 885, as amended, which is classified principally to chapter 32 (section 1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables volume.

The Colorado River Storage Project Act, referred to in text, is Act Apr. 11, 1956, c.203, 70 Stat. 105, as amended which is classified generally to chapter 12B (section 620 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 620 of this title and Tables volume.

The Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), and the Water Treaty of 1944, referred to in text, are not classified to the Code.

The Boulder Canyon Project Act, referred to in text, is Act Dec. 21, 1928, c. 42, 45 Stat. 1057, as amended, which is classified generally to subchapter I (section 617 et seq.) of chapter 12A of this title. For complete classification of this Act to the Code, see section 617t of this title and Tables volume.

The Boulder Canyon Project Adjustment Act, referred to in text, is Act July 19, 1940, c. 643, 54 Stat. 774, as amended, which is classified generally to subchapter II (section 618 et seq.) of chapter 12A of this title. For complete classification of this Act to the Code, see section 618o of this title and Tables volume.

Section 6 of the Fryingpan Arkansas Project Act [43 U.S.C.A. 616e] and section 15 of the Navajo Indian irrigation project and initial stage of the San Juan-Chama Project Act [43 U.S.C.A. 615ww], referred to in text, were omitted from the Code.

The National Environmental Policy Act of 1969, referred to in text, is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The Federal Water Pollution Control Act, as amended, referred to in text, is Act June 30, 1948, c. 758, as amended generally by Pub.L. 92-500, 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (section 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see The Colorado

River Basin Project Act, referred to in text, is Pub.L. 90-537, Sept. 30, 1968, 82 Stat. 885, as amended, which is classified principally to chapter 32 (section 1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables volume.

§1598. Modification of projects; contract authority; authorization of appropriations

(a) The Secretary is authorized to provide for modifications of the projects authorized by this subchapter as determined to be appropriate for purposes of meeting the objective of this subchapter. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to appropriate committees of the Congress, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall be notified of these changes.

(b) The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this subchapter, in advance of the appropriation of funds therefor. There is hereby authorized to be appropriated the sum of $125,100,000 for the construction of the works and for other purposes authorized in section 1592(a) or (b) of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in costs involved therein, and such sums as may be required to operate and maintain such works. The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a) of this section, including measures as provided for in section 1592(b) of this title. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C.A. 4601 et seq.]. (Pub.L. 93-320, Title II, 208, June 24, 1974, 88 Stat. 274; Pub.L. 98-569, 5, Oct. 30, 1984, 98 Stat. 2939.)

Historical Note

References in Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (b), is Pub.L. 91-646, Jan. 2, 1971, 84 Stat. 1894, which is classified generally to chapter 61 (section 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables volume.

1984 Amendment. Subsec. (a). Pub.L. 98-569, 5(a) struck out "and not then if disapproved by said committees" before ", except that funds may be expended".

Subsec. (b). Pub.L. 98-569, 5(b)(1), added "(a) or (b)" following "1592". Pub.L. 98-569, 5(b)(2) added "The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a) of this section, including measures as provided for in section 1592(b) of this title."

§1599. Definitions

As used in this subchapter
(a) all terms that are defined in the Colorado River Compact shall have the meanings therein defined;
(b) *Colorado River Basin States* means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.
(Pub.L. 93-320, Title II, 209, June 24, 1974, 88 Stat. 275.)
[Source: United States Code Annotated, Title 43 Public Lands, Chapter 32a]

Chapter 17 - Colorado River Basin Salinity Control Act, Amendment

PUBLIC LAW 98-569 [H. R. 2790]; October 30, 1984

Preface
An Act to amend The Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1.
Section 201(b) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1591(b)), hereinafter referred to as the "Act", is amended by adding at the end thereof the following new sentence: "In determining the relative priority of implementing additional units or new self-contained portions of units authorized by section 202, the Secretary or the Secretary of Agriculture, as the case may be, shall give preference to those additional units or new self--contained portions of units which reduce salinity of the Colorado River at the least cost per unit of salinity reduction."

Section 2.
(a) Section 202 of the Act (43 U.S.C. 1592) is amended by inserting "(a)" after "Sec. 202."

(b) Section 202(a) of such Act, as amended by subsection (a), is amended-

(1) in paragraph (1) by inserting before the period at the end thereof the following:", and consisting of measures to replace incidental fish and wildlife values foregone";

(2) in the second sentence of paragraph (2) by inserting "replacing canals and laterals with pipe," after "canals and laterals," and by inserting "implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone." after "efficient facilities";

(3) in the third sentence of paragraph (2) by inserting ", or portion thereof," after "Grand Valley unit", by striking out "agencies" and inserting in lieu thereof "non-Federal entities", by inserting ", or portions thereof," after "water distribution systems", and by striking out "all obligations" and inserting in lieu thereof "the obligations specified in subsection (b)(2)";

(4) in paragraph (2) by striking out the fourth, fifth, and sixth sentences;

(5) by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3);

(6) in paragraph (3) (as redesignated) by deleting the period at the end thereof and inserting ", and consisting of measures to replace incidental fish and wildlife values foregone."; and

(7) by adding at the end thereof the following new paragraphs:

(4) Stage I of the Lower Gunnison Basin unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce seepage from canals and laterals in the Uncompahgre Valley, and consisting of measures to replace incidental fish and wildlife values foregone, essentially as described in the feasibility report and final environmental statement dated February 10, 1984. Prior to initiation of construction of stage I of the Lower Gunnison Basin unit, or of a portion of stage I, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Uncompahgre Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) relating to the continued operation and maintenance of the unit's facilities.

"(5) Portions of the McElmo Creek unit, Colorado, as components of the Dolores participating project, Colorado River Storage project, authorized by Public Law 90-537 and Public Law 84-485, consisting of all measures and all necessary appurtenant and associated works to reduce seepage only from the Towaoc-Highline combined canal, Rocky Ford laterals, Lone Pine lateral, and Upper Hermana lateral, and consisting of measures to replace incidental fish and wildlife values foregone. The Dolores participating project shall have salinity control as a project purpose insofar as these specific facilities are concerned: *Provided*, That the costs of construction and replacement of these specific facilities shall be allocated by the Secretary to salinity control and irrigation only after consultation with the State of Colorado, the Montezuma Valley Irrigation District, Colorado, and the Dolores Water Conservancy District, Colorado: *And provided further*, That such allocation of costs to salinity control will include only the separable and specific costs of these specific facilities and will not include any joint costs of any other facilities of the Dolores participating project. Repayment of costs allocated to salinity control shall be subject to this Act. Repayment of costs allocated to irrigation shall be subject to the Acts which authorized the Dolores participating project, the Reclamation Act of 1902, and Acts amendatory and supplementary thereto. Prior to initiation of construction of these specific facilities, or a portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Montezuma Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) relating to the continued operation and maintenance of the unit's facilities.

(c) Section 202 of such Act is further amended by inserting at the end thereof the following new subsections:

(b) In implementing the units authorized to be constructed pursuant to subsection (a), the

Secretary shall carry out the following directions:

(1) As reports are completed describing final implementation plans for the unit, or any portion thereof, authorized by paragraph (5) of subsection (a), and prior to expenditure of funds for related construction activities, the Secretary shall submit such reports to the appropriate committees of the Congress and to the governors of the Colorado River Basin States.

(2) Non-Federal entities shall be required by the Secretary to contract for the long-term operation and maintenance of canal and lateral systems constructed pursuant to activities provided for in subsection (a): *Provided*, That the Secretary shall reimburse such non-Federal entities for the costs of such operation and maintenance to the extent the costs exceed the expenses that would have been incurred by them in the thorough and timely operation and maintenance of their canal and lateral systems absent the construction of a unit, said expenses to be determined by the Secretary after consultation with the involved non-Federal entities. The operation and maintenance for which non-Federal entities shall be responsible shall include such repairing and replacing of a unit's facilities as are associated with normal annual maintenance activities in order to keep such facilities in a condition which will assure maximum reduction of salinity inflow to the Colorado River. These non-Federal entities shall not be responsible, nor incur any costs, for the replacement of a unit's facilities, including measures to replace incidental fish and wildlife values foregone. The term replacement shall be defined for the purposes of this title as a major modification or reconstruction of a completed unit or portion thereof, which is necessitated, through no fault of the non-Federal entity or entities operating and maintaining a unit, by design or construction inadequacies or by normal limits on the useful life of a facility. The Secretary is authorized to provide continuing technical assistance to non-Federal entities to assure the effective and efficient operation and maintenance of a unit's facilities.

(3) The Secretary may, under authority of this title, and limited to the purposes of this Act, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to organize private canal and lateral owners into formal organizations with which the Secretary may enter into a grant or contract to construct, operate, and maintain a unit's facilities.

(4) In implementing the units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5) of subsection (a), the Secretary shall comply with procedural and substantive State water laws.

(5) The Secretary may, under authority of this title and limited to the purposes of this Act, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to operate and maintain measures to replace incidental fish and wildlife values foregone.

(6) In implementing the units authorized to be constructed pursuant to subsection (a),

the Secretary shall implement measures to replace incidental fish and wildlife values foregone concurrently with the implementation of a unit's, or a portion of a unit's, related features.

(c)

(1) The Secretary of Agriculture may establish a voluntary cooperative salinity control program with landowners to improve on-farm water management and reduce watershed erosion on non-Federal lands and on lands under the control of the Department of Agriculture for the purpose of assisting in meeting the objectives of this title.

(2) In carrying out such program, the Secretary of Agriculture shall-

(A) identify salt-source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) develop, in consultation with the public and affected governmental interests, plans for implementing measures that will reduce the salt load of the Colorado River by improving on-farm irrigation water management including improvement of related laterals and by improving watershed erosion management practices, such measures to include voluntary replacement of incidental fish and wildlife values foregone;

(D) provide continuing technical assistance for irrigation water management as well as monitoring and evaluation of changes in salt contributions to the Colorado River to determine program effectiveness;

(E) carry out related research, demonstration, and education activities; and

(F) in entering into contracts or agreements pursuant to section 202 (c)(2)(C), require a minimum of 30 per centum cost-sharing contribution from individuals or groups of owners and operators of farms, ranches, and other lands as well as from local governmental and nongovernmental entities such as irrigation districts and canal companies, unless the Secretary finds in his discretion that such cost-sharing requirement would result in a failure to proceed with needed on-farm measures.

(3) The measures to be implemented in any particular salt source area shall be described in reports issued by the Secretary of Agriculture. Copies of the reports are to be submitted to-

(A) the committees on Agriculture and Appropriations of the House of Representatives and the committees on Agriculture, Nutrition and Forestry and Appropriations of the Senate;

(B) members of the advisory council established by section 204(a) of this title; and

(C) the Governor of any State where measures are to be implemented.

No funds for implementation of proposed measures undertaken pursuant to this subsection may be expended until the expiration of sixty days after submission of the report of the Secretary of Agriculture.

(4) The Secretary of Agriculture may use existing agencies as well as the services and facilities of the Commodity Credit Corporation to carry out the provisions of this subsection. The Secretary of Agriculture, in addition, may authorize participating agencies to utilize grants or cooperative agreements with conservation districts, local governmental agencies, colleges and universities, or others as appropriate to carry out the activities identified in this subsection. There is hereby authorized to be appropriated annually, to be available until expended, such funds as may be necessary to carry out the provisions of this subsection: *Provided,* That no disbursement shall be made by the Commodity Credit Corporation unless it has received funds to cover the amount thereof from appropriations available for the purpose of carrying out this Act.

(5) The Secretary of Agriculture shall submit a report to Congress by January 1, 1988, and at each five-year interval thereafter, concerning the operation of the program authorized by this subsection. Such report shall contain an evaluation of the operation of such program and may include recommendations for such additional legislation as may be necessary to solve identified salinity problems in areas designated by the Secretary of Agriculture and may include recommendations to utilize new technology and research related to such problems.".

Section 3.
Section 203(b) of the Act (43 U.S.C. 1593(b)) is amended by

(1) striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(2) inserting at the end thereof the following new paragraphs:

"(3) to develop a comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management and submit a report which describes the program and recommended implementation actions to the Congress and to the members of the advisory council established by section 204(a) of this title by July 1, 1987;

"(4) to undertake feasibility investigations of saline water use and disposal opportunities, including measures and all necessary appurtenant and associated works, to demonstrate saline water use technology and to beneficially use and dispose of saline and brackish waters of the Colorado River Basin in joint ventures with current and future industrial water users, using, but not limited to, the concepts generally described in the Bureau of Reclamation Special Report of September 1981, entitled "Saline water use and disposal opportunities"; and

"(5) to undertake advance planning activities on the Sinbad Valley Unit, Colorado, as described in the Bureau of Land Management Salinity Status Report, covering the period 1978-1979 and dated February 1980."

Section 4.

(a) Section 205(a) of the Act (43 U.S.C. 1595(a)) is amended by inserting "(a)" after "section 202" and by inserting after "total costs" the following: "(excluding costs borne by non-Federal participants pursuant to section 202(c)(2)(C)) of the on-farm measures authorized by section 202(c), of all measures to replace incidental fish and wildlife values foregone, and".

(b) Section 205(a)(1) of such Act is amended by inserting before "shall be nonreimbursable." the words "authorized by section 202(a)(1), (2), and (3), including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit, or separable feature thereof authorized by section 202(a) (4) and (5), including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c), including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone,".

Section 205(a)(l) of such Act is further amended by adding at the end thereof "The total costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5), of section 205(a)".

(c) Section 205(a)(2) of such Act is amended by striking "Twenty-five per centum" and inserting in lieu thereof "The reimbursable portion".

(d) Section 205(a)(3) of such Act is amended to read as follows:

"(3) Costs of construction and replacement of each unit or separable feature thereof authorized by sections 202(a)(1), (2), and (3) and costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the units authorized by sections 202(a)(1), (2), and (3), allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid within a fifty-year period or within a period equal to the estimated life of the unit, separable feature thereof, or replacement, whichever is less, without interest from the date such unit, separable feature, or replacement is determined by the Secretary to be in operation.

(e) Section 205(a) of such Act is amended by inserting at the end thereof the following new paragraphs:

"(4)(i) Costs of construction and replacement of each unit or separable feature thereof authorized by sections 202(a) (4) and (5), costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the on-farm measures authorized by section 202(c) or of the units authorized by sections 202(a) (4) and (5), and costs of implementation of the on-farm measures authorized by section 202(c) allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid as provided in subparagraphs (ii) and (iii), respectively, of this paragraph.

"(ii) Costs allocated to the upper basin shall be repaid with interest within a fifty-year period, or within a period equal to the estimated life of the unit, separable feature thereof, replacement, or on-farm measure, whichever is less, from the date such unit, separable feature thereof, replacement, or on-farm measure is determined by the Secretary or the Secretary of Agriculture to be in operation.

"(iii) Costs allocated to the lower basin shall be repaid without interest as such costs are incurred to the extent that money is available from the Lower Colorado River Basin development fund to repay costs allocated to the lower basin. If in any fiscal year the money available from the Lower Colorado River Basin development fund for such repayment is insufficient to repay the costs allocated to the lower basin, as provided in the preceding sentence, the deficiency shall be repaid with interest as soon as money becomes available in the fund for repayment of those costs.

"(iv) The interest rates used pursuant to this Act shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding, marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period during the month preceding the date of enactment of the Act entitled "An Act to amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes" for costs outstanding at that date, or, in the case of costs incurred subsequent to enactment of such Act, during the month preceding the fiscal year in which the costs are incurred.

"(5) Costs of operation and maintenance of each unit or separable feature thereof authorized by section 202(a) and of measures to replace incidental fish and wildlife values foregone allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such costs are incurred. In the event that revenues are not available to repay the portion of operation and maintenance costs allocated to the Upper Colorado River Basin fund and to the Lower Colorado River Basin development fund in the year next succeeding the fiscal year in which such costs are incurred, the deficiency shall be repaid with interest calculated in the same manner as provided in section 205(a)(4)(iv). Any reimbursement due non-Federal entities pursuant to section

202(b)(2) shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such operation and maintenance costs are incurred."

(f) (1) Section 205(b)(1) of such Act is amended by inserting "authorized by section 202(a), costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c)," before "allocated for repayment".

(2) Section 403(g)(2) of the Lower Colorado River Basin Project Act (43 U.S.C. 1543(g)) is amended by inserting "the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures" before "payable from".

(g) Section 205(c) of the Act is amended by inserting "authorized by section 202(a), costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c)" before "allocated for".

(h) Section 5(d)(5) of the Colorado River Storage Project Act (43 U.S.C. 620d(d)(5)) is amended by inserting ", the costs of measures to replace incidental fish and wildlife values foregone, and the costs of the on-farm measures" before "payable".

(i) Section 205(e) of the Act is amended by

(1) striking out "of construction, operation, maintenance, and replacement of units";

(2) inserting "to the Upper Colorado River Basin Fund" after "allocated";

(3) inserting ", section 205(a)(4) and section 205(a)(5)" after "section 205(a)(3)"; and

(4) inserting ", for the construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and for the implementation of on-farm measures" after "salinity control units".

Section. 5.

(a) Section 208(a) of the Act (43 U.S.C. 1598) is amended by striking out "and not then if disapproved by said committees,".

(b) (1) The second sentence of section 208(b) of the Act is amended by inserting "(a) or (b)" after "section 202".

(2) Section 208(b) of the Act is amended by inserting after the second sentence thereof the following new sentence: "The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a), including measures as provided for in subsection (b) of section 202 of this title."

Section 6.
The amendments made by this Act shall take effect upon enactment of this Act.

Section 7.

For purposes of complying with section 401 of the Congressional Budget Act of 1974, the authorization provided under this Act is subject to the availability of appropriations.
Approved October 30, 1984.
[Source: Public Law 98-569, H.R.2790]

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Chapter 18 - Colorado River Salinity Control Implementation

POLICY FOR IMPLEMENTATION OF COLORADO RIVER SALINITY STANDARDS THROUGH THE NPDES PERMIT PROGRAM

Prepared by
The Colorado River Basin Salinity Control Forum
February 28, 1977

Foreword

In November 1976, the United States Environmental Protection Agency Regional Administrators notified each of the seven Colorado River Basin states of the approval of the water quality standards for salinity for the Colorado River System as contained in the document entitled "Proposed Water Quality Standards for Salinity Including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975," and the supplement dated August 25, 1975. The salinity standards including numeric criteria and a plan of implementation provide for a flow weighted average annual numeric criteria for three stations in the lower main stem of the Colorado River: below Hoover Dam, below Parker Dam, and, at Imperial Dam.

The Plan of Implementation is comprised of a number of Federal and non-Federal projects and measures to maintain the flow-weighted average annual salinity in the Lower Colorado River at or below numeric criteria at the three stations as the Upper and Lower Basin states continue to develop their compact-apportioned waters. One of the components of the Plan consists of the placing of effluent limitations, through the National Pollutant Discharge Elimination System (NPDES) permit program, on industrial and municipal discharges.

The purpose of this policy is to provide more detailed guidance in the application of salinity standards developed pursuant to Section 303 and through the NPDES permitting authority in the regulation of municipal and industrial sources. (See Section 402 of the Federal Water Pollution Control Act.) This policy is applicable to discharges that would have an impact, either direct or indirect on the lower main stem of the Colorado River System. The lower main stem is defined as that portion of the main river from Hoover Dam to Imperial Dam.

I. Industrial Sources

The Salinity Standards state that "the objective for discharges shall be a no-salt return policy whenever practicable." This is the policy that shall be followed in issuing NPDES discharge permits for all new industrial sources, and upon the reissuance of permits for all existing industrial sources, except as provided herein. The following addresses those cases where no-discharge of salt may be deemed not to be practicable.

A. New Construction

1. New construction is defined as any facility from which a discharge may occur, the construction of which is commenced after October 18, 1975. (Date of submittal of water quality standards as required by 40 CFR 120, December 11, 1974). Appendix A provides guidance on new construction determination.

a. The permitting authority may permit the discharge of salt upon a satisfactory demonstration by the permittee that it is not practicable to prevent the discharge of all salt from proposed new construction.

b. The demonstration by the applicant must include information on the following factors relating to the potential discharge:

(1) Description of the proposed new construction.

(2) Description of the quantity and salinity of the water supply.

(3) Description of water rights, including diversions and consumptive use quantities.

(4) Alternative plans that could reduce or eliminate salt discharge. Alternative plans shall include:

(a.) Description of alternative water supplies, including provisions of water reuse, if any.

(b.) Description of quantity and quality of proposed discharge.

(c.) Description of how salts removed from discharges shall be disposed of to prevent such salts from entering surface waters or groundwater aquifers.

(d.) Costs of alternative plans in dollars per ton of salt removed.

(5) Of the alternatives, a statement as to the one plan for reduction of salt discharge that the applicant recommends be adopted.

(6) Such other information pertinent to demonstration of non-practicability as the permitting authority may deem necessary.

c. In determining what permit conditions shall be required, the permit issuing authority shall consider, but not be limited to the following:

(1) The practicability of achieving no discharge of salt.

(2) Where no discharge is determined not to be practicable.

(a.) The impact of the total proposed salt discharge of each alternative on the lower main stem in terms of both tons per year and concentration.

(b.) Costs per ton of salt removed from the discharge for each plan alternative.

(c.) Capability of minimizing salinity discharge.

(3) With regard to both points, one and two above, the compatibility of state water laws with either the complete elimination of a salt discharge or any plan for minimizing a salt discharge.

(4) The no-salt discharge requirement may be waived in those cases where the salt load reaching the main stem of the Colorado River is less than one ton per day or 350 tons per year, whichever is less. Evaluation will be made on a case-by-case basis.

B. Existing Facilities

1. The permitting authority may permit the discharge of salt upon a satisfactory demonstration by the permittee that it is not practicable to prevent the discharge of all salt from an existing facility.

2. The demonstration by the applicant must include, in addition that required under Section I,A,1,b; the following factors relating to the potential discharge:

a. Existing tonnage of salt discharged and volume of effluent.

b. Cost of modifying existing industrial plant to provide for no salt discharge.

c. Cost of salt minimization.

3. In determining what permit conditions shall be required, the permit issuing authority shall consider the items presented under I,A,1,c (2), and in addition; the annual costs of plant modification in terms of dollars per ton of salt removed for:

a. No salt return.

b. Minimizing salt return.

4. The no-salt discharge requirements may be waived in those cases where the salt load

reaching the main stem of the Colorado River is less than one ton per day or 350 tons per year, whichever is less. Evaluation will be made on a case-by-case basis.

II. Municipal Discharges

The basic policy is that a reasonable increase in salinity shall be established for municipal discharges to any portion of the Colorado River stream that has an impact on the lower main stem. The incremental increase in salinity shall be 400 mg/1 or less, which is considered to be a reasonable incremental increase above the flow weighted average salinity of the intake water supply.

A. The permitting authority may permit a discharge in excess of the 400 mg/1 incremental increase at the time of issuance or reissuance of a NPDES discharge permit, upon satisfactory demonstration by the permittee that it is not practicable to attain the 400 mg/1 limit.

B. Demonstration by the applicant must include information on the following factors relating to the potential discharge:

1. Description of the municipal entity and facilities.

2. Description of the quantity and salinity of intake water sources.

3. Description of significant salt sources of the municipal wastewater collection system, and identification of entities responsible for each source, if available.

4. Description of water rights, including diversions and consumptive use quantities.

5. Description of the wastewater discharge, covering location, receiving waters, quantity, salt load, and salinity.

6. Alternative plans for minimizing salt contribution from the municipal discharge. Alternative plans should include:

a. Description of system salt sources and alternative means of control.

b. Cost of alternative plans in dollars per ton, of salt removed from discharge.

7. Such other information pertinent to demonstration on non-practicability as these permitting authority may deem necessary.

C. In determining what permit conditions shall be required, the permit issuing authority shall consider the following criteria including, but not limited to:

1. The practicability of achieving the 400 mg/1 incremental increase.

2. Where the 400 mg/1 incremental increase is not determined to be practicable:

a. The impact of the proposed salt input of each alternative on the lower main stem in terms of tons per year and concentration.

b. Costs per ton of salt removed from discharge of each alternative plan.

c. Capability of minimizing the salt discharge.

D. If, in the opinion of the permitting authority, the data base for the municipal waste discharger is inadequate, the permit will contain the requirement that the municipal waste discharger monitor the water supply and the wastewater discharge for salinity. Such monitoring program shall be completed within 2 years and the discharger shall then present the information as specified above.

E. Requirements for establishing incremental increases may be waived in those cases where the incremental salt load reaching the main stem of the Colorado River is less than one ton per day or 350 tons per year, whichever is less. Evaluation will be made on a case-by-case basis.

F. All new and reissued NPDES permits for all municipalities shall require monitoring of the salinity of the intake water supply and the wastewater treatment plant effluent in accordance with the following guidelines:

Treatment Plant Design Capacity	Monitoring Frequency	Type of Sample
< 1.0 MGD*	Quarterly	Discrete
1.0 - 5.0 MGD	Monthly	Composite
> 5.0 - 50.0 MGD	Weekly	Composite
50.0 MGD	Daily	Composite

1. Analysis for salinity may be either as total dissolved solids (TDS) or be electrical conductivity where a satisfactory correlation with TDS has been established. The correlation should be based on a minimum of five different samples.

2. Monitoring of the intake water supply may be at a reduced frequency where the salinity of the water supply is relatively uniform.

APPENDIX A - Guidance on New Construction Determination

For purposes of determining a new construction, a source should be considered new if by October 18, 1975, there has not been:

I. Significant site preparation work such as major clearing or excavation; and/or

II. Placement, assembly or installation of unique facilities or equipment at the premises where such facilities or equipment will be used; and/or

III. Any contractual obligation to purchase unique facilities or equipment. Facilities and equipment shall include only the major items listed below, provided that the value of such items represents a substantial commitment to construct the facility:

A. structures; or

B. structural materials; or

C. machinery; or

D. process equipment; or

E. construction equipment.

IV. Contractual obligation with a firm to design, engineer, and erect a completed facility (i.e., a turnkey plant).

POLICY FOR USE OF BRACKISH AND/OR SALINE WATERS FOR INDUSTRIAL PURPOSES

Adopted by
The Colorado River Basin Salinity Control Forum
September 11, 1980

The states of the Colorado River Basin, the federal Executive Department, and the Congress have all adopted as a policy that the salinity in the lower main stem of the Colorado River shall be maintained at or below the flow-weighted average values found during 1972, while the Basin states continue to develop their compact-apportioned waters. In order to achieve this policy, all steps which are practical and within the framework of the administration of states' water rights must be taken to reduce the salt load of the river. One such step was the adoption in 1975 by the Forum of a policy regarding effluent limitations for industrial discharges with the objective of "no-salt return" wherever practicable. Another step was

the Forum's adoption in 1977 of the "Policy for Implementation of Colorado River Salinity Standards through the NPDES Permit Program." These policies are part of the basinwide plan of implementation for salinity control which has been adopted by the seven Basin states.

The Forum finds that the objective of maintaining 1972 salinity levels would be served by the exercise of all feasible measures including, wherever practicable, the use of brackish and/or saline waters for industrial purposes.

The summary and page 32 of the Forum's 1978 Revision of the Water Quality Standards for Salinity state: "The plan also contemplates the use of saline water for industrial purposes whenever practicable,..." In order to implement this concept and thereby further extend the Forum's basic salinity policies, the Colorado River Basin states support the Water and Power Resources Service (WPRS) appraisal study of saline water collection, pretreatment and potential industrial use.

The Colorado River Basin contains large energy resources which are in the early stages of development. The WPRS study should investigate the technical and financial feasibility of serving a significant portion of the water requirements of the energy industry and any other industries by the use of Basin brackish and/or saline waters. The Forum recommends that:

I. The Colorado River Basin states, working with federal agencies, identify, locate and quantify such brackish and/or saline water sources.

II. Information on the availability of these waters be made available to all potential users.

III. Each state encourage and promote the use of such brackish and/or saline waters, except where it would not be environmentally sound or economically feasible, or would significantly increase consumptive use of Colorado River System water in the state above that which would otherwise occur.

IV. The WPRS, with the assistance of the states, encourages and promotes the use of brackish return flows from federal irrigation projects in lieu of fresh water sources, except where it would not be environmentally sound or economically feasible, or would significantly increase consumptive use of Colorado River System water.

V. The WPRS considers a federal contribution to the costs of industrial use of brackish and/or saline water, where cost-effective, as a joint private-government salinity control measure. Such activities shall not delay the implementation of the salinity control projects identified in Title II of P.L. 93-320.

POLICY FOR IMPLEMENTATION OF COLORADO RIVER SALINITY STANDARDS THROUGH THE NPDES PERMIT PROGRAM FOR INTERCEPTED GROUND WATER

Adopted by
The Colorado River Basin Salinity Control Forum
October 20, 1982

The States of the Colorado River Basin in 1977 agreed to the "Policy for Implementation of Colorado River Salinity Standards through the NPDES Permit Program" with the objective for industrial discharge being "no-salt return" whenever practicable. That policy required the submittal of information by the applicant on alternatives, water rights, quantity, quality, and costs to eliminate or minimize the salt discharge. The information is for use by the NPDES permit-issuing agency in evaluating the practicability of achieving "no-salt" discharge.

There are mines and wells in the Basin which discharge intercepted ground waters. The factors involved in those situations differ somewhat from those encountered in other industrial discharges. Continued development will undoubtedly result in additional instances in which permit conditions must deal with intercepted ground water.

The discharge of intercepted ground water needs to be evaluated in a manner consistent with the overall objective of "no-salt return" whenever practical. The following provides more detailed guidance for those situations where ground waters are intercepted with resultant changes in ground-water flow regime.

I. The "no-salt" discharge requirement may be waived at the option of the permitting authority in those cases where the discharged salt load reaching the main stem of the Colorado River is less than one ton per day or 350 tons per year whichever is less. Evaluation will be made on a case-by-case basis.

II. Consideration should be given to the possibility that the ground water, if not intercepted, normally would reach the Colorado River System in a reasonable time frame. An industry desiring such consideration must provide detailed information including a description of the topography, geology, and hydrology. Such information must include direction and rate of ground water flow; chemical quality and quantity of ground water; and the location, quality, and quantity of surface streams and springs that might be affected. If the information adequately demonstrates that the ground water to be intercepted normally would reach the river system in a reasonable time frame and would contain approximately the same or greater salt load than if intercepted, and if no significant localized problems would be created, then the permitting agency may waive the "no-salt" discharge requirement.

* The term "intercepted ground water" means all ground water encountered during mining or other industrial operations.

III. In those situations where the discharge does not meet the criteria in I or II above, the applicant will be required to submit the following information for consideration:

A. Description of the topography, geology, and hydrology. Such information must include the location of the development, direction and rate of ground water flow, chemical quality and quantity of ground water, and relevant data on surface streams and springs that are or might be affected. This information should be provided for the conditions with and without the project.

B. Alternative plans that could substantially reduce or eliminate salt discharge. Alternative plans must include:

1. Description of water rights, including beneficial uses, diversions, and consumptive use quantities.

2. Description of alternative water supplies, including provisions for water reuse, if any.

3. Description of quantity and quality of proposed discharge.

4. Description of how salts removed from discharges shall be disposed of to prevent their entering surface waters or ground water aquifers.

5. Technical feasibility of the alternatives.

6. Total construction, operation, and maintenance costs; and costs in dollars per ton of salt removed from the discharge.

7. Closure plans to ensure termination of any proposed discharge at the end of the economic life of the project.

8. A statement as to the one alternative plan for reduction of salt discharge that the applicant recommends be adopted, including an evaluation of the technical, economic, and legal practicability of achieving no discharge of salt.

9. Such information as the permitting authority may deem necessary.

IV. In determining whether a "no-salt" discharge is practicable, the permit-issuing authority shall consider, but not be limited to, the water rights and the technical, economic, and legal practicability of achieving no discharge of salt.

V. Where "no-salt" discharge is determined not to be practicable the permitting authority shall, in determining permit conditions, consider:

A. The impact of the total proposed salt discharge of each alternative on the lower main stem in terms of both tons per year and concentration.

B. Costs per ton of salt removed from the discharge for each plan alternative.

C. The compatibility of state water laws with each alternative.

D. Capability of minimizing salinity discharge.

E. The localized impact of the discharge.

F. Minimization of salt discharges and the preservation of fresh water by using intercepted ground water for industrial processes, dust control, etc. whenever it is economically feasible and environmentally sound.

POLICY FOR IMPLEMENTATION OF COLORADO RIVER SALINITY STANDARDS THROUGH THE NPDES PERMIT PROGRAM FOR FISH HATCHERIES

Adopted by
The Colorado River Basin Salinity Control Forum
October 28, 1988

The states of the Colorado River Basin in 1977 adopted the "Policy for Implementation of Colorado River Salinity Standards through the NPDES Permit Program." The objective was for "no-salt return" whenever practicable for industrial discharges and an incremental increase in salinity over the supply water for municipal discharges. The Forum addressed the issue of intercepted ground water under the 1977 policy, and adopted a specific policy dealing with that type of discharge.

A specific water use and associated discharge which has not been here-to-fore considered is discharges from fish hatcheries. This policy is limited exclusively to discharges from fish hatcheries within the Colorado River Basin. The discharges from fish hatcheries need to be addressed in a manner consistent with the 1977 and 1980 Forum policies.

The basic policy for discharges from fish hatcheries shall permit an incremental increase in salinity of 100 mg/l or less above the flow weighted average salinity of the intake supply water. The 100 mg/l incremental increase may be waived if the discharged salt load reaching the Colorado River system is less than one ton per day, or 350 tons per year, whichever is less. Evaluation is to be made on a case-by-case basis.

I. The permitting authority may permit a discharge in excess of the 100 mg/l incremental increase at the time of insurance or reissuance of a NPDES discharge permit. Upon satisfactory demonstration by the permittee that it is not practicable to attain the 100 mg/l limit.

II. Demonstration by the applicant must include information on the following factors relating to the potential discharge:

A. Description of the fish hatchery and facilities.

B. Description of the quantity and salinity of intake water sources.

C. Description of salt sources in the hatchery.

D. Description of water rights, including diversions and consumptive use quantities.

E. Description of the discharge, covering location, receiving waters, quantity salt load, and salinity.

F. Alternative plans for minimizing salt discharge from the hatchery. Alternative plans should include:

1. Description of alternative means of salt control.

2. Cost of alternative plans in dollars per ton, of salt removed from discharge.

G. Such other information pertinent to demonstration of non-practicability as the permitting authority may deem necessary.

III. In determining what permit conditions shall be required, the permit-issuing authority shall consider the following criteria including, but not limited to:

A. The practicability of achieving the 100 mg/l incremental increase.

B. Where the 100 mg/l incremental increase is not determined to be practicable:

1. The impact of the proposed salt input of each alternative on the lower main stem in terms of tons per year and concentration.

2. Costs per ton of salt removed from discharge of each alternative plan.

3. Capability of minimizing the salt discharge.

IV. If, in the opinion of the permitting authority, the database for the hatchery is inadequate, the permit will contain the requirement that the discharger monitor the water

supply and the discharge for salinity. Such monitoring program shall be completed within two years and the discharger shall then present the information as specified above.

V. All new and reissued NPDES permits for all hatcheries shall require monitoring of the salinity of the intake water supply and the effluent at the time of peak fish population.

A. The practicability of achieving the 100 mg/l incremental increase.

B. Where the 100 mg/l incremental increase is not determined to be practicable:

1. The impact of the proposed salt input of each alternative on the lower main stem in terms of tons per year and concentration.

2. Costs per ton of salt removed from discharge of each alternative plan.

3. Capability of minimizing the salt discharge.

IV. If, in the opinion of the permitting authority, the database for the hatchery is inadequate, the permit will contain the requirement that the discharger monitor the water supply and the discharge for salinity. Such monitoring program shall be completed within two years and the discharger shall then present the information as specified above.

V. All new and reissued NPDES permits for all hatcheries shall require monitoring of the salinity of the intake water supply and the effluent at the time of peak fish population.

A. Analysis for salinity may be either as total dissolved solids (TDS) or be electrical conductivity where a satisfactory correlation with TDS has been established. The correlation should be based on a minimum of five different samples.

[Source: 1996 Review, Water Quality Standards for Salinity-Colorado River System, Colorado River Basin Salinity Control Forum-June 1996, Appendix B, pgs.B-1-B-14]

Chapter 19 - Colorado River Floodway Act

PUBLIC LAW 99-450
[H. R. 1246]
October 8, 1986

Preface
An Act To establish a federally declared Floodway for the Colorado River below Davis Dam.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.
43 U.S.C. 1600.

This Act may be cited as the "Colorado River Floodway Protection Act".

Section 2. Findings and Purposes
43 U.S.C. 1600.

(a) Findings.- The Congress finds that-

(1) there are multiple purposes established by law for the dams and other control structures administered by the Secretary of the Interior on the Colorado River;

(2) the maintenance of the Colorado River Floodway established in this Act is essential to accomplish these multiple purposes;

(3) developments within the Floodway are and will continue to be vulnerable to damaging flows such as the property damage which occurred in 1983 and may occur in the future;

(4) certain Federal programs which subsidize or permit development within the Floodway threaten human life, health, property, and natural resources; and

(5) there is a need for coordinated Federal, State, and local action to limit Floodway development.

(b) Purpose.-The Congress declares that the purposes of this Act are to-

(1) establish the Colorado River Floodway, as designated and described further in this Act, so as to provide benefits to river users and to minimize the loss of human life, protect health and safety, and minimize damage to property and natural resources by restricting future Federal expenditures and financial assistance, except public health funds, which have the effect of encouraging development within the Colorado River Floodway; and

(2) establish a task force to advise the Secretary of the Interior and the Congress on establishment of the Floodway and on managing existing and future development within the Floodway, including the appropriateness of compensation in specified cases of extraordinary hardship.

Section 3. Definitions.
43 U.S.C.1600a.

(a) The term *Committees* refers to the Committee on Interior and Insular Affairs of the United
States House of Representatives and the Committee on Environment and Public Works and the
Committee on Energy and Natural Resources of the United States Senate.

(b) The term *financial assistance* means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than-

(1) general revenue-sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221);

(2) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(3) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(4) assistance for environmental studies, plans, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(5) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age, survivors, or disability insurance program. Such term also includes flood insurance described in sections 1322 (a) and (b) of the National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572) as amended, on and after the dates on which the provisions of those sections become effective.

(c) The term *Secretary* means the Secretary of the Interior.

(d) The term *water district* means any public agency providing water service, including water districts, county water districts, public utility districts, and irrigation districts.

(e) The term *Floodway* means the Colorado River Floodway established in section 5 of this Act.

Section 4. Colorado River Floodway Task Force.
State and Local Governments. Indians. Reports. 43 U.S.C. 1600b.

(a) To advise the Secretary and the Congress there shall be a Colorado River Floodway Task Force, which shall include one representative of-

(1) each State (appointed by the Governor) and Indian reservation in which the Floodway is
located;

(2) each county in which the Floodway is located;

(3) a law enforcement agency from each county in which the Floodway is located;

(4) each water district in which the Floodway is located;

(5) the cities of Needles, Parker, Blythe, Bullhead City, Yuma, Laughlin, Lake Havasu City, Nevada (if and when incorporated), and Mojave County, Arizona Supervisor District No. 2 (chosen by, but not a member of the Board of Supervisors);

(6) the Chamber of Commerce from each county in which the Floodway is located;

(7) the Colorado River Wildlife Council;

(8) the Army Corps of Engineers;

(9) the Federal Emergency Management Agency (FEMA);

(10) the Department of Agriculture;

(11) the Department of the Interior; and

(12) the Department of State.

(b) The task force shall be chartered and operate under the provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I) and shall prepare recommendations concerning the Colorado River Floodway, which recommendations shall deal with:

(1) the means to restore and maintain the Floodway specified in section 5 of this Act, including, but not limited to, specific instances where land transfers or relocations, or other changes in land management, might best effect the purposes of this Act;

(2) the necessity for additional Floodway management legislation at local, tribal, State, and Federal levels;

(3) the development of specific design criteria for the creation of the Floodway boundaries;

(4) the review of mapping procedures for Floodway boundaries;

(5) whether compensation should be recommended in specific cases of economic hardship resulting from impacts of the 1983 flood on property outside the Floodway which could not reasonably have been foreseen; and Indians.

(6) the potential application of the Floodway on Indian lands and recommended legislation or regulations that might be needed to achieve the purposes of the Floodway taking into consideration the special Federal status of Indian lands.

(c) The task force shall exist for at least one year after the date of enactment of this Act, or until such time as the Secretary has filed with the Committees the maps described in subsection 5(b)(2). The task force shall file its report with the Secretary and the Committees within nine months after the date of enactment of this Act.

Section 5. Colorado River Floodway.
Davis Dam. State and Local Governments. Indians. Banks and Banking 43 U.S.C. 1600c.

(a) There is established the Colorado River Floodway as identified and generally depicted on maps that are to be submitted by the Secretary.

(b) (1) Within eighteen months after the date of enactment of this Act, the Secretary, in consultation with the seven Colorado River Basin States, represented by persons designated by the Governors of those States, the Colorado River Floodway Task Force, and any other interested parties shall:

(i) complete a study of the tributary floodflows downstream of Davis Dam;

(ii) define the specific boundaries of the Colorado River Floodway so that the Floodway can accommodate either a one-in-one hundred year river flow consisting of controlled releases and tributary inflow, or a flow of forty thousand cubic feet per second (cfs), whichever is greater, from below Davis Dam to the Southerly International Boundary between the United States of America and the Republic of Mexico.

(2) As soon as practicable after the determination of the Floodway boundary pursuant to this subsection, the Secretary shall prepare and file with the Committees maps depicting the Colorado River Floodway, and each such map shall be considered a standard map to be adhered to by all agencies and shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map may be made. Each such map shall be on file and available for public inspection in the Office of the Commissioner of the Bureau of Reclamation, Department of the Interior,

and in other appropriate offices of the Department.

(3) The Secretary shall provide copies of the Colorado River Floodway maps to (A) the chief executive officer of each State, county, municipality, water district, Indian tribe, or equivalent jurisdiction in which the Floodway is located, (B) each appropriate Federal agency, including agencies which regulate Federal financial institutions, and (C) each federally insured financial banks and institution which serves the geographic area as one of its primary markets, banking.

(c) (1) The Secretary shall conduct, at least once every five years, a review of the Colorado River Floodway and make, after notice to and in consultation with the appropriate officers referred to in paragraph (3) of subsection (b), and others, such minor and technical modifications to the boundaries of the Floodway as are necessary solely to reflect changes that have occurred in the size or location of any portion of the floodplain as a result of natural forces, and as necessary pursuant to subsection (c) of section (7) of this Act.

(2) If, in the case of any minor and technical modification to the boundaries of the Floodway made under the authority of this subsection, an appropriate chief executive officer of a State, county, municipality, water district, Indian tribe, or equivalent jurisdiction, to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, the Secretary shall submit to the chief executive officer a written justification for his failure to make modifications consistent with such comments or proposals.

Section 6. Limitations on Federal Expenditures Affecting the Floodway.
43 U.S.C. 1600d.

(a) Except as provided in section 7, no new expenditures or new financial assistance may be made available under authority of any Federal law or any purpose within the Floodway established under section 5 of this Act.

(b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if-

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date of enactment.

Section 7. Exceptions.
Grants. Loans. 43 U.S.C. 1600e.

Notwithstanding section 6, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Colorado River Floodway for-

(a) any dam, channel or levee construction, operation or maintenance for the purpose of flood control, water conservation, power or water quality;

(b) other remedial or corrective actions, including but not limited to drainage facilities essential to assist in controlling adjacent high ground water conditions caused by flood flows;

(c) the maintenance, replacement, reconstruction, repair, and expansion, of publicly or tribally owned or operated roads, structures (including bridges), or facilities: *Provided*, That, no such expansion shall be permitted unless-

(1) the expansion is designed and built in accordance with the procedures and standards established in section 650.101 of title 23, Code of Federal Regulations, and the following as they may be amended from time to time; and

(2) the boundaries of the Floodway are adjusted to account for changes in flows caused, directly or indirectly, by the expansion;

(d) military activities essential to national security;

(e) any of the following actions or projects, but only if the Secretary finds that the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(1) projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects;

(2) the establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto;

(3) projects eligible for funding under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11);

(4) scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and are limited to actions that are necessary to alleviate the emergency. Disaster assistance under the provisions of the Disaster Relief Act of 1974 (Public Law 93-288, as

amended) may also be provided respect to persons residing within the Floodway, or structures or public infrastructure in existence or substantially under construction therein, on the date ninety days after the date of enactment of this Act; *Provided,* That, such persons, or with respect to public infrastructure the State or local political entity which owns or controls such infrastructure, had purchased flood insurance for structures or infrastructure under the National Flood Insurance Program, if eligible, and had taken prudent and reasonable steps, as determined by the Director of the Federal Emergency Management Agency, to minimize damage from future floods or operations of the Floodway established in the Act;

(6) other assistance for public health purposes, such as mosquito abatement programs;

(7) nonstructural projects for riverbank stabilization that are designed to enhance or restore natural stabilization systems;

(8) publicly or tribally financed, owned and operated compatible recreational developments such as regional parks, golf courses, docks, boat launching ramps (including steamboat and ferry landings), including compatible recreation uses and accompanying utility or interpretive improvements which are essential or closely related to the purpose of restoring the accuracy of a National Historical Landmark and which meet best engineering practices considering the nature of Floodway conditions; and

(9) compatible agricultural uses that do not involve permanent crops and include only a minimal amount of permanent facilities in the Floodway.

Section 8. Certification of Compliance.
43 U.S.C.1600f.

The Secretary of the Interior shall, on behalf of each Federal agency concerned, make written
of compliance, certification that each agency has complied with the provisions of this Act during each fiscal year beginning after September 30, 1985. Such certification shall be submitted on an annual basis to the United States House of Representatives and the United States Senate on or before January 15 of each fiscal year.

Section 9. Priority of laws.
State and Local Governments. Indians. 43 U.S.C. 1600g.

Nothing contained in the Act shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat.1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 944, 59 Stat. 1219), the Flood Control Act of 1944 (58 Stat. 887), the decree entered by the Supreme Court of the United States in Arizona v. California, and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501). Furthermore, nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, tribe, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State, tribal, or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State or tribe, so that the two cannot be reconciled or consistently stand together. Inconsistencies shall be reviewed by the task force, and the task force shall make recommendations concerning such local laws. This Act shall in no way be interpreted to interfere with a State's or tribe's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

Section 10. Separability
43 U.S.C. 1600h.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Section 11. Reports to Congress
Indians. 43 U.S.C. 1600i.

Within one year after the date of the enactment of this Act, the Secretary shall prepare and submit
to the Committees a report regarding the Colorado River Floodway, the task force's report, and
the Secretary's recommendations with respect to the objectives outlined in section 4(b) of this Act.
In making his report, the Secretary shall analyze the effects of this Act on the economic development of the Indian tribes whose lands are located within the Floodway.

Section 12. Amendments Regarding Flood Insurance
Banks and Banking. Loans. 42 U.S.C.4029, 42 U.S.C. 4001 note.

(a) The National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572), as amended, is amended by adding the following section:

§1322 (a) Owners of existing National Flood Insurance Act policies with respect to structure located within the Floodway established under section 5 of the Colorado River Floodway Protection Act shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act and to renew and transfer such policies.

"(b) No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the Colorado River Floodway Protection Act for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act. New construction includes all structures that are not insurable prior to that date.

"(c) The Secretary of the Interior may by rule after notice and comment pursuant to 5 U.S.C. 553 establish temporary Floodway boundaries to be in effect until the maps required by section 5(b)(2) of the Colorado River Floodway Protection Act are filed, for the purpose of enforcing subsections (b) and (d) of this section.

"(d) A federally supervised, approved, regulated or insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section: *Provided*, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway."

Section 13. Federal leases.
Public Lands. Indians. Insurance. Securities. 43 U.S.C. 1600j.

(a) No lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be granted after the date of enactment of this Act unless the Secretary determines that such lease would be consistent with the operation and maintenance of the Colorado River Floodway.

(b) No existing lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be extended beyond the date of enactment of this Act or the stated expiration date of its current term, whichever is later, unless the lessee agrees to take reasonable and prudent steps determined to be necessary by the Secretary to minimize the inconsistency of operation under such lease with the operation and maintenance of the Colorado River Floodway.

(c) No lease of lands owned in whole or part by the United States between Hoover Dam and Davis Dam below elevation 655.0 feet of Lake Mohave shall be granted unless the Secretary determines that such lease would be consistent with the operation of Lake Mohave.

(d) The provisions of subsections (a) and (b) of this section shall not apply to lease operations on Indian lands pursuant to a lease providing for activities which are exempted under section 7 of this Act.

(e) Subsections (a) and (b) of this section shall not apply to lands held in trust by the United States for the benefit of any Indian tribe or individual with respect to any lease where capital improvements, and operation and maintenance costs are not provided for by Federal financial assistance if the lessee, tribe, or individual has provided insurance or other security for the benefit of the Secretary sufficient to insure against all reasonably foreseeable, direct, and consequential damages to the property of the tribe, private persons, and the United States, which may result from the proposed lease.

Section 14. Notices and Existing Laws
Public lands. 42 U.S.C. 4001 note.

(a) (1) Nothing in this Act shall alter or affect in any way the provisions of section 702c of title 33, United States Code.

(2) The Secretary shall provide notice of the provisions of section 702c of title 33, United States Code, and this Act to all existing and prospective lessees of lands leased by the United States and within the Colorado River Floodway.
(b) Except as otherwise specifically provided in this Act, all provisions of the National Flood
Insurance Act of 1968, as amended, and requirements of the National Flood Insurance Program ("NFIP") shall continue in full force and effect within areas wholly or partially within the Colorado River Floodway. Any maps or other information required to be prepared by this Act shall be used to the maximum extent practicable to support implementation of the NFIP.

(c) The Secretary shall publish notice on three successive occasions in newspapers of general circulation in communities affected by the provisions of section 1322 of Public Law 90-448 (82 Stat. 572), as amended by this Act.

Section 15. Authorization of Appropriation
Contracts. Indians 43 U.S.C. 1600*l*.

There is authorized to be appropriated to the Department of the Interior $600,000, through the end of fiscal year 1990, in addition to any other funds now available to the Department to discharge its duties to implement sections 4 through 14 of this Act: *Provided*, That by mutual agreement, such funds shall be made available to the Federal Emergency Management Agency to discharge its duties under section 12 of this Act: *Provided further*, That the provisions of sections 6 and 7 of this Act shall not be affected by this section: *And provided further*, in addition, Indian tribes may be eligible under Public Law 93-638 to contract for studies of Indian lands required under the provisions of this Act.

Approved October 8, 1986.

[Source: Public Law 99-450, H.R. 1246]

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Chapter 20 - Grand Canyon Protection Act

PUBLIC LAW NO. 102-575
October 30, 1992

Section 1801. Short Title

This Act may be cited as the "Grand Canyon Protection Act of 1992".

Section 1802. Protection of Grand Canyon National Park

(a) IN GENERAL.-The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1804 and exercise other authorities under existing law in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use.

(b) COMPLIANCE WITH EXISTING LAW.-The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado River Basin Compact, the Water Treaty of 1994 with Mexico, the decree of the Supreme Court in Arizona vs. California, and the provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 that govern allocation, appropriation, development, and exportation of the waters of the Colorado River Basin.

(c) RULES OF CONSTRUCTION.-Nothing in this title alters the purposes for which the Grand Canyon National Park or the Glen Canyon National Recreation Area were established or affects the authority and responsibility of the Secretary with respect to the management and administration of the Grand Canyon National Park and Glen Canyon National Recreation Area, including natural and cultural resources and visitor use, under laws applicable to those areas, including, but not limited to, the Act of August 25, 1916 (39 Stat. 535) as amended and supplemented.

Section 1803. Interim Protection of Grand Canyon National Park

(a) INTERIM OPERATIONS.-Pending compliance by the Secretary with section 1804, the Secretary shall, on an interim basis, continue to operate Glen Canyon Dam under the Secretary's announced interim operating criteria and the Interagency Agreement between the Bureau of Reclamation and the Western Area Power Administration executed October 2, 1991 and exercise other authorities under existing law, in accordance with the standards set forth in section 1802, utilizing the best and most recent scientific data available.

(b) CONSULTATION.-The Secretary shall continue to implement Interim Operations in consultation with-

(1) Appropriate agencies of the Department of the Interior, including the Bureau of Reclamation, United States Fish and Wildlife Service, and the National Park Service;

(2) The Secretary of Energy;

(3) The Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(4) Indian Tribes; and

(5) The general public, including representatives of the academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of Federal power produced at Glen Canyon Dam.

(c) DEVIATION FROM INTERIM OPERATIONS.-The Secretary may deviate from Interim Operations upon a finding that deviation is necessary and in the public interest to-

(1) comply with the requirements of Section 1804(a);

(2) respond to hydrologic extremes or power system operation emergencies;

(3) comply with the standards set forth in Section 1802;

(4) respond to advances in scientific data; or

(5) comply with the terms of the Interagency Agreement.

(d) TERMINATION OF INTERIM OPERATIONS.-Interim operations described in this section shall terminate upon compliance by the Secretary with section 1804.

Section 1804.Glen Canyon Dam Environmental Impact Statement; long-term Operation of Glen Canyon Dam.

(a) FINAL ENVIRONMENTAL IMPACT STATEMENT.-Not later than 2 years after the date of enactment of this Act, the Secretary shall complete a final Glen Canyon Dam environmental impact statement, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) AUDIT.-The Comptroller General shall-

(1) audit the cost and benefits to water and power users and to natural, recreational, and cultural resources resulting from management policies and dam operations identified pursuant to the environmental impact statement described in subsection (a); and

(2) report the results of the audit to the Secretary and the Congress.

(c) ADOPTION OF CRITERIA AND PLANS.-

(1) Based on the findings, conclusions, and recommendations made in the environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall- (A) adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968; and (B) exercise other authorities under existing law, so as to ensure that Glen Canyon Dam is operated in a manner consistent with section 1802.

(2) Each year after the date of the adoption of criteria and operating plans pursuant to paragraph (1), the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968 on the preceding year and the projected year operations undertaken pursuant to this Act.

(3)In preparing the criteria and operating plans described in section 602(b) of the Colorado River Basin Project Act of 1968 and in this subsection, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including-

(A) representatives of academic and scientific communities;
(B) environmental organizations;
(C) the recreation industry; and
(D) contractors for the purpose of Federal power produced at Glen Canyon Dam.

(d) REPORT TO CONGRESS.-Upon implementation of long-term operations under

subsection (c), the Secretary shall submit to the Congress the environmental impact statement described in subsection (a) and a report describing the long-term operations and other reasonable mitigation measures taken to protect, mitigate adverse impacts to, and improve the condition of the natural, recreational, and cultural resources of the Colorado River downstream of Glen Canyon Dam.

(e) ALLOCATION OF COSTS.-The Secretary of the Interior, in consultation with the Secretary of Energy, is directed to reallocate the costs of construction, operation, maintenance, replacement and emergency expenditures for Glen Canyon Dam among the purposes directed in section 1802 of this Act and the purposes established in the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 170). Costs allocated to section 1802 purposes shall be nonreimbursable. Except that in fiscal year 1993 through 1997 such costs shall be nonreimbursable only to the extent to which the Secretary finds the effect of all provisions of this Act is to increase net offsetting receipts; Provided, That if the Secretary finds in any such year that the enactment of this Act does cause a reduction in net offsetting receipts generated by all provisions of this Act, the costs allocated to section 1802 purposes shall remain reimbursable. The Secretary shall determine the effect of all the provisions of this Act and submit a report to the appropriate House and Senate committees by January 31 of each fiscal year, and such report shall contain for that fiscal year a detailed accounting of expenditures incurred pursuant to this Act, offsetting receipts generated by this Act, and any increase or reduction in net offsetting receipts generated by this Act.

Section 1805. Long-Term Monitoring

(a) IN GENERAL.-The Secretary shall establish and implement long-term monitoring programs and activities that will ensure that Glen Canyon Dam is operated in a manner consistent with that of section 1802.

(b) RESEARCH.-Long-term monitoring of Glen Canyon Dam shall include any necessary research and studies to determine the effect of the Secretary's actions under section 1804(c) on the natural, recreational, and cultural resources of Grand Canyon National Park and Glen Canyon National Recreation Area.

(c) CONSULTATION.-The monitoring programs and activities conducted under subsection (a) shall be established and implemented in consultation with-

(1) the Secretary of Energy;

(2) the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming;

(3) Indian tribes; and

(4) the general public, including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors

for the purchase of Federal power produced at Glen Canyon Dam.

Section 1806. Rules of Construction.

Nothing in this title is intended to affect in any way-

(1) the allocations of water secured to the Colorado Basin States by any compact, law, or decree; or

(2) any Federal environmental law, including the Endangered Species Act. (16 U.S.C. 1521 et seq.).

Section 1807. Studies Nonreimbursable

All costs of preparing the environmental impact statement described in section 1804, including supporting studies, and the long-term monitoring programs and activities described in section 1805 shall be nonreimbursable. The Secretary is authorized to use funds received from the sale of electric power and energy from the Colorado River Storage Project to prepare the environmental impact statement described in section 1804, including supporting studies, and the long-term monitoring programs and activities described in section 1805, except that such funds will be treated as having been repaid and returned to the general fund of the Treasury as costs assigned to power for repayment under section 5 of the Act of April 11, 1956 (70 Stat. 170). Except that in fiscal year 1993 through 1997 such provisions shall take effect only to the extent to which the Secretary finds the effect of all the provisions of this Act is to increase net offsetting receipts; Provided, That if the Secretary finds in any such year that the enactment of this Act does cause a reduction in net offsetting receipts generated by all provisions of this Act, all costs described in this section shall remain reimbursable. The Secretary shall determine the effect of all the provisions of this Act and submit a report to the appropriate House and Senate committees by January 31 of each fiscal year, and such report shall contain for that fiscal year a detailed accounting of expenditures incurred pursuant to this Act, offsetting receipts generated by this Act, and any increase or reduction in net offsetting receipts generated by this Act.

Section 1808. Authorization of Appropriations

There are authorized to be appropriated such sums as are necessary to carry out this title.

Section 1809. Replacement Power

The Secretary of Energy in consultation with the Secretary of the Interior and with representatives of the Colorado River Storage Project power customers, environmental organizations and the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall identify economically and technically feasible methods of replacing any power generation that is lost through adoption of long-term operational criteria for Glen Canyon Dam as required by section 1804 of this title. The Secretary shall present a report of the findings, and implementing draft legislation, if necessary, not later than two years after adoption of long-term operating criteria. The Secretary shall include an investigation of the feasibility of adjusting operations at Hoover Dam to replace all or part of such lost generation. The Secretary shall include an investigation of the modifications or additions to the transmission system that may be required to acquire and deliver replacement power.

Chapter 21 - Hoover Power Plant Act of 1984

PUBLIC LAW 98-381 -- AUG. 17, 1984
98 STAT. 1333

An Act

To authorize the Secretary of the Interior to construct, operate, and maintain certain facilities at Hoover Dam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "Hoover Power Plant Act of 1984".

TITLE I

Section 101.

(a) The Secretary of the Interior is authorized to increase the capacity of existing generating equipment and appurtenances at Hoover Powerplant (hereinafter in this Act referred to as "uprating program"); and to improve parking, visitor facilities, and roadways and to provide additional elevators, and other facilities that will contribute to the safety and sufficiency of visitor access to Hoover Dam and Powerplant (hereinafter in this Act referred to as "visitor facilities program").

(b) The Secretary of the Interior is authorized to construct a Colorado River bridge crossing, including suitable approach spans, immediately downstream from Hoover Dam for the purpose of alleviating traffic congestion and reducing safety hazards. This bridge shall not be a part of the Boulder Canyon project and shall neither be funded nor repaid from the Colorado River Dam Fund or the Lower Colorado River Basin Development Fund.

Section 102.

(a) Section 403(b) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. 1543) is amended by inserting "(1)" after "(b)" and adding the following new paragraph at the end thereof: "(2) Except as provided in subsection 309(b), as amended, sums advanced by non-Federal entities for the purpose of carrying out the provisions of title III of this Act shall be credited to the development fund and shall be available without further appropriation for such purpose".

(b) Paragraph (1) of section 403 (c) of the Colorado River Basin Project Act of 1968 (82 Stat. 894, as amended, 43 U.S.C. 1543 (c)) is revised to read as follows: "(1) all revenues collected in connection with the operation of facilities authorized in title III in furtherance of

the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), until completion of repayment requirements of the Central Arizona project;".

(c) Paragraph (2) of section 403(c) is revised by inserting immediately preceding the existing proviso: *"Provided, however,* That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* That after the repayment period for said Central Arizona project, the equivalent of 2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section:".

Section 103.

(a) The Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, is further amended:

(1) In the first sentence of section 2(b), by striking out "except that the aggregate amount of such advances shall not exceed the sum of $165,000,000", and by replacing the comma after the Word "Act" with a period.

(2) In section 3, by deleting "$165,000,000." and inserting in lieu thereof "$242,000,000, of which $77,000,000 (October 1983 price levels) shall be adjusted plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs as indicated by engineering cost indices applicable to the type of construction involved herein. Said $77,000,000 represents the additional amount required for the uprating program and the visitor facilities program:.

(b) Except as amended by this Act, the Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemented, shall remain in full force and effect.

Section 104.

(a) The Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. 618), as amended and supplemented, is further amended:

(1) In section 1 by deleting the phrase "during the period beginning June 1, 1937, and ending May 31, 1987" appearing in the introductory paragraph of section 1 and in section 1(a) and inserting in lieu thereof "beginning June 1, 1937".

(2) In section 1(b) by deleting the phrase "and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987" and inserting in lieu thereof "and such advances made on and after June 1, 1937, over fifty-year periods".

(3) In section 1 by deleting the word "and" at the end of subsection (c); deleting the period at the end of subsection (d) and inserting in lieu thereof "; and", and by adding after subsection (d) the following new subsection (e): "(e) To provide by application of the increments to rates specified in section 403 (c)(2) of the Colorado River Basin Project Act of 1968, as amended and supplemented, revenues, from and after June 1, 1987, for application to the purposes there specified".

(4) In section 2:

(i) by deleting the first sentence and subsection (a) and inserting in lieu thereof: "All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for: "(a) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriations Acts;" and

(ii) by amending subsection (e) to read as follows: "(e) Transfer to the Lower Colorado River Basin Development Fund established by title IV of the Colorado River Basin Project Act of 1968, as amended and supplemented, of the revenues referred to in section 1(e) of this Act".

(5) By deleting the final period at the end of section 6 and inserting in lieu thereof the following: *"Provided,* That the respective rates of interest on appropriated funds advanced for the visitor facilities program, as described in section 101(a) of the Hoover Power Plant Act of 1984, shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the program during the month preceding the fiscal year in which the costs of the program are incurred. To the extent that more than one interest rate is determined

pursuant to the preceding sentence, the Secretary of the Treasury shall establish for repayment purposes an interest rate at a weighted average of the rates so determined".

(6) In section 12, in the paragraph beginning with "Replacements", by deleting "during the period from June 1, 1937, to May 31, 1987, inclusive" and inserting in lieu thereof "beginning June 1, 1937".

(b) Except as amended by this Act, the Boulder Canyon Project Adjustment Act of 1940 (54 Stat. 774, as amended, 43 U.S.C. 618), as amended and supplemented, shall remain in full force and effect.

Section 105.

(a) (1) The Secretary of Energy shall offer:

(A) To each contractor for power generated at Hoover Dam a renewal contract for delivery commencing June 1, 1987, of the amount of capacity and firm energy specified for that contractor in the following table:

Schedule A
Long Term Contingent Capacity And Associated Firm Energy Reserved For Renewal Contract Offers To Current Boulder Canyon Project Contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh) Summer	Winter	Total
Metropolitan Water District of	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of	189,000	452,192	193,797	645,989
United States, for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787

(B) To purchasers in the States of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

Schedule B

Contingent Capacity Resulting From The Uprating Program And Associated Firm Energy

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,364	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,364	767,214

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: *Provided, further,* That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

Schedule C

Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: *Provided, however,* That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatt-hours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in the amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona
Second: Meeting Hoover Dam contractual obligations under schedule A of section 105(a)(1)(A) and under schedule B of section 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	Arizona, Nevada, California

(2) The total obligation of the Secretary of Energy to deliver firm energy pursuant to schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B) is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in any year of operation (less deliveries thereof to Arizona required by its first priority under schedule C of section 105(a)(1)(C) whenever actual generation in any year of operation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said schedules A and B in the ratio that the sum of the quantities of firm energy to which each

contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.

(3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 Federal Register commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.

(4) Each contract offered under subsection (a)(1) of this section shall:

(A) expire September 30, 2017;

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided*, That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall use such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; and

(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act, as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, 2017.

(c) (1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this

subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.

(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.

(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.

(g) The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for the renewal of contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning June 1, 1987, and ending September 30, 2017.

(h) (1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Boulder Canyon project is barred unless the complaint is filed within one year after the date of enactment of this Act in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Boulder Canyon Project Act or the Boulder Canyon Project Adjustment Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the act on complained of.

(2) Any contract entered into pursuant to section 105 of section 107 of this Act shall contain provisions by which any dispute or disagreement as to interpretation or performance of the provisions of this title or of applicable regulations or of the contract may be determined by arbitration or court proceedings. The Secretary of Energy or the Secretary of the Interior, as the case may be, if authorized to act for the United States in such arbitration or court proceedings and, except as provided in paragraph (1) of this subsection, jurisdiction is conferred upon any district court of the United States of proper venue to determine the dispute.

(i) It is the purpose of subsections (c), (g), and (h) of this section to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning June 1, 1987, and ending September 30, 2017, will vest with certainty and finality.

Section 106.

Reimbursement of funds advanced by non-Federal purchasers for the uprating program shall be a repayment requirement of the Boulder Canyon project beginning with the first day of the month following completion of each segment thereof. The cost of the visitor facilities program as defined in section 101(a) of this Act shall become a repayment requirement beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

Section 107.

(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended (hereinafter in this Act referred to as "Navajo surplus") shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 and as provided in part IV, section A of the Criteria.

(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939, shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River

Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however,* That rates shall not exceed levels that allow for an appropriate saving for the contractor.

(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control.

Section 108.

Recognizing the expiration of Colorado River storage project (CRSP) contracts in 1989, prior to final reallocation of CRSP power pursuant to existing law, and within one year after enactment of this Act, the Secretary of Energy, acting through the Western Area Power Administration, shall report, to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on all Colorado River storage project (CRSP) power resources, including those presently allocated to the Lower Division States, which may be used to financially support the development of authorized projects in the States of the Upper Division (as that term is used in article II of the Colorado River Compact) of the Colorado River Basin.

Section 109.

The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) is authorized to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any entity, public or private, to design, construct, operate, and maintain such facilities.

TITLE II

Section 201.

(a) Each long-term firm power service contract entered into or amended subsequent to one year from the date of enactment of this Act by the Secretary of Energy acting by and through the Western Area Power Administration (hereinafter "Western"), shall contain an article requiring the development and implementation by the purchaser thereunder of an energy conservation program. A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than one year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one program will be required for that purchaser. Each such contract article shall ---

(1) contain time schedules for meeting program goals and delineate actions to be taken in the event such schedules are not met, which may include a reduction of the allocation of capacity or energy to such purchaser as would otherwise be provided under such contract; and

(2) provide for review and modification of the energy conservation program at not to exceed five year intervals.

(b) For purposes of this title, an energy conservation program shall ---

(1) apply to all uses of energy and capacity which are provided from any Federal project;
(2) contain definite goals;

(3) encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner.

Section 202.

(a) Within one year after the date of enactment of this Act, Western shall amend its existing regulations (46 Fed. Reg. 56140) to reflect ---

(1) the elements to be considered in the energy conservation programs required by this title, and

(2) Western's criteria for evaluating and approving such programs.

Such amended regulations shall be promulgated only after public notice and opportunity to comment in accordance with the Administrative Procedure Act (5 U.S.C. 551-706).

(b) The following elements shall be considered by Western in evaluating energy conservation programs:

(1) energy consumption efficiency improvements;

(2) use of renewable energy resources in addition to hydroelectric power;

(3) load management techniques;

(4) cogeneration;

(5) rate design improvements, including --

(i) cost of service pricing;

(ii) elimination of declining block rates;

(iii) time of day rates;

(iv) seasonal rates; and

(v) interruptible rates; and

(6) production efficiency improvements.

(c) Where a purchaser is implementing one or more of the foregoing elements under a program responding to Federal, State, or other initiatives that apply to conservation and renewable energy development, in evaluating that purchaser's energy conservation program submitted pursuant to this title, Western shall make due allowance for the incorporation of such elements within the energy conservation program required by this title.

Approved August 17, 1984.

[Source: U.S. Code Congressional and Administrative News, Volumne1, 98th Congress-Second Session 1984, Pages: 98 Stat-1333-1342]

Chapter 22 - Ak Chin Water Settlement, Revised

PUBLIC LAW 98-530
98TH CONGRESS

AN ACT

Relating to the water rights of the Ak-Chin Indian Community.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1.
The Congress hereby finds and declares that-

(1) the Department of the Interior and the Ak-Chin Indian Community executed on September 23, 1983, an agreement entitled "Agreement in Principle for Revised Ak-Chin Water Settlement", wherein the parties agreed to revisions of the Act of July 28, 1978 (Public Law 95-328; 92 Stat. 409);

(2) the main purpose of the Agreement in Principle is to accomplish a prompt and economical fulfillment of the intent of the Act;

(3) section 3 of that Act requires that the Secretary of the Interior (hereinafter referred to as the "Secretary") as soon as possible but not later than twenty-five years after the date of the enactment of that Act, deliver to the Ak-Chin Indian Reservation a permanent supply of water to fulfill the Ak-Chin Indian Community's entitlement to eighty-five thousand acre-feet of water;

(4) section 2 of that Act requires that the Secretary deliver an interim supply of water until the permanent supply is acquired and delivered to the Reservation;

(5) the Secretary proposed to the Community, subject to the approval of Congress, to deliver the permanent supply not later than January 1, 1988, except that the Community, as a consideration, agree to certain modifications in the quantities of water to be delivered as the permanent supply and to release him from his obligation to deliver an interim supply;

(6) in order to establish January 1, 1988, as the date certain for the delivery of a permanent supply, the Community agreed to-

(A) the reduced deliveries of the permanent supply under certain conditions;

(B) the Secretary's proposals regarding the interim supply; and

(C) certain other proposals of the Secretary; and executed the Agreement in Principle; and

(7) the provisions contained in this Act conform to the purposes of that Agreement and the consideration embodied in it.

Section 2.

(a) As soon as possible but not later than January 1, 1988, the Secretary shall deliver annually a permanent water supply from the main project works of the Central Arizona Project to the southeast corner of the Ak-Chin Indian Reservation of not less than seventy-five thousand acre-feet of surface water suitable for agricultural use except as otherwise provided under subsections (b) and (c).

(b) In any year in which sufficient surface water is available, the Secretary shall deliver such additional quantity of water as is requested by the Community not to exceed ten thousand acre-feet. The Secretary shall be required to carry out the obligation referred to in this subsection only if he determines that there is sufficient capacity available in the main project works of the Central Arizona Project to deliver such additional quantity.

(c) In time of shortage, if the aggregate supply of water referred to in subsection (1) is not sufficient to deliver seventy-five thousand acre-feet, the Secretary may deliver a lesser quantity but in no event less than seventy-two thousand acre-feet. For the purposes of this Act, the term "time of shortage" means a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), such that there is not sufficient Central Arizona Project water in that year to supply up to a limit of three hundred nine thousand eight hundred and twenty-eight acre-feet of water for Indian uses, and up to a limit of five hundred ten thousand acre-feet of water for non-Indian municipal and industrial uses.

(d) The Secretary shall be deemed to have satisfied his obligation to deliver water under this section only if such water is delivered at flow rates which meet the seasonal requirements for agricultural use on the Reservation. Such rates shall not exceed three hundred cubic feet per second.

(e) To meet the obligations of the Secretary to deliver water under this Act, the Secretary shall design, construct, operate, maintain, and replace, at no cost to the Community, such facilities, including any aqueduct and appurtenant pumping facilities, powerplants and electric power transmission facilities, which may be necessary.

(f) The water supply referred to in subsections (a) and (c) shall consist of the aggregate of the following-

> (1) First, a permanent supply of no more or less than fifty thousand acre-feet of surface water per annum to be diverted from the Colorado River of the three hundred thousand acre-feet of water heretofore authorized by the Act of July 30, 1947 (61 Stat. 628), for beneficial consumptive use on lands of the Yuma Mesa Division of the Gila Project.

Water referred to in this paragraph and in subsection (g)(1) shall have equal priority. Furthermore, these provisions shall not affect the relative priorities among themselves of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project as fully set out in section 301(b) of Public Law 90-537.

(2) Such Central Arizona Project water allocated to the Community and referred to in the "Notice of Final Water Allocations to Indians and non-Indian Water Users and Related Decisions" (48 Fed. Reg. 12446, March 24, 1983) as is necessary to fulfill the Secretary's water delivery obligations. Delivery of such Central Arizona Project water shall be as provided in the December 11, 1980, Central Arizona Project water delivery contract between the United States and the Ak-Chin Indian Community, except as otherwise provided by this Act and any contract executed pursuant to this Act.

Notwithstanding any other provision of this Act, nothing is paragraph (1) of this subsection shall enlarge or diminish the authority of the Secretary under existing law. Nothing in section 4 or any other provision of this Act shall reduce the Secretary's obligation to deliver to the Ak-Chin Reservation a permanent supply of fifty thousand acre-feet of surface water per annum as well as the water referred to in paragraph (2) of this subsection.

(g) (1) The limitation in the first section of the Act of July 30, 1947 (61 Stat. 628) on the annual beneficial consumptive use in the Yuma Mesa Division of the Gila Project of no more than three hundred thousand acre-feet of Colorado River water shall be deemed to be a limitation of no more than two hundred and fifty thousand acre-feet, effective as provided in section 4 of this Act.

(2) Such two hundred and fifty thousand acre-feet of water shall not be used to irrigate more than thirty-seven thousand one hundred and eight-seven acres of land in the Yuma Mesa Division, specifically; six thousand five hundred and eighty-seven acres in the North Gila Valley Irrigation District; ten thousand six hundred acres in the Yuma Irrigation District; and twenty thousand acres in the Yuma Mesa Irrigation and Drainage District. Additional land in the Yuma Mesa Irrigation and Drainage District may be irrigated if there is a corresponding reduction in the irrigated acreage in the other districts so that at no time are more than thirty-seven thousand one hundred and eighty-seven acres being irrigated in the Yuma Mesa Division.

(3) Pursuant to appropriation, the Secretary shall pay-

(A) $5,400,000 to the Yuma Mesa Irrigation and Drainage District for the purpose of replacement, rehabilitation, and repair of the water delivery system within the Yuma Mesa Irrigation and Drainage District, including water pumping facilities; and

(B) $2,000,000 to the Yuma Mesa Irrigation and Drainage District, $1,000,000 to the Yuma Irrigation District, and $1,000,000 to the North Gila Valley Irrigation District, for the purpose of on-farm and district water conservation and drainage

measures.

Such funds shall not be used as non-Federal contributions in connection with any other Federal programs requiring cost-sharing. None of the payments to be made by the Secretary to said districts under this subsection shall be treated as supplemental or additional benefits or reimbursable to the United States.

(4) The Secretary is authorized and directed to amend the repayment contracts, as amended, between the United States and said districts to conform to the provisions of this Act and to provide that all remaining repayment obligations owing to the United States on the date of the enactment of this Act are discharged. The Secretary is authorized at the request of the districts or any one of them to issue a certificate acknowledging that the lands in the requesting district are free of the ownership and full cost pricing provisions of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of Yuma Country, Arizona. Amendments to the districts' contracts relating to items other than those covered by this Act shall not be made without the consent of the irrigation districts.

(5) The Secretary shall be required to carry out his obligations in paragraphs (3) and (4) only if the Yuma Mesa Irrigation and Drainage District, the North Gila Valley Irrigation District, and the Yuma Irrigation District execute amendatory contracts necessary to carry out the provisions of this subsection, including specifically a waiver and release of any and all claims to the annual beneficial consumptive use of Colorado River water in excess of two hundred fifty thousand acre-feet as provided in paragraph (1) of this subsection.

(h) (1) If the facilities required to deliver water to the Ak-Chin Reservation as provided in this section are not completed by January 1, 1988, the Secretary shall pay damages measured by the replacement cost of water not delivered in that calendar year up to a limit of thirty-five thousand acre-feet. In addition and to mitigate the effects occasioned by the failure to deliver said water, the Secretary shall pay all operation, maintenance and replacement costs of on-reservation wells to produce up to forty thousand acre-feet of water in that year for use by the Community.

(2) Commencing January 1, 1989, the Secretary shall pay damages measured by the replacement cost of water not delivered under subsection (a) or (c) as appropriate, up to a limit of seventy-five thousand or seventy-two thousand acre-feet of water, irrespective of whether the facilities to deliver water to the Ak-Chin Reservation have been completed.

(i) In any year in which the Ak-Chin Indian Community requests additional water under subsection (b) and such water and associated canal capacity are available, if the Secretary fails to deliver that quantity of additional water, in addition to any damages which he is required to pay under subsection (h), he shall pay damages in an amount measured by the agricultural water service operation, maintenance, and replacement costs for the Central Arizona Project in effect during that year, plus 20 per centum, of such additional quantity of

water as is not delivered.

(j) The Ak-Chin Indian Community shall have the right to devote the permanent water supply provided for by this Act to any use, including but not limited to agricultural, municipal, industrial, commercial, mining or recreational use.

(k) The water referred to in subsection (f)(1) shall be for the exclusive use and benefit of the Ak-Chin Indian Community, except that whenever the aggregate water supply referred to in subsection (f) exceeds the quantity necessary to meet the obligations of the Secretary under this Act, the Secretary shall allocate on an interim basis to the Central Arizona Project any of the water referred to in subsection (f) which is not required for delivery to the Ak-Chin Indian Reservation under this Act.

Section 3.

(a) The obligation of the Secretary to acquire and deliver to the Community an interim water supply from 1984 through 1987 under section 2 of the Act of July 28, 1978 (Public Law 95-328) shall be deemed to be fully discharged once-

(1) within sixty days of enactment of appropriations, the Secretary pays to the Community $1,400,000 in a lump sum grant for economic development in fiscal year 1986;

(2) the Secretary of the Treasury, within thirty days after the date of enactment of this Act, has paid to the Community $15,000,000 for general community purposes as provided in Public Law 98-396;

(3) within sixty days after the date of enactment of this Act the Secretary has provided to the Community grants for economic development purposes of $2,000,000 from funds provided in Public Law 98-396 for the permanent water supply; and

(4) the Secretary has amended those repayment contracts between the United States and the Community to provide that all repayment obligations owing to the United States are discharged.

The Secretary is hereby and directed to take such actions needed to amend the contracts referred to in paragraph (4).

(b) To carry out the purposes of this section the Ak-Chin Indian Community shall have the complete discretion to use and expend the funds referred to in this section.

Section 4.

The provisions of sections 2 (f)(1) and (g) of this Act shall not take effect until-

(1) the amendatory contracts authorized by section 2(g) of this Act have been duly ratified and approved by each of the districts and executed by the United States; and

(2) the funds authorized to be paid to the districts by section 2(g)(3) of this Act have been appropriated and transferred to the districts.

Section 5.

(a) The obligations of the Secretary under section 3 of the Act of July 28, 1978 (92 Stat. 409; Public Law 95-328), shall terminate upon the enactment of this Act. If the Secretary fails to acquire the water supply referred to in section 2(f)(1) of this Act by January 1, 1988, the Secretary shall be obligated-

(1) to deliver annually to the southeast corner of the Ak-Chin Indian Reservation eighty-five thousand acre-feet of water suitable for irrigation beginning January 1, 1988; and

(2) to provide as soon as possible, but not later than January 1, 2003, for the permanent delivery of such water.

(b) Failure to deliver water as specified in this section shall render the United States liable for damages measured by the replacement cost of water not delivered.

Section 6.

The Secretary shall establish a water management plan for the Ak-Chin Indian Reservation which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan, developed under Arizona law.

Section 7.

(a) There is hereby authorized to be appropriated the sum of $1,000,000 for payment to the fund referred to in subsection (b). Subject to appropriations, the Secretary shall pay a sum of $1,000,000 to such fund.

(b) No portion of the sum referred to in subsection (a) shall be paid unless-

(1) the Central Arizona Water Conservation District establishes a fund to be administered by the District for voluntary acquisition or conservation of water from sources within the State of Arizona for use in central Arizona in years when water supplies are reduced; and

(2) the Central Arizona Water Conservation District has contributed the sum of not less than $1,000,000 to such fund: *Provided*, That if the contribution of not less than $1,000,000 by the District to such fund has not been fully paid as provided in this section within two years of the date of enactment of this Act, the authorization for appropriation and payment of the sum referred to in subsection (a) shall terminate.

(c) If the provisions of this section are for any reason not implemented as herein provided, the other sections of this Act shall remain unaffected thereby.

Section 8.

Nothing in this Act shall be construed to enlarge or diminish the authority of the Secretary with regard to the Colorado River.

Section 9.

No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

Section 10.

(a) Section 311 of the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1283) is amended to read as follows: "Sec. 311. The provisions of section 2415 of title 28, United States Code, shall apply to any action relating to water rights of the Papago Indian Tribe or of any member of such Tribe which is brought-

"(1) by the United States for, or on behalf of, such Tribe or member of such Tribe, or

"(2) by such Tribe.".

(b) The amendment made by this section shall not apply with respect to any action filed prior to the date of enactment of this Act.

Approved October 19, 1984.

[Source: U.S. Code Congressional and Administrative News, Volumne130, 98th Congress - 1984, Pages: 98 Stat 2698-2703]

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Chapter 23 - Salt River Pima-Maricopa Indian Community Water Rights Settlement Act

Public Law 100-512
100th Congress
October 20, 1988
An Act

To provide for the settlement of the water rights claims of the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as the "Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988".

Section 2. Congressional Findings.

(a) The Congress finds and declares that-

(1) it is the policy of the United States, in fulfillment of its trust responsibility to Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency largely depend on development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 14, 1879, the United States Government established a reservation for the Salt River Pima-Maricopa Indian Community in Maricopa County, Arizona, at the confluence of the Salt and Verde Rivers tributary to the Gila River;

(5) the United States, as trustee for the Community, obtained water entitlements for the Community pursuant to the Kent Decree of 1910 and the Bartlett Dam Agreement of 1935; however, continued uncertainty as to the full extent of the Community's entitlement to water has severely limited the Community's access to the water and financial resources necessary to develop its valuable agricultural lands and frustrated its

efforts to reduce its dependence on Federal program funding and achieve meaningful self-determination and economic self sufficiency;

(6) litigation to determine the full extent and nature of the Community's water rights and those of its allotted land owners, and damages thereto, is currently pending before the United States District Court in Arizona and in the United States Claims Court. The United States, as trustee for the Community, also has filed claims for the Community's water rights in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa;

(7) recognizing that final resolution of pending litigation will take many years and entail great expense to all parties, continue economically and socially damaging limits to the Community's access to water, prolong uncertainty as to the availability of water supplies and seriously impair the long-term economic planning and development of all parties, the Community and neighboring non-Indian communities have sought to settle their disputes to water and reduce the burdens of litigation;

(8) after more than two years of negotiations, which included participation by representatives of the United States Government, the Community and neighboring non-Indian communities of the Salt River Valley, who all are party to the General Adjudication of the Gila River System and Source, the parties have entered into an agreement to resolve all water rights claims between and among themselves, to quantify the Community's entitlement to water, to provide for the orderly development of the Community's lands, and to prescribe a procedure for resolving such remaining claims which the Community and its allottees may have against the United States;

(9) pursuant to the agreement, the neighboring non-Indian communities will transfer rights to approximately thirty-two thousand acre-feet of surface water to the Community, provide for the means of firming existing water supplies of the Community, and make substantial additional contributions to carry out the agreement's provisions; and

(10) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Community, it is appropriate that the United States participate in the implementation of the agreement and contribute funds for the rehabilitation and expansion of existing reservation irrigation facilities so as to enable the Community to utilize fully its water entitlements in developing a diverse, efficient reservation economy.

(b) Therefore, it is the purpose of this Act

(1) to approve, ratify and confirm the agreement entered into by the Community and its neighboring non-Indian communities,

(2) to authorize and direct the Secretary to execute and perform such agreement, and

(2) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Community as provided in the agreement and this Act.

Section 3. Definitions.

For the purposes of this Act-

(a) *Agreement* means that agreement dated February 12, 1988, among the Salt River Pima Maricopa Indian Community; the State of Arizona; the Salt River-Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Water Conservation District; the Roosevelt Irrigation District; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the Arizona town of Gilbert; and the Central Arizona Water Conservation District, together with all exhibits thereto.

(b) *Allottees* means owners of allotted land within the Salt River Pima-Maricopa Indian Reservation.

(c) *Bartlett Dam Agreement* means the agreement between the United States and the Salt River Valley Water Users' Association dated June 3, 1935, relating to Verde River storage works.

(d) *CAP* means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(e) *CAWCD* means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract with the United States, dated December 15, 1972, for the delivery of water and repayment of costs of the Central Arizona Project.

(f) *Community* means the Salt River Pima-Maricopa Indian Community, a community of Pima and Maricopa Indians organized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(g) *Kent Decree* means the decree dated March 1, 1910, entered in Patrick T. Hurley versus Charles F. Abbott, and others, Case Numbered 4564, in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa, and all decrees supplemental thereto.

(h) *Plan 6 Agreement* means the agreement among the United States; the CAWCD; the Flood Control District of Maricopa County; SRP; the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; the State of Arizona; and the City of Tucson, for funding of Plan 6 facilities of the CAP, and for other purposes, dated April 15, 1986, together with Exhibits A, B, C, and D thereto.

(i) *RID* means the Roosevelt Irrigation District, an irrigation district organized under the laws of Arizona.

(j) *RWCD* means the Roosevelt Water Conservation District, an irrigation district organized under the laws of the State of Arizona.

(k) *Secretary* means the Secretary of the United States Department of the Interior.

(l) *SRP* means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, and the Salt River Valley Water Users' Association, an Arizona corporation.

Section 4. Kent Decree Reregulation.

(a) The Secretary is authorized and directed to designate seven thousand acre-feet (hereinafter referred to as "Designated Space") of the additional active conservation capacity which will result from the modifications to Roosevelt Dam on the Salt River previously authorized by the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506 et seq.), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), and the relevant provisions relating to "Construction Program" contained in title II of the Act making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes (Public Law 100-202), to be used for the reregulation of the Community's entitlement to water under the Kent Decree. The Designated Space shall be used for seasonal reregulation only, with no annual carry-over past October 1.

(b) The costs associated with the Designated Space shall be nonreimbursable, and the non-Federal funding obligation associated with the Designated Space under the Plan 6 Agreement and any supplement thereto is hereby forgiven.

Section 5. Bartlett Dam agreement.

(a) The Secretary is directed to amend the Bartlett Dam Agreement to provide that the Salt River Valley Water Users' Association shall increase the total Community allotment of developed water to twenty thousand acre-feet on December 31 of any calendar year in which all of the following three conditions occur:

(1) for at least two hundred and ninety-two days of the calendar year the total water stored in Salt River Valley Water Users' Association reservoirs on the Verde River is more than the storage capacity of Bartlett Dam Reservoir, which, for the purposes of this Act, is deemed to be one hundred seventy-eight thousand, one hundred eighty-six acre-feet, as periodically adjusted by the Salt River Valley Water Users' Association for silt losses;

(2) the total Community allotment of developed water under the Bartlett Dam

Agreement generated during the calendar year is less than seven thousand acre-feet;

(3) the total Community allotment of developed water under the Bartlett Dam Agreement existing at the end of the calendar year is less than twenty thousand acre-feet.

(b) Article 4 of the Bartlett Dam Agreement shall be deleted and replaced with the following language: "ARTICLE 4. OPERATION OF STORAGE WORKS 'The works to be constructed upon Verde River shall be operated and maintained by the Association. The Association may at any time store any part or all of Flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation'".

(c) Except as provided in subsections (a) and (b), all terms of the Bartlett Dam Agreement shall remain unchanged and in full force and effect.

Section 6. Ratification and Confirmation of Contracts.

(a) The contract between the Salt River Valley Water Users' Association and the Carrick and Mangham Agua Fria Lands and Irrigation Company (the predecessor of the Roosevelt Irrigation District) dated August 25, 1921, together with the modifications thereto dated February 3, 1927, and May 31, 1950, is ratified, confirmed, and declared to be valid.

(b) The contract between the Salt River Valley Water Users' Association and the Roosevelt Water Conservation District dated October 24, 1924, together with all amendments thereto and any extension thereto entered into pursuant to the Agreement is ratified, confirmed, and declared to be valid.

(c) The Secretary is authorized and directed to revise the subcontract of the Roosevelt Water Conservation District for agricultural water service from the CAP to include an addendum substantially in the form of exhibit "3.1" to the Agreement and to execute the subcontract as revised. Notwithstanding any other provision of law, the Secretary shall approve the conversions of agricultural water to municipal and industrial uses authorized by the addendum at such time or times as the conditions authorizing such conversions, as set forth in the addendum, are found to exist.

(d) The Secretary is authorized and directed to execute and perform that agreement among the United States, the CAWCD, the RWCD, the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the Arizona town of Gilbert providing for the assignment of a portion of the RWCD's entitlement to agricultural water service from the CAP and other matters in substantially the form of exhibit "12.3" to the Agreement, and such agreement is hereby ratified, confirmed, and declared to be valid.

(e) The Secretary is authorized and directed, at such time as the authorizations in section 10(b)(1) become effective, to certify that the lands within the RWCD are free from the

ownership and full cost pricing limitations of Federal reclamation law.

Section 7. Colorado River Water Exchange.

(a) On or before December 31, 1990, the Secretary shall acquire, from willing irrigation districts and their landowners (hereinafter "sellers"), rights to twenty-two thousand acre-feet of annual consumptive use of water from the main stream of the Colorado River in the State of Arizona with a contractual priority predating September 30, 1968, and which was not included by the Secretary, the Arizona Water Commission, or the Arizona Water Commission, or the Arizona Department of Water Resources in the determination of the water supplies available to the CAP for the purpose of establishing the initial allocations to non-Indian entities. Nothing in this Act shall alter the responsibilities of the United States under article V of the March 9, 1964, Decree of the United States Supreme Court in Arizona versus California, 376 U.S. 340.

(b) The Secretary is authorized, as part of consideration to willing sellers for the acquisition of water pursuant to subsection (a), to amend existing repayment contracts with the United States to which such sellers are subject to provide for the discharge of any remaining repayment obligation which the irrigation districts owe the United States as of May 30, 1987, and to certify that the lands within the irrigation districts are free from the ownership and full cost pricing limitations of Federal reclamation law.

(c) The Secretary shall contract to deliver such water to the Arizona cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, and Phoenix, and the Arizona town of Gilbert, in exchange for water provided by these cities and the town to the Community, in the amounts set forth in the Agreement. Such water shall increase the supply available for delivery to CAP non-Indian municipal and industrial subcontractors of CAP water service. The terms of each water delivery contract shall be in a form mutually acceptable to the respective parties thereto and substantially similar to exhibits "3.h.1" through "33.h.7" to the Agreement, which exhibits substantially conform to the terms of the CAP municipal and industrial water service subcontracts to which each of such cities and the town are parties on the effective date of this Act, except that:

(1) there shall be no water service capital charges associated with water deliveries made pursuant to the contracts authorized by this section, except as otherwise provided in the Agreement;

(2) for the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245 between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of water to cities and the town pursuant to the contracts authorized by this section shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation;

(3) notwithstanding the provisions of section 9(e) of the Reclamation Project Act of

1939 (43 U.S.C. 485h(e) and section 304(b)(2) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)(2)), the term of the contracts authorized by this section shall be perpetual.

(d) Within one year of the date of enactment of this Act the cities and the town shall deposit $9,000,000 in an escrow account as provided in the Agreement for the purposes of funding the acquisition of the rights to water referred to in subsection (a). On or after the date the waiver referred to in section 10(b)(1) becomes effective, monies shall be paid out of the escrow account to the United States in accordance with the Agreement: *Provided,* That such payment shall not exceed the costs incurred by the Secretary pursuant to subsection (a) or $9,000,000, whichever amount is less. Any monies remaining in escrow account after payment to the United States shall be returned to cities and the town. If the waiver referred to in section 10(b)(1) do not become effective by December 31, 1991, all monies in the escrow account shall be returned to the cities and the town in accordance with the Agreement.

(e) Neither the Salt River Valley Water Users' Association nor the Salt River Project Agricultural Improvement and Power District shall become subject to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) by virtue of either its participation in the settlement or its execution and performance of the Agreement, including but not limited to the exchange provided for in this section.

Section 8. Water Delivery Contract Amendments; Water Lease.

(a) The Secretary is authorized and directed to amend the CAP water delivery contract between the United States and the Community dated December 11, 1980 (herein referred to as the "Community CAP Delivery Contract"), as follows:

(1) to extend the term of such contract to December 31, 2098, and to provide for its subsequent renewal upon terms and conditions to be agreed upon by the parties prior to the expiration of the extended term thereof;

(2) to authorize the Community to lease the CAP water to which the Community is entitled under the Community CAP Delivery Contract to the Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe and the Arizona town of Gilbert under the terms and conditions of the Project Water Lease set forth in exhibits "3.m.1" through "3.m.7" to the Agreement for a term commencing January 1, 2000, and ending December 30, 2098;

(3) to perform the specific terms and conditions set forth in exhibit "3.j." to the Agreement.

(b) Notwithstanding any other provision of law, the amendments to the Community CAP Delivery Contract set forth in exhibit "3.j." to the Agreement and the terms and conditions of the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement

are hereby authorized, approved, and confirmed.

(c) Consistent with subsection (d)(1) of this section, the United States shall not impose upon the Community the operation, maintenance and replacement charges described and set forth in section 7(b) of the Community CAP Delivery Contract or any other charge with respect to CAP water delivered or required to be delivered to the cities and the town pursuant to the Community CAP Delivery Contract and the Project Water Leases herein authorized.

(d) The Community and the Secretary shall lease to the cities and the town, for a term commencing on January 1, 2000, and ending December 30, 2098, and for the total consideration of $16,000,000 to be paid by the cities and the town to the Community, upon those terms reflected in the Project Water Leases set forth in exhibits "3.m.1" through "3.m.7" to the Agreement, up to thirteen thousand three hundred acre-feet of CAP water to which the Community is entitled under the Community CAP Delivery Contract. The Project Water Leases shall specifically provide that-

(1) the cities and the town, each in accordance with its obligations under the Project Water Leases, shall pay all operation, maintenance and replacement costs of such water to the United States, or, if directed by the Secretary, to the Central Arizona Water Conservation District: *Provided,* That such payments shall not be commenced earlier than October 1, 1998:

(2) except as otherwise provided in the Project Water Leases, the cities and the town shall not be obligated to pay water service capital charges or municipal and industrial subcontract charges or any other charges or payment for such CAP water other than the operation, maintenance, and replacement costs and lease payments as set forth in this subsection.

(e) For the purpose of determining the allocation and repayment of costs of the CAP as provided in Article 9.3 of Contract Numbered 14-06-W-245, between the United States of America and the Central Arizona Water Conservation District dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of CAP water pursuant to the Project Water Leases referred to in subsection (d) shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

(f) Except as authorized by this section, no water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

Section 9. Construction and Rehabilitation; Trust Fund.

(a) The Secretary is directed-

(1) pursuant to the existing authority of the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.), to design and construct new facilities for the delivery of water from the Community's turnout on the CAP Granite Reef Aqueduct and from the

Arizona Canal to the irrigable Community reservation lands lying north of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement and to irrigable Community reservation lands south of the Arizona Canal at a cost which shall not exceed the cost for such design and construction which would have been incurred by the Secretary in the absence of the Agreement and this Act;

(2) pursuant to existing authority and obligation of the Snyder Act (25 U.S.C. 13), to deposit into the Community Trust Fund established under subsection (b)(1) $17,000,000 for the rehabilitation and improvement of the Community's existing facilities for the delivery of water to irrigable Community reservation lands lying south of the Arizona Canal and west of the Parker Dam Power Project power transmission line easement; and

(3) to deposit into the Community Trust Fund the funds authorized to be appropriated by subsection (c) for the Community to use in the design and construction of facilities to put to beneficial use the Community's water entitlement, to defray the cost to the Community of CAP operation, maintenance and replacement charges, and for other economic and community development on the Salt River Indian Reservation.

(b) (1) As soon as practicable, the Community shall establish the Salt River Community Trust Fund into which shall be deposited-

(A) by the Secretary, the funds provided in paragraphs (2) and (3) of subsection (a), and

(B) by the State of Arizona, $3,000,000 required by paragraph 20.2(b) of the Agreement.

(c) There is hereby authorized to be appropriated $30,470,000 to carry out the provisions of paragraph (3) of subsection (a).

(d) Upon the completion of the actions described in section 12(a), the Trust Fund, principal and income, may be used by the Community, in its discretion, to fulfill the purposes of the Agreement and this Act, but no part of such fund may be used to make per capita payments to members of the Community.

(e) Effective with the payments into the Trust Fund by the Secretary of the amounts required under paragraph (A) of subsection (b)-

(A) the Secretary shall have no further duties or responsibilities with respect to the administration of, or expenditures from the Trust Fund, and

(B) the United States shall not be liable for any claim or cause of action arising from the Community's use and expenditure of moneys from the Trust Fund.

Section 10. Claims Extinguishment; Waivers and Releases.

(a) (1) There are extinguished-

(A) all Allottees' claims against the United States for damages for deprivation of water rights through December 31, 1991;

(B) all Allottees' claims against all persons other than the United States for damages for deprivation of water rights through December 31, 1991, for which damages are not recoverable under subparagraph (a)(1)(A) of this section; and

(C) all rights of Allottees to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including rights to surface water, groundwater, and effluent.

(2) For purposes of paragraph (a)(1) of this section claims for water rights include all claims under Federal and State laws (including claims for water rights in groundwater, surface water, and effluent) which may otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(3) The benefits realized by the Allottees under this Act shall constitute full and complete satisfaction of all Allottees' claims for water rights under Federal and State laws (including claims for water rights in groundwater, surface water, and effluent) that may accrue after the authorizations contained in paragraph (b)(1) of this section have become effective and which would otherwise have been enforceable by money damages, declaratory relief, injunction, or other relief.

(4) Consent is given to Allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to recover damages, if any, for the extinguishment of claims effected by subparagraphs (a)(1)(A) and (a)(1)(B) of this section: *Provided, however,* That any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section shall not be joined in the same action as a claim for damages for rights extinguished by subparagraph (a)(1)(A) of this section.

(5) The United States shall have a claim only against the Community for any judgement entered against it in any action for damages for water rights extinguished by subparagraph (a)(1)(B) of this section, and the Community shall not have sovereign immunity with respect to such claim.

(6) (A) With respect to any claim against the United States which is extinguished by subparagraphs (a)(1)(A) and (a)(1)(B), the United States may assert as a defense in any action brought pursuant to paragraph (a)(4) of this section the limitation of section 2501 of title 28, United States Code, as to damages incurred more than six years before the commencement of the action, but it shall not assert a timeliness

defense as to damages incurred within six years before the commencement of the action.

(B) With respect to any claim for damages for rights extinguished by subparagraph (a)(1)(B) of this section, the United States may assert as a defense any defense which the person whose liability was extinguished might have asserted in an action brought by the Allottees against him prior to the effective date of this Act.

(b) (1) The Community is authorized, as part of the performance of its obligations under the Agreement, to execute a waiver and release of all present and future claims of water rights or injuries to water rights (including water rights in groundwater, surface water, and effluent), from time immemorial to the effective date of this Act, and any and all future claims of water rights (including water rights in groundwater, surface water, and effluent), from and after the effective date of this Act, which the Community may have, or which it may have standing to assert on behalf of its members and Allottees, against the United States; the State of Arizona or any agency or political subdivision thereof; or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(2) In any action asserted within two years after the date of enactment of this Act by the Community against the United States in the United States Claims Court for monetary damages based upon loss or impairment of water rights the United States may assert a limitation as to damages incurred more than eight years before the commencement of the action instead of the six year limitation of section 2501 of title 28, United States Code, and it shall not assert a timeliness defense as to damages incurred within eight years before the commencement of the action.

(c) The benefits realized by the Community under this Act shall constitute full and complete satisfaction of all monetary claims against the United States for any damages alleged to accrue after completion of the requirements of section 12(a).

(d) Except as provided in paragraph (a)(5) of this section and paragraphs 17.2 and 17.5 of the Agreement, the United States shall not assert any claim against any person in its own right or on behalf of the Community based upon-

(1) water rights or injuries to water rights of the Community, its members or Allotees; or

(2) water rights or injuries to water rights held by the United States on behalf of the Community, its members or Allottees.

(e) In the event the authorizations contained in paragraph (b)(1) of this section do not become effective pursuant to section 12(a), the Community shall retain the right to assert past and future water rights claims as to all reservation lands.

Section 11. Miscellaneous Provisions.

(a) In the event any party to the Agreement should file a lawsuit in Federal District Court only relating directly to the interpretation or enforcement of the Agreement, naming the United States of America or the Communities as parties, authorization is hereby granted to join the United States of America and/or the Community in any such litigation, and any claim by the United States of America or the Community to sovereign immunity from such suit is hereby waived.

(b) From and after the effective date of this Act, the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District collectively are authorized to assert, on behalf of the Community, the Community's claims to spill water, as defined in the Agreement, in the General Adjudication of the Gila River System and Source currently pending in the Superior Court of the State of Arizona in and for the County of Maricopa (hereinafter referred to as the "Gila River Adjudication"). From and after such effective date, the United States shall not prosecute a separate claim or claims for spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding. The United States shall not challenge any claims to spill water on behalf of the Community in the Gila River Adjudication or in any other administrative or judicial proceeding.

(c) Upon the effective date of this Act as set forth in section 12, section 302 of the Colorado River Basin Project Act (43 U.S.C. 1522) shall no longer apply to the Community.

(d) The United States of America shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Agreement against any Indian-owned land within the Community's reservation, and no assessment shall be made in regard to such costs against such lands.

(e) Water received by the Cities and Town pursuant to paragraphs 10.3, 11.0, 12.2, and 19.0 of the Agreement shall not affect any future allocation or reallocation of the CAP supply.

(f) To the extent the Agreement does not conflict with the provisions of this Act, such Agreement is hereby approved, ratified, and confirmed. The Secretary is authorized and directed to execute and perform such Agreement. The Secretary is further authorized to execute any amendments to the Agreement and perform any actions required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(g) Effective as of the date of enactment of this Act, and, notwithstanding the provisions of section 177 of title 25 United States Code, the Salt River Pima-Maricopa Indian Community may, as to any land outside of the Salt River Pima-Maricopa Indian Reservation to which it holds fee title, leasehold interest or any other interest, sell, encumber, hypothecate, lease or otherwise deal with such land or interest in such land as any other owner, lessor or interest holder might, subject to the laws of the state within which the land is situated.

(h) Within thirty days after the date of enactment of this Act, the Secretary shall request the Arizona Department of Water Resources to recommend a reallocation of non-Indian agricultural CAP water that has been offered to but not contracted for by potential non-Indian agricultural subcontractors. Within one hundred and eighty days of receipt of such recommendations, the Secretary shall reallocate such water for non-Indian agricultural use, and the Secretary and CAWCD shall thereafter offer amendatory or new subcontracts for such water to non-Indian agricultural users.

Section 12. Effective Date.

(a) The authorizations contained in section 10(b)(1) of this Act shall not be effective until such time as-

(1) the Secretary has fulfilled the requirements of sections 4 and 7;

(2) the Bartlett Dam Agreement has been amended as provided in section 5;

(3) the Roosevelt Water Conservation District subcontract for agricultural water service from CAP has been revised and executed as provided in section 6(c) and the assignment described in section 6(d) has been executed;

(4) the funds required for the purpose of section 9(a)(1) have been appropriated;

(5) the funds authorized by section 9(a)(2) and 9(c) have been appropriated and deposited into the Community Trust Fund;

(6) the State of Arizona has appropriated and deposited into the Community Trust Fund the $3,000,000 required by paragraph 20.2(b) of the Agreement;

(7) the stipulation which is attached to the Agreement as exhibit "3.e" has been approved; and

(8) the Agreement has been modified to the extent it is in conflict with this Act and has been executed by the Secretary.

(b) If the actions described in paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of subsection (a) have not all occurred by December 31, 1991, sections 4, 5, 6, 7(b), 7(c), 8, 9(a)(2), 9(a)(3), 9(b), 9(c), 10(a)(1)(c), 10(d), and 11(a), 11(b), 11(c), 11(d), 11(e), and 11(f), and any contracts entered into pursuant to those provisions, shall not thereafter be effective, any funds appropriated pursuant to sections 9(a)(2) and 9(c) shall revert to the Treasury, and any funds appropriated pursuant to paragraph 20.2(b) of the Agreement shall revert to the State of Arizona.

Section 13. Other Claims.

Nothing in the Agreement or this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Community.

Section 14. Ak-Chin.

(a) The Ak-Chin Indian Community of Arizona may make repayment of the Ak-Chin West supplemental loan by a discounted prepayment in lieu of the repayment terms and provisions contained in section 5(c) of Public Law 89-984, the Small Reclamation Projects Act. The Secretary of the Interior shall determine such amount in a manner that will result in an equitable repayment based on the current applicable interest rate.

(b) The Ak-Chin West supplemental loan is hereby exempt from the 1986 amendments (Public Law 99-546) to the Small Reclamation Projects Act, and the requirement contained in section 4(e) of Small Reclamation Projects Act for a sixty-day congressional review of the approved loan application is hereby waived.
Approved October 20, 1988.
[Source: U.S. Code Congressional and Administrative News, Volume134, 100th Congress - 1988, Pages: 102 Stat 2549-2560]

Chapter 24 - Arizona complaint, Indian reservations

No. 9, ORIGINAL
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1959
STATE OF ARIZONA, COMPLAINANT
V.
STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, DEFENDANTS
BEFORE: HON. SIMON H. RIFKIND, SPECIAL MASTER
IV. INDIAN RESERVATIONS AND SAN CARLOS PROJECT

General

Finding 4.0.1

Within the Lower Colorado River Basin as defined in Article II(g) of the Colorado River Compact, there are 25 Indian Reservations on which the United States claims rights to the use of water.

Finding 4.0.2

Use of water for irrigation of agricultural crops is necessary for the livelihood of the Indians residing on or entitled to reside on these Reservations. The lands on each of the Reservations which are susceptible of irrigation from existing irrigation systems or extensions thereof or additional systems have been carefully classified for suitability for irrigation according to depth, texture and permeability of soil and subsoil, slope, erosion, drainage, salinity, and alkalinity. The annual consumptive use and diversion requirements for each of the many irrigation areas on the several Reservations are set forth in the findings which follow. Consumptive use, as employed in this connection, includes that quantity of water which must be applied to the crop artificially to meet the consumptive requirements of the crop (denominated by witness Criddle as the "consumptive irrigation water requirement"), plus the consumptive requirements for domestic use, including stock water, incidental to operation of the irrigation areas. Diversion requirement, as so employed, is that quantity of water which must be diverted from the source in order to meet the comusmptive use requirement, including such domestic use, taking into account a reasonable application efficiency, conveyance losses, etc.

Finding 4.0.3

On some of the Reservations, as, for example, the Navajo, Hopi, Zuni, Fort Apache, Hualapai, many inhabitants reside away from the irrigation areas and the raising and maintenance of livestock is in many instances a substantial element of the economy on such Reservations. Water for domestic use, including stock watering, is provided by utilization of springs, surface flow in streams, the interception and impoundment in

small reservoirs of runoff, and wells. Such uses are within the reserved rights of the United States with respect to the several Reservations where they occur. However, because the quantities of water consumed thereby are relatively small it is unnecessary for the purposes of this case that such rights be quantitatively measured.

Finding 4.0.4

The general trend of the population of the tribes and communities of Indians which inhabit the several Reservations of the Lower Colorado River Basin is one of increase. With respect to certain Reservations sufficient reliable data is available to permit determination of the population trend of the particular tribe residing on or entitled to reside on the Reservation, and in such cases specific findings are made concerning the population trend for those Reservations. As to the Reservations with respect to which such specific findings are not made, it is nevertheless reasonably to be expected that the trend of population of the Indians residing on or entitled to reside on the Reservations will be generally upward as is true of all Indians of the Lower Colorado River Basin, but in varying degrees.

Havasupai Indian Reservation

Finding 4.10.1

The Havasupai Indian Reservation was created by the Executive Orders of June 8, 1880, November 23, 1880, and March 31, 1882, for the use and occupancy of the Suppai (Yavasuppai) Indians. By the terms of each of such orders waters of Cataract Creek and the existing settlements and improvements of the Suppai Indians were included within the reservation boundaries.

Finding 4.10.2

The Havasupai Indian Reservation is located in the bottom of a side canyon of the Grand Canyon in Arizona and contains approximately 3,000 acres.

Finding 4.10.3

The Havasupai Tribe, with a current population of approximately 250, inhabit the Havasupai Indian Reservation and grow subsistence gardens.

Finding 4.10.4

Within the Havasupai Indian Reservation are 204 acres of lands susceptible of irrigation from the existing irrigation system and which are suited for irrigation.

Finding 4.10.5

The source of water supply for the 204 irrigable acres of the Havasupai Indian Reservation is Havasu Creek, sometimes known as Cataract Creek, which is adequate for the irrigation of said lands. Havasu Creek is a tributary which has its confluence with the Colorado River above Lake Mead and a short distance below this Reservation. The annual consumptive use is 505 acre-feet and the annual diversion requirement is 1,120 acre-feet.

Conclusion 4.10

By reason of the establishment of the Havasupai Indian Reservation, the United States has the right to divert, for irrigation of 204 irrigable acres of the Havasupai Indian Reservation, waters of Havasu Creek in a total quantity of 1,120 acre-feet per year and with a priority of June 8, 1880.

Hualapai Indian Reservation

Finding 4.11.1

The Hualapai Indian Reservation was established by the Executive Order of January 4, 1883, for the use and occupancy of the Hualapai Indians.

Finding 4.11.2

The Hualapai Indian Reservation is located in northern Arizona abutting the Colorado River and extending south from it.

Finding 4.11.3

The Hualapai Indian School Reserve created by Executive Order of December 22, 1898, and added to by Executive Order of May 14, 1900, and the Hualapai Indian Reserve consisting of allotments of land to individual Hualapai Indians are located south of the Hualapai reservation.

Finding 4.11.4

The Hualapai Indian Reservation, the Hualapai Indian School Reserve and the Hualapai Indian Reserve have a combined area of approximately 1,000,000 acres and are inhabited by the Hualapai Tribe which has a current population of approximately 700.

Finding 4.11.5

The Hualapai Indians have primarily a livestock economy and have historically utilized the irrigable acres located on the Hualapai Indian Reservation, School Reserve and Allotments.

Finding 4.11.6

There are within the Hualapai Indian Reservation, Hualapai Indian Reserve, and the Hualapai Allotments 83 acres which are susceptible of irrigation from present irrigation systems and which are suited for irrigation.

Finding 4.11.7

The source of water supply, annual consumptive use, annual diversion requirement and the priority dates of the four irrigation units comprising the 83 irrigable acres of the Hualapai Indian Reservation, Hualapai Indian School Reserve, and Hualapai Allotments, are as follows:

Irrigation Units	Source of Water Supply	Net Area (acres)	Priority Date	Annual Consumptive Use A/F	Annual Diversion Req. A/F
Hualapai Indian Reservation	Big Sandy River	21	January 4, 1883	49	98
Meriwhitica Unit-Hualapai Reservation	Spring	11	January 4, 1883	25	50
Hualapai Allotments	Big Sandy River	41	1897	95	190
Indian School Reserve	Well	10	December 22, 1898	24	48
Total		83		193	386

The water supply physically available is adequate for the irrigation of said lands. Meriwhitica Spring is within the drainage area of the Colorado River above Lake Mead. Big Sandy River is a tributary of the Bill Williams River.

Conclusion 4.11

By reason of the establishment of the Hualapai Indian Reservation, the Hualapai Indian School Reserve and the Hualapai Allotments, the United States has the right to divert, for irrigation of 83 irrigable acres of the Hualapai Indian Reservation, Hualapai Indian School Reserve and Hualapai Allotments, waters of the sources, and with the dates of priority as set forth below and in a total quantity of 386 acre-feet per year:

Hualapai Indian Reservation: 21 acres from the Big Sandy River. Jan. 4, 1883
11 acres from Meriwhitica Spring. Jan 4, 1883
Hualapai Allotments: 41 acres from the Big Sandy River. 1897
Hualapai Indian School Reserve:10 acres from well. Dec. 22, 1898.
[Source: Supreme Court of the United States]

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Chapter 25 - Southern Arizona Water Rights Settlement Act of 1982

97th CONGRESS
PUBLIC LAW 97-293
RECLAMATION REFORM ACT
TITLE III
CONGRESSIONAL FINDINGS

Section 301. Congressional Findings. Papago Tribe Water rights claims.

The Congress finds that -

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will -

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

Section 302. Definitions.

For purposes of this title -

(1) The term *acre-foot* means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term *Central Arizona Project* means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et. seq.).

(3) The term *Papago Tribe* means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term *Secretary* means the Secretary of the Interior.

(5) The term *subjugate* means to prepare land for the growing of crops through irrigation.

(6) The term *Tucson Active Management Area* means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term *December 11, 1980, agreement* means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term *replacement costs* means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term *value* means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater.

Section 303. Water Deliveries To Tribe From CAP; Management Plan; Report On Water Availability; Contract With Tribe. Water management plan, establishment. Appropriation authorization. Study.

(a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall -

(1) in the case of the San Xavier Reservation -

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier

Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation -

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

(4) There are authorized to be appropriated up to $3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

(b) (1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine -

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservations subject to the limitations of section 306(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.

Section 304. Deliveries Under Existing Contract; Alternative Water Supplies; Operation and Maintenance.

(a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to -

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or
(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, bank, group, or community.

(e) (1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(A), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project -

(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240;25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized -

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or

project, or with any authority, corporation, partnership, individual, or other legal entity; and to use facilities constructed in whole or in part with Federal funds.

Section 305. Reclaimed Water; Alternative Water Supplies. Payment of damages.

(a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b) (1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.

(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof -

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area -

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or
(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to -

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

Section 306. Limitation On Pumping Facilities For Water Deliveries; Disposition Of Water.

(a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to -

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and

livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.
(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to -

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or entity designate by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c) (1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.

Section 307. Obligation Of The Secretary; Contract For Reclaimed Water; Dismissal And Waiver Or Claims Of Papago Tribe And Allottees. Waiver and release. Effective date.

(a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if-

(1) within one year of the date of enactment of this title -

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement might provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title;

(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of -

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States for the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title.

Section 308. Study Of Lands Within The Gila Bend Reservation; Exchange Of Lands And Addition Of Lands To The Reservation; Authorized Appropriations. Study and analysis. Management. Reimbursement.

(a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he
deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

Section 309. Establishment Of Trust Fund; Expenditures From Fund.

(a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of $15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

Section 310. Application Of Indian Self-Determination And Education Assistance Act.

The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

Section 311. Extension of Statute of Limitations.

Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complain is filed prior to January 1, 1985.

Section 312. Arid Land Renewable Resource Assistance

If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe -

(1) price guarantees, loan guarantees, or purchase agreements,

(2) loans, and

(3) joint venture projects, at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe.

Section 313. Cooperative Fund. Establishment. Appropriation authorization. Trustee. Investments. Termination.

(a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304 and 305 of this title, including -

(A) operation, maintenance, and repair costs related to the delivery of water under section 303, 304 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b) (1) The Cooperative Fund shall consist of -

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) $5,250,000 to be contributed as follows:

(i) $2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) $1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

(iii) $1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) $5,250,000; and

(B) Such sums up to $16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c) (1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of -

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title -

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.

Section 314. Compliance And Budget Act. Effective date.

No authority under this title to enter into contracts or to make payments shall be effective except
to the extent and in such amounts as provided in advance in appropriations Acts. Any provisions
of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

Section 315. Short Title. Date
This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982."

Approved October 12, 1982.

[Source: U.S. Code Congressional and Administrative News, Volume1, 97th Congress - Second session1982, Pages: 96 Stat 1274-1285]

Chapter 26 - Notice of final CAP water allocations

Office of the Secretary
Central Arizona Project, Arizona
Water Allocations and Water Service Contracting
Record of Decision

Preface

Agency
Office of the Secretary, Department of the Interior

Action
Notice of final water allocations to Indian and non-Indian water users and related decisions.

Summary
The Purpose of this action is to provide notice of final decisions made by the Secretary of the Interior concerning the allocation of water developed by the Central Arizona Project (CAP) to Indian and non-Indian water users, the conditions upon which those allocations were made, and water service contracting.

For Further Information Contact
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Supplementary Information
Previous Department of the Interior notices concerning CAP water allocations were published in the Federal Register on December 20, 1972, April 18, 1975, October 18, 1976, August 8, 1980, and December 10, 1980. Previous notices concerning compliance with the National Environmental Policy Act of 1969 in connection with CAP water allocations were published on June 2, 1981, December 4, 1981, December 11, 1981, and March 24, 1982.

These decisions were made pursuant to the authority vested in the Secretary of the Interior by the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 C.F.R. Part 1505) and the Implementing Procedures of the U.S. Department of the Interior (516 DM 5.4), and in recognition of the Secretary's trust responsibilities to the Indian tribes of central Arizona. They were made after full consideration by the Secretary and his staff of the decision making records and activities of previous Secretaries of the Interior on the subject of CAP water allocations, the draft and final environmental impact statements prepared on Water Allocations and Water Service Contracting, Central Arizona Project (INT-DES 81-50 and INT-FES 82-7 respectively), and

the views of members of the public, officials of other Federal agencies and the State of Arizona, members of the Congress, Indian tribes and environmental organizations presented in the form of written comments and correspondence or orally at meetings and public hearings held in connection with the allocations and environmental impact statements.

Decision

The Secretary of the Interior has elected to allocate waters developed by the Central Arizona Project (CAP) and to proceed with water service contracting with Indian and non-Indian users for the delivery of Arizona's remaining entitlement to Colorado River water. This decision allocates 309,828 acre-feet annually of water for Indian use (see Table 1) and 640,000 acre-feet annually for municipal and industrial (M&I) use (see Table 2), with the remaining supply for non-Indian agricultural use (see Table 3).

These allocations will, however, be subject to the following conditions:

1. The Gila River Indian Community will be offered a water service contract for 173,100 acre-feet per year for irrigation purposes on the reservation subject to acceptance of feasible non-potable water exchanges and subject to a 25 percent reduction in water short years with the remaining 75 percent of the irrigation allocation on a priority basis with 510,000 acre-feet of non-Indian M&I allocations.

2. Indian entities with existing contracts which provide for non-potable water exchanges will be required to accept non-potable water exchanges where feasible and consistent with contractual provisions.

3. Allocations to tribal homelands are intended to serve irrigation, domestic, municipal, and industrial uses on the Reservations and repayment of allocated project costs will be based on actual uses of the water and will be in accordance with applicable statutes.

4. The M&I allocation of 640,000 acre-feet per year can be made more firm by executing feasible non-potable effluent exchanges with Indian tribes. This allocation is subject to adoption of a pooling concept whereby all M&I allottees share in the benefits of effluent exchanges.

5. Water service contracting with M&I entities will proceed in accordance with this decision and based on quantities delineated on Table 2 herein.

6. An initial contracting period extending for 6 months will be provided and, in the absence of extenuating circumstances, the expiration of such period will lead to a request on behalf of the Secretary for the Arizona Department of Water Resources (DWR) to recommend reallocation of any remaining M&I and non-Indian agricultural water not contracted for during the initial contract period.

7. All water not contracted for, or contracted for but not expected to be utilized

during interim periods, will be retained under jurisdiction of the Secretary and will be marketed on an interim basis to expedite repayment of the CAP.

CAP Water Allocation Description

The decision is to allocate 309,828 acre-feet of CAP water annually to 12 Indian entities for irrigation or for maintaining tribal homelands; and to accept the State of Arizona's 1982 allocation recommendations for non-Indian users, which provide 640,000 acre-feet annually for M&I use, with the remaining supply for non-Indian agricultural use. The quantities allocated to Indian users and the purposes they will serve are shown in Table 1.

Table 1 - Cap Water Allocations

Indian Communities

Units: Acre-feet

Entity	Irrigation	Tribal Homeland*	Total
Ak Chin	58,300		58,300
Camp Verde		1,200	1,200
Fort McDowell		4,300	4,300
Gila River	173,100		173,100
Papago-Chuichu	8,000		8,000
Papago-San Xavier		27,000	27,000
Papago-Schuk Toak		10,800	10,800
Pasqua Yaqui		500	500
Salt River	13,300		13,300
San Carlos	2,700	10,000	12,700
Tonto Apache		128	128
Yavapai		500	500
Total	255,400	54,428	309,828

* Includes irrigation, domestic, municipal, and industrial uses on the Reservation.

To ensure that maximum beneficial use is made of CAP water supplies in conjunction with available Arizona water supplies, Indian entities with existing contracts which provide for non-potable water exchanges will be required to accept non-potable water in exchange for CAP Indian irrigation allocations where feasible and consistent with contractual provisions. During years of water supply shortages, Indian users and non-Indian M&I users would share a first priority on project water supplies. Depending upon severity of shortages, project water delivery for miscellaneous uses would be reduced pro rata until exhausted; next, non-Indian agricultural uses would be reduced the same way until exhausted; next, the Gila Tribe allocation would be reduced 25 percent and other Indian irrigation uses would be reduced 10 percent on a pro rata basis until exhausted. Thereafter, the remaining water contracted for by 11 Indian entities under existing contracts and 75 percent of the Gila River Tribe allocation would share a priority with 510,000 acre-feet of non-Indian M&I uses (the 510,000 acre-feet of M&I supply is exclusive of water obtained through effluent exchange agreements with Indian entities) and would be reduced on a proportional basis, and within each class on a prorated basis, based on the amount of water actually delivered to each entity in the latest non-shortage year.

It is further decided that the water allocated to tribal homelands, under provisions of these CAP water allocations, shall be defined to serve irrigation, domestic, municipal, and industrial uses and purposes on the Reservations and repayment shall be subject to applicable law based on the actual use of the water.

The Secretary of the Interior will retain the right to contract for water sales on an interim basis where Indian water allottees are not utilizing the full CAP allotment as provided herein.

The quantities allocated to the M&I entities recommended for CAP water by the DWR in 1982 are shown in Table 2 below. The allocations include 71 municipal users, 2 power companies, 8 mining companies, 2 recreational entities, and 2 other applicants that do not fall under any of these categories.

Table 2 - CAP Water Allocations

Municipal and Industrial[1]

Units: Acre-feet

M&I (Municipal)[29]	County	Schedule of Demand		
		1985	2005	2034
Aqua Fria (Citizens Util Co.)	Maricopa			1,439
Apache Jct. (Az. Water Co.)	Pinal			6,000
Avondale	Maricopa			4,099
Berneil Water Co.	Maricopa			432
Buckeye	Maricopa			25[1]
Camp Verde Water Co.	Other			1,443
Casa Grande (Az Water Co)	Maricopa			8,884
Carefree Ranch Water Co.	Maricopa			954
Carefree Water Co.	Maricopa			400
Cave Creek Water Co.	Maricopa			1,600
Chandler	Maricopa			3,668
Chandler Heights I.D.	Maricopa			315
Chapparal City Water Co.	Maricopa			6,978
Clearwater Co.	Maricopa			2,849
Coolidge (Az. Water Co.)	Pinal			2,000

[29]Municipal subcontractors will be allowed to use up to the amount of water identified for the year 2034 at any time during the contract repayment period.

[30]The maximum allocation shall be 434 acre-feet until 2005, then reducing to 25 acre-feet per year for the year 2034.

M&I (Municipal)[29]	County	Schedule of Demand		
		1985	2005	2034
Community Water Co. (Green Valley)	Pima			1,100
Consolidated Water Co.	Maricopa			3,932
Cortaro-Marana I.D.	Pima			47
Cottonwood Water Co.	Other			1,789
Crescent Valley Water Co.	Maricopa			2,697
Del Lago	Pima			786
Desert Ranch Water Co.	Maricopa			139
Desert Sage Water Co.	Maricopa			5,933
Desert Sands Water Co.	Maricopa			768
Eloy	Pinal			2,171
E&R Water Co.	Other			161
Florence	Pinal			1,641
Florence Gardens	Pinal			407
Flowing Wells I.D.	Pima			4,354
Foothills Water Co.	Pima			1,652
Gilbert	Maricopa			7,235
Glendale	Maricopa			14,083
Globe	Other			3,480
Goodyear	Maricopa			2,374
Green Valley Water Co.	Pima			1,900

M&I (Municipal)[29]	County	Schedule of Demand		
		1985	2005	2034
Ironwood Water Co.	Maricopa			393
Litchfield Park Service Co.	Maricopa			5,580
Maricopa Mountain Water Co.	Pinal			108
Mayer-Humboldt Water Co.	Other			332
McMicken I.D.	Maricopa			9,513
Mesa	Maricopa			20,129
Miami-Claypool (Az. Water Co.)	Other			1,829
Midvale Farms Water Co.	Pima			1,500
New Pueblo	Pima			237
New River Utility Co.	Maricopa			2,359
Nogales	Other			3,949
North Valley Water Co.	Maricopa			393
Palm Springs Water Co.	Pinal			2,919
Paradise Valley Water Co.	Maricopa			3,231
Payson	Other			4,995
Peoria	Maricopa			15,000
Phoenix	Maricopa			113,882
Prescott	Other			7,127
Queen Creek I.D.	Maricopa			944

M&I (Municipal)[29]	County	Schedule of Demand		
		1985	2005	2034
Ranch Lands water Co.	Pima			393
Rio Rico (Citizens Utility Co.)	Pima			2,683
Rio Verde Utility, Inc.	Maricopa			812
San Tan I.D.	Maricopa			236
Scottsdale	Maricopa			19,702
Sun City (Citizens Utility Co.)	Maricopa			15,835
Sunrise water Co.	Maricopa			944
Sunshine Water Co.	Maricopa			16
Tempe	Maricopa			4,315
Trails End Water Service	Other			226
Tucson	Pima			151,064
Turner Ranches	Maricopa			3,932
West End Water Co.	Maricopa			157
West Phoenix Water Co.	Maricopa			91
White Tank (Az. Water Co.)	Maricopa			968
Williams A.F. Base	Maricopa			833
Youngtown	Maricopa			380
Subtotal				494, 742

M&I (Power)	County	1985	2005	2034
Az. Public Service/Salt River Project		55,400[1]		43,218[1]

M&I (Mines)	County	1985	2005	2034
Anamax, Twin Buttes	Pima	6,105[31]		4,444
Asarco-Hayden	Other	833[31]		582
Asrco-Mission	Pima	4,161[31]		0[1]
Cities Service Co.	Other	3,285[31]		2,271
Cyprus-Pima	Pima	7,263[31]		5,339
Duval	Pima	11,628[31]		8,549
Inspiration Copper	Other	4,647[31]		2,906
Kennecott	Other	28,611[31]		22,023
Phelps-Dodge	Other	20,866[31]		14,665
Subtotal-Mines				60,784

[31]Subcontractors will be allowed to utilize the indicated amount until such time that all M&I use totals 640,000 acre-feet.

[32]Distribution between the two entities to be determined during contract negotiations.

[33]No request for water in the year 2034.

M&I (Recreation)	County	1985	2005	2034
Az. Game & Fish Dept.	Maricopa	755[31]		324
Maricopa County	Maricopa	852[31]		665
Subtotal-Recreation				989

M&I (Other)	County	1985	2005	2034
Phoenix Memorial Park	Maricopa			84
State Land Department				39,006
Subtotal-Other				39,090
TOTAL				638,823

To ensure that maximum use is made of available CAP water supplies, the Secretary of the Interior will retain the right to contract for water sales on an interim basis where water allottees are not utilizing the full CAP allotment as provided herein.

The allocations to M&I users can be made more firm by, and are premised on expectations that, municipal effluent in quantities of at least 100,000 acre-feet per year will be exchanged with Indian users. These expectations are consistent with the Indian allocations where this decision provides that exchanges will be required where feasible and consistent with contractual provisions. Exchanges will be treated under a pooling concept whereby benefits of exchange will accrue to all M&I users.

The CAP water allocations to the non-Indian agricultural users shall include the remaining supplies and are expressed as percentages of water available to non-Indian agriculture. These agricultural entities range in size from 90 acres to over 150,000 acres and include 23 irrigation districts or farming operations. Table 3 below provides the percent of supply available for each entity.

As previously noted for Indian allottees and non-Indian municipal and industrial allottees, the Secretary of the Interior will retain the right to contract for water sales on an interim basis where water allottees are not utilizing the full CAP allotment as provided herein.

Table 3

CAP Water Allocation Non-Indian Irrigation[1]
Percent of Supply Available for Non-Indian Agriculture

ENTITY	1985	2005[35]	2034[35]
Arcadia Water Company	0.13		
Avra Valley Association	3.69		
Central Arizona Irrigation District	18.01		
Chandler Heights Irrigation District	0.28		
Cortaro-Marana Irrigation District	2.14		
FICO	1.39		
Harquahala Valley Irrigation District	7.67		
Hohokam Irrigation District	6.36		
La Croix	0.04		
Maricopa-Stanfield Irrigation District	20.48		
Marley, Kemper Jr.	0.04		
McMicken Irrigation District	7.28		
MCMWCD #1	4.66		
New Magma Irrigation District	4.34		
Queen Creek Irrigation District	4.83		
Rood, W. E.	0.04		
Roosevelt Irrigation District	2.61		

[34] During shortages, all M&I and Indian uses would have priority over non-Indian irrigation. When available, non-Indian irrigation shares the project supply available for this purpose according to the listed percentages. These allocations are based in part on recommendations from the State of Arizona and percentages shown are reflective of those provided in correspondence to the Secretary of the Interior dated January 18, 1982, and November 10, 1982, from the Arizona Department of Water Resources.

ENTITY	1985	2005[35]	2034[35]
RWCD	5.98		
Salt River Project	2.97		
San Carlos Irrigation District[3]	4.09		
San Tan Irrigation District	0.77		
Tonopah Irrigation District	1.98		
U.S. Forest Service	0.22		
TOTAL	100.00		

[35] The allocation for years subsequent to 1985 will be based on the 1985 allocation minus the supply that would have been delivered to eligible lands that have been converted to M&I or otherwise removed from irrigation. Contract language similar to that contained in the letter to the Secretary of the Interior from the Arizona Department of Water Resources dated November 10, 1982, will be included in all non-Indian irrigation subcontracts.

[36] The water service subcontract among the United States, the Central Arizona Water Conservation District (CAWCD) and the San Carlos Irrigation District (District) will not require the District to reduce the amount of groundwater pumped by the amount of CAP water received. However, the subcontract will require that the District continue to employ measures adequate in the judgment of the Secretary and the CAWCD to control expansion of irrigation in the contract service area and to reduce pumping of groundwater consistent with, and to comply in all other respects with, Arizona's statutory requirements.

During years of water supply shortages, Indian users and non-Indian M&I users would share a first priority on project water supplies. Depending upon severity of shortages, miscellaneous uses would be reduced pro rata until exhausted; next, non-Indian agricultural uses would be reduced the same way until exhausted; next, 25 percent of the Gila Tribe allocation and 10 percent of the irrigation amount allocated to Indian contractors other than the Gila Tribe would be reduced pro rata until exhausted. Finally, the remaining water contracted for by 11 Indian entities under existing contracts and 75 percent of the Gila River Tribe allocation would share a priority with 510,000 acre-feet of non-Indian M&I uses (510,000 acre-feet for M&I is exclusive of water obtained through effluent exchange agreements with Indian entities) and would be reduced on a proportional basis, and within each class on a prorated basis, based on the amount of water actually delivered to each entity in the latest non-shortage year.

Description of Alternative Allocations
The following alternatives were considered by the Department in reaching its decision:

A. Options - Water Allocation

A.1. No Action

The "No Action" alternative would allocate CAP water based upon the demands anticipated during the planning stages of the project; M&I deliveries at 82,000 acre-feet, 232,000 acre-feet, and 312,000 acre-feet, in years 1975, 1990, and 2000 and after, respectively, in the metropolitan Phoenix and Tucson areas. The remainder would go to agricultural users (both Indian and non-Indian) shared pro rata on acreage developed for irrigation.

A.2. Kleppe Allocation with 1981 State Recommendations

Five central Arizona Indian tribes would be allocated 257,000 acre-feet annually for irrigation use until 2005, thereafter 10 percent of total project supplies or 20 percent of project agricultural supplies, whichever was to their advantage. M&I users would be allocated from 190,242 acre-feet (1985) to 719,992 acre-feet (2034) annually. The remainder of the CAP supplies would be shared by 23 irrigation districts or farming operations pro rata based on eligible acres.

A.3. Andrus Allocation with 1981 State Recommendations

This provides 12 Indian tribes or communities with a total of 309,828 acre-feet annually for irrigation or for maintaining tribal homelands. The 1981 State recommendations provide from 190,242 (1985) to 514,000 (2034) acre-feet annually to 81 M&I entities, with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries are reduced until exhausted first to all miscellaneous uses and then to non-Indian irrigation uses, then 10 percent of the Indian irrigation amount is reduced until exhausted. Finally, the remaining Indian irrigation and tribal homeland amounts are reduced pro rata with no more than 510,000 acre-feet per year of M&I uses, based on amount of water actually delivered to each entity in the most recent past year of full deliveries to these entities.

A.4. Andrus Allocation Modified to Favor M&I Use

The Indian allocations are the same as Alternative 3, the differences being in the distribution in times of shortage. The alternative allocates from 190,242 acre-feet (1985) to 697,020 acre-feet (2034) annually to 81 M&I entities, with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries are reduced until exhausted first to all miscellaneous uses and then to non-Indian irrigation uses, then 25 percent of the Indian irrigation amount is reduced until exhausted. Finally the remaining Indian

irrigation and tribal homeland amounts are reduced pro rata with all M&I uses, based on the scheduled amounts of water (demand) for each entity in the current year. In addition, effluent exchanges (full time) of not less than 100,000 acre-feet per year are assumed for the Salt River and Gila River reservations in amounts not to exceed 20 percent of the individual tribe's allocation prior to 2005, nor more than 50 percent after 2005.

A.5. Andrus Allocation Modified to Favor Indian Use

The Indian allocations are the same as Alternative 3, the differences being in the distribution in times of shortages. This alternative allocated from 190,242 acre-feet (1985) to 578,010 acre-feet (2034) annually to 81 M&I entities with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries are reduced until exhausted first to all miscellaneous uses and then to non-Indian irrigation and non-municipal M&I use. Finally, the Indian allocated amounts are reduced pro rata with the M&I (municipal only) amounts based on the quantity of water actually delivered to each entity in the most recent past year of full deliveries. There is no prior 10 percent reduction in Indian agricultural use.

A.6. Agency Proposed Action with 1982 State Recommendations

The Agency Proposed Action is to allocate 309,828 acre-feet annually to 12 Indian tribes for irrigation or for maintaining tribal homelands. The 1982 State Recommendations provide 640,000 acre-feet annually (2034) to 85 M&I entities, with the remaining supply to 23 irrigation districts or farming operations. During shortages, CAP deliveries would be reduced until exhausted first to all miscellaneous uses and then to non-Indian agricultural use, next, 25 percent of the Gila Tribe allocation and 10 percent of the irrigation amount allocated to Indian contractors other than the Gila Tribe would be reduced pro rate until exhausted. Finally, the remaining water contracted for by 11 Indian entities under existing contracts and 75 percent of the Gila River Tribe allocation would share a priority with 510,000 acre-feet of non-Indian M&I uses (510,000 acre-feet for M&I is exclusive of water obtained through effluent exchange agreements with Indian entities) and would be reduced on a proportional basis, and within each class on a prorated basis, based on the amount of water actually delivered to each entity in the latest non-shortage year. In addition, effluent exchanges would be required for tribal entities where feasible and consistent with contractual provisions.

B. Options - Effluent Exchange

B.1. Effluent exchanges optional for tribal contractors, but not required.

B.2. Effluent exchanges with Indian tribes required where feasible and consistent with contractual provisions (i.e., where conditions specified in individual Indian contracts are met).

B.3. Allocations made consistent with option B.2., with the proviso that CAWCD will implement the "pooling concept."

B.4. Allocations made consistent with Option B.3., with added contractual provision that M&I locations will be adjusted if effluent exchanges are not implemented.

B.5. Allocations made consistent with Option B.2., but cities would be allowed to individually exchange effluent with Indian users.

C. Options - Tribal Homeland

C.1. Do not define purpose of water allocated to tribal homeland at this time.

C.2. Define purpose of water allocated to tribal homeland as domestic, municipal, and industrial.

C.3. Define purpose of water allocated to tribal homeland as agricultural irrigation and therefore capital costs would be deferred under the Leavitt Act.

C.4. Define purposes of water allocated to tribal homeland as any use necessary to ensure intended purpose of the reservation including irrigation, domestic, municipal, and industrial. Contracts would be interpreted pursuant to the Rules, Regulations, and Determinations provisions of the contracts to provide for appropriate repayment consistent with the actual use of the water.

C.5. Define and interpret purposes of water allocated to tribal homelands consistent with option C.4. with added clarification that agricultural irrigation uses would be subject to priority reduction of 10 percent in water short years before sharing a priority basis with non-Indian M&I.

Background for Decision

Authorized as part of the Colorado River Basin Project Act (Public Law 90-537) in 1968, the CAP is a multi-purpose water project which will deliver water for irrigation, municipal and industrial uses in central and southern Arizona, and by exchange, to users in western New Mexico and on Gila River tributaries upstream from CAP facilities in Arizona.

The water users can be divided into four categories: Indian agricultural irrigation, tribal homeland, non-Indian agriculture, and non-Indian M&I.

The Secretary of the Interior has the responsibility for allocating CAP waters. A final allocation of CAP water and a contract with the Secretary for delivery of the water is required so that facilities can be designed and constructed to treat (where necessary) and deliver the CAP water to the point of use. In many cases, the delivery facilities will be extensive, or will require negotiation for joint use of existing facilities, and adequate lead time is required if the users will be able to take water when the CAP comes on-line.

The main CAP aqueduct system is currently scheduled to make water deliveries to the Phoenix and Pinal county areas in 1985, and to the Tucson area in 1989 or 1990. Even if the allocations are made without delay, it is likely that some of the eventual recipients of CAP water will be unable to take delivery when the water is first made available.

On November 12, 1981, Secretary Watt provided guidance to the Bureau of Reclamation with regard to his proposed action on CAP allocations to the Indian sector. Based on the Secretary's proposal, the DWR prepared final recommendations for the allocation of CAP water to the non-Indian sector. The recommendations were forwarded to the Secretary in letters dated January 18, 1982, April 6, 1982, and November 10, 1982. These proposed Indian allocations, along with the State's recommendations for non-Indian allocations, comprised the Agency Proposed Action in the final EIS on Water Allocations and Water Service Contracting, Central Arizona Project, which was prepared by the Bureau of Reclamation and filed with the Environmental Protection Agency on March 19, 1982.

Non-Indian agricultural water users are expected to contract for and receive water available from the CAP facilities which is not being utilized in the early years by the M&I and Indian contractors. The amount of this water will be relatively substantial in the early years of the project and during years of high runoff in the Colorado River Basin. Amounts are expected to decrease during the project life as the M&I use increases.

The Department's allocation (Alternative 6) contains elements of Alternatives 3 (Andrus) and 4 (Andrus Modified for M&I). The magnitude of the alternative allocations is identical, but the distribution of the project water during times of shortage combines elements of both. Under the Andrus allocation (Alternative 3) during shortages, 10 percent of Indian allocations for irrigation use would be reduced until exhausted prior to a pro rata reduction of the remaining Indian irrigation and tribal homelands amounts on a shared priority basis with 510,000 acre-feet per year of non-Indian M&I uses. The Andrus Modified for M&I Alternative (Alternative 4), provides that during shortages, 25 percent of the Indian

irrigation amount would be reduced until exhausted prior to a pro rata reduction of the remaining Indian irrigation and tribal homeland amounts with all non-Indian M&I uses. The Department's Indian allocation is a combination of these two shortage distribution formulas. Like the Andrus allocation, the shortage distribution maintains the 510,000 acre-feet per year formula value for non-Indian M&I use, as well as the 10 percent reduction in Indian irrigation use for the 11 tribes or communities affected by water service contracts executed in December 1980 (all except the Gila River Indian Reservation). However, like Alternative 4 (Andrus Modified for M&I Use), the Gila River Indian Reservation's allocation would be reduced by 25 percent prior to the pro rata reduction.

Like Alternative 4, the Department's allocation will require effluent exchanges where feasible and consistent with contract provisions. However, in addition to the exchanges with the Salt River and Gila River Reservations described for Alternative 4, the analysis also assumes exchanges between the city of Tucson and the San Xavier Indian Reservation.

Discussion of the Environmental Consequences of the Alternatives

The requirements of the National Environmental Policy Act have been integrated into all phases of planning and development of the Central Arizona Project. A programmatic Environmental Impact Statement (EIS) was completed in 1972 and several site-specific statements have been or are in the process of being done on individual features of the project. The Bureau of Reclamation prepared a final EIS on Water Allocations and Water Service Contracting, Central Arizona Project in March 1982. Copies of the final EIS are available to the public upon request.

The Bureau addressed two general categories of impacts: The first category was impacts due to demographic and land use changes resulting from the availability or unavailability of CAP water; or due to the varying amount of CAP water made available. The second category was due to distribution system construction and development of lands for irrigation. Such actions impact wildlife and wildlife habitat, cultural resources, social/economic conditions, groundwater quantity, population, and land use.

The agency-proposed action was derived from an institutional process that involved soliciting expressions of interest to contract for CAP water from the Arizona Indian tribes; and from requesting the State of Arizona to make recommendations on allocating CAP water for M&I use and non-Indian agriculture.

On November 12, 1981, the Secretary selected a proposed Indian allocation (Proposed Action) in order to facilitate the timely completion of the EIS. In light of the Secretary's proposed action to allocate CAP water to Indians, the State of Arizona was asked to make recommendations on allocating CAP water to non-Indians. By letters to the Secretary dated January 18, 1982, April 6, 1982, and November 10, 1982, the DWR made such recommendations after extensive public involvement procedures.

The relative differences in environmental impacts among the allocation alternatives generally are not significant. The Proposed Action provides a significant benefit to the tribes by assuring a relatively stable and predictable water supply for domestic and

economic development. However, by making a reasonable reduction in the Gila Indian Reservation's allocation during times of water supply shortage, additional water is made available for non-Indian municipal and industrial use. Compared to alternatives 3 and 5 over the 50-year repayment period of the CAP, the Proposed Action is projected to deliver about 2,500,000 acre-feet more to the M&I sector, and over 1,000,000 acre-feet more to the non-Indian agricultural sector, while maintaining the essential benefits of CAP water deliveries to the tribes. The increased delivery to the M&I sector avoids locally severe impacts of water supply shortfalls in Apache Junction under alternatives 3 and 5, and to the Kennecott and Phelps Dodge mining operations under alternatives 1 and 5. Under the Proposed Action significantly less farmland would be retired for acquisition of ground-water rights by municipalities than under alternatives 1 and 2. Hence, the Proposed Action, which falls within the range of alternatives 3 and 4 and the resulting environmental impacts is considered to be the environmentally preferred alternative.

There will also be some differing levels of environmental impacts, associated with constructing canals and laterals to deliver CAP water to Indian and non-Indian users. Future environmental analysis of individual delivery systems will include, where appropriate, the evaluation of all reasonable alternatives. All practical means to avoid or minimize adverse environmental impacts will be achieved through specific mitigation measures and monitoring provisions imposed upon the water user in the subcontract and construction specifications.

1. Impacts from Demographic and Land Use Changes

The Bureau's analysis indicates that there would be no significant difference in the acreage of undeveloped desert that would be converted to urban use over the 50-year project period under any of the alternative CAP water allocations (about 165,000 acres under each of the alternatives). A loss of that wildlife now associated with that desert habitat would also be expected. The amount of habitat is part of almost 20 million acres of Sonoran Desert scrub vegetation estimated to exist in Arizona.

The amount of farmland to be converted to urban use within the project service area over the 50-year project period would be about 34,500 acres for each of the alternatives. This would mean a loss of crops grown on converted farmland, predominately cotton. The significance of impact is revealed by comparing about 34,500 acres of irrigated farmland to be lost as a result of urbanization of the estimated 792,500 harvested acres now being irrigated in the project area. The amount of irrigated farmland to be lost amounts to about 5 percent of the total farmland now being irrigated.

Some agricultural lands may be retired to make water available (grandfathered water rights) to nearby municipalities if required to sustain projected population growth. Since the alternative CAP allocations would provide water in varying quantities for municipal use, in some cases, the combination of CAP and other dependable water supplies would not meet the demands of the projected population of a given municipality. In those cases, retirement of farmland was assumed as the

most likely means for increasing the water supplies. It is estimated that a maximum of 6,900 acres would be retired from cultivation under any of the CAP allocation alternatives to meet the water demands of the municipal sector. It will take a period of time before any kind of natural vegetation is reestablished on this land. In addition, it will mean the loss of farm revenues for those now cultivating the land.

Another impact of retiring farmland is the added particulate matter in the area of abandoned fields. Retiring farmland would exacerbate the already existing problem of
dust storms and fugitive dust until vegetation has recovered sufficiently to alleviate the problem.

Anticipated changes in land use on the 10 Indian reservations are not expected to be significant. While in excess of 90,000 acres have been developed for irrigation on the ten reservations, it is estimated that 50,100 acres of land are under irrigation at the present time. An additional 28,149 acres of land could be developed for irrigation under the CAP action alternatives.

Much of the irrigation use of CAP water on Indian reservations would take place on lands previously developed for irrigation. However, some of these lands were subsequently abandoned and have reverted to native vegetation, and the redevelopment of this acreage would cause wildlife habitat losses. It is also possible that the redevelopment of these lands could have adverse impacts on cultural resources that may remain partially intact.

In all cases there will be a beneficial economic impact to tribes with any of the CAP action alternatives. Alternatives 3, 4, 5, and 6 provide an added significant benefit to the tribes by assuring a relatively stable and predictable water supply for domestic and economic development on Indian reservations. Additional jobs would be generated, per capita income would be increased, and the life style of the reservation residents would be upgraded.

Since CAP water would be used primarily as a substitute for groundwater, no changes in land use or other impacts are expected as a direct result of the non-Indian agricultural allocations. However, differences in allocations to M&I users could lead to farmland retirement within agricultural districts. There will also be some impacts on fish and wildlife, as well as land use, as irrigation delivery facilities such as canals and laterals are constructed to deliver CAP water to these entities.

2. Impacts of Constructing Distribution Systems

There will be some environmental impacts associated with constructing canals and laterals to deliver CAP water to Indian and non-Indian users. At least 40 to 50 miles of canals will be required to deliver the Indian allocation of CAP water. Most of this land will be Sonoran Desert, but some will be retired agricultural

land, existing irrigated agricultural land, or undeveloped urban lands. In addition, perhaps as much as 500 miles of canals and pipelines will be required to deliver irrigation and M&I water to non-Indian entities. Under a "worst case" scenario, assuming a 66-foot construction right-of-way, 4,400 acres would be disturbed, including both developed and undeveloped land.

No adverse impacts on special status species are anticipated as a result of CAP water allocations. Changes in land use, such as development of undisturbed wildlife habitat, were projected for each of the action alternatives. The difference among the alternatives is minimal, certainly not significant in the context of endangered species habitat.

The abundance of cultural resources in the CAP area is disappearing at an increasing rate as population grows and development continues. Exact inventories of the cultural resources and an analysis of impacts can be made only when the precise arreal extent of projected and use modifications are defined. At that time, intensive archaeological/historical surveys of the above defined areas would be conducted. Generally, however, of the possible scenarios, only the conversion of lands to agriculture could have significant impact.

In some cases, where planning for delivery facilities is incomplete and it appears that such facilities would be extensive, or would be constructed in environmentally sensitive areas, further environmental analysis may be required prior to execution of a water service subcontract.

Summary

Since CAP water would be used primarily as a substitute for ground water, no major changes in population, land use, or other social indicators are expected as a result of the water allocations. Without the delivery of M&I water, the CAP service area population is projected to be just under 2.5 million by 2034. The area is projected to increase by an additional 100,000 persons by 2034 as a result of M&I water availability, representing an increase of approximately 4 percent over projected growth without CAP. The land use effects identified are of relatively minor magnitude and will not likely impose major economic effects on neighboring communities or lands.

In conclusion, the effect of CAP water would be twofold. First, the water would enable certain existing activities to be maintained at near-current levels. For example, agriculture would be able to sustain production while reducing the serious overdrafting of the ground water supplies. Second, CAP water would help to accommodate the population and economic growth that is projected for central Arizona.

Effect on Previous Decision

The decisions contained herein supersede those made by Secretary Andrus on December 5, 1980, and to the extent those decisions are inconsistent with these decisions, they are rescinded.

Approved February 10, 1983.

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Chapter 27 - Offstream Storage of Colorado River Water

43 CFR PART 414--OFFSTREAM STORAGE OF COLORADO RIVER WATER AND DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED APPORTIONMENT IN THE LOWER DIVISION STATES

Subpart A--Purposes and Definitions

Subpart B--Storage and Interstate Release Agreements

Subpart C--Water Quality and Environmental compliance

Authority: 5 U.S.C. 553; 43 U.S.C. 391, 485 and 617; 373 U.S. 546; 376 U.S.340.

Subpart A--Purposes and Definitions

Sec. 414.1 Purpose.

(a) What this part does. This part establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering,participating in, and administering Storage and Interstate Release Agreements in the Lower Division States (Arizona, California, and Nevada) that would:

(1) Permit State-authorized entities to store Colorado River water offstream;
(2) Permit State-authorized entities to develop intentionally created unused apportionment (ICUA);
(3) Permit State-authorized entities to make ICUA available to the Secretary for release for use in another Lower Division State. This release may only take place in accordance with the Secretary's obligations under Federal law and may occur in either the year of storage or in years subsequent to storage; and
(4) Allow only voluntary interstate water transactions. These water transactions can help to satisfy regional water demands by increasing the efficiency, flexibility, and

certainty in Colorado River management in accordance with the Secretary's authority under Article II (B) (6) of the Decree entered March 9, 1964 (376 U.S. 340) in the case of Arizona v. California, (373 U.S. 546) (1963), as supplemented and amended.

(b) What this part does not do. This part does not:

(1) Affect any Colorado River water entitlement holder's right to use its full water entitlement;
(2) Address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities;
(3) Change or expand existing authorities under the body of law known as the "Law of the River";
(4) Change the apportionments made for use within individual States;
(5) Address intrastate storage or intrastate distribution of water;
(6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law; or
(7) Authorize any specific activities; the rule provides a framework only.

Sec. 414.2 Definitions of terms used in this part.

Authorized entity means:

(1) An entity in a Storing State which is expressly authorized pursuant to the laws of that State to enter into Storage and Interstate Release Agreements and develop ICUA ("storing entity"); or
(2) An entity in a Consuming State which has authority under the laws of that State to enter into Storage and Interstate Release Agreements and acquire the right to use ICUA ("consuming entity").

Basic apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary of the Interior, to satisfy 7.5 million acre-feet (maf) of annual consumptive use in the Lower Division States. The United States Supreme Court, in Arizona v. California, confirmed that the annual basic apportionment for the Lower Division States is 2.8 maf of consumptive use in the State of Arizona, 4.4 maf of consumptive use in the State of California, and 0.3 maf of consumptive use in the State of Nevada.

BCPA means the Boulder Canyon Project Act, authorized by the Act of Congress of December 21, 1928 (45 Stat. 1057).

Colorado River Basin means all of the drainage area of the Colorado River System and all other territory within the United States to which the waters of the Colorado River System shall be beneficially applied.

Colorado River System means that portion of the Colorado River and its tributaries within the United States.

Colorado River water means water in or withdrawn from the mainstream.

Consuming entity means an authorized entity in a Consuming State.

Consuming State means a Lower Division State where ICUA will be used.

Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.

> (1) Consumptive use from the mainstream within the Lower Division States includes water drawn from the mainstream by underground pumping.
> (2) The Mexican treaty obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

Decree means the decree entered March 9, 1964, by the Supreme Court in Arizona v. California, 373 U.S. 546 (1963), as supplemented or amended.

Entitlement means an authorization to beneficially use Colorado River water pursuant to:

> (1) The Decree;
> (2) A water delivery contract with the United States through the Secretary; or
> (3) A reservation of water from the Secretary.

Intentionally created unused apportionment or ICUA means unused apportionment that is developed:

> (1) Consistent with the laws of the Storing State;
> (2) Solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.

Lower Division States means the States of Arizona, California, and Nevada.

Mainstream means the main channel of tthe Colorado River downstream from Lee Ferry within the United States, including the reservoirs behind dams on the main channel, and Senator Wash Reservoir off the main channel.

Offstream storage means storage in a surface reservoir off of the mainstream or in a ground water aquifer. Offstream storage includes indirect recharge when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;
(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;
(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;
(4) Release of ICUA by the Secretary to the consuming entity; and
(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Sttorage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B--Storage and Interstate Release Agreements

Sec. 414.3 Storage and Interstate Release Agreements.

(a) Basic requirements for Storage and Interstate Release Agreements. Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.
(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.
(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.
(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.
(5) The agreement must specify that ICUA may not be requested by the consuming entity in a quantity that exceeds the quantity of water that had been stored under a Storage and Interstate Release Agreement in the Storing State.
(6) The agreement must specify a procedure to verify and account for the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement.
(7) The agreement must specify that, by a date certain, the consuming entity will:

(i) Notify the storing entity to develop a specific quantity of ICUA in the following calendar year;

(ii) Ask the Secretary to release that ICUA; and

(iii) Provide a copy of the notice or request to each Lower Division State.

(8) The agreement must specify that when the storing entity receives a request to develop a specific quantity of ICUA:

(i) It will ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA; and

(ii) Any actions that the storing entity takes will be consistent with its State's laws.

(9) The agreement must include a description of:

(i) The actions the authorized entity will take to develop ICUA;

(ii) Potential actions to decrease the authorized entity's consumptive use of Colorado River water;

(iii) The means by which the development of the ICUA will be enforceable by the storing entity; and

(iv) The notice given to entitlement holders, including Indian tribes, of opportunities to participate in development of this ICUA.

(10) The agreement must specify that the storing entity will certify to the Secretary that ICUA has been or will be developed that otherwise would not have existed. The certification must:

(i) Identify the quantity, the means, and the entity by which ICUA has been or will be developed; and

(ii) Ask the Secretary to make the ICUA available to the consuming entity under Article II(B)(6) of the Decree and the Storage and Interstate Release Agreement.

(11) The agreement must specify a procedure for verifying development of the ICUA appropriate to the manner in which it is developed.

(12) The agreement must specify that the Secretary will release ICUA developed by the storing entity:

(i) In accordance with a request of the consuming entity;

(ii) In accordance with the terms of the Storage and Interstate Release Agreement;

(iii) Only for use by the consuming entity and not for use by other entitlement holders; and

(iv) In accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree and all other applicable laws and executive orders.

(13) The agreement must specify that ICUA shall be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity by reducing Colorado River water use within the Storing State.

(14) The agreement must specify that the Secretary will release ICUA only after the Secretary has determined that all necessary actions have been taken under this part.

(15) The agreement must specify that before releasing ICUA the Secretary must first determine that the storing entity:

(i) Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA requested by the consuming entity; and

(ii) Certified to the satisfaction of the Secretary that the quantity of ICUA requested by the consuming entity has been developed in that year or will be developed in that year under Sec. 414.3(f).

(16) The agreement must specify that the non-Federal parties to the Storage and Interstate Release Agreement will indemnify the United States, its employees, agents, subcontractors, successors, or assigns from loss or claim for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of the actions taken by the non-federal parties to the Storage and Interstate Release Agreement under this part.

(17) The agreement must specify the extent to which facilities constructed or financed by the United States will be used to store, convey, or distribute water associated with a Storage and Interstate Release Agreement.

(18) The agreement must include any other provisions that the parties deem appropriate.

(b) How to address financial considerations. The Secretary will not execute an agreement that has adverse impacts on the financial interests of the United States. Financial details between and among the non-Federal parties need not be included in the Storage and Interstate Release Agreement but instead can be the subject of separate agreements. The Secretary need not be a party to the separate agreements.

(c) How the Secretary will execute storage and interstate release agreements. The Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) may execute and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input. In considering whether to execute a Storage and Interstate Release Agreement, the Secretary may request, and the non-Federal parties must provide, any additional supporting data necessary to clearly set forth both the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction. The Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species; comments from interested parties, particularly parties who may be affected by the proposed action; comments from the State agencies responsible for consulting with the Secretary on matters related to the Colorado River; and other relevant factors, including the direct or indirect consequences of the proposed Storage and Interstate Release Agreement on the financial interests of the United States. Based on the consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

(d) Assigning interests to an authorized entity. Non-Federal parties to a Storage and Interstate Release Agreement may assign their interests in the Agreement to authorized entities. The assignment can be in whole or in part. The assignment can only be made if all parties to the agreement approve.

(e) Requirement for contracts under the Boulder Canyon Project Act. Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.

> (1) An authorized entity may satisfy the requirement of this section through a direct contract with the Secretary. An authorized entity also may satisfy the Section 5 requirement of the BCPA, for purposes of this part, through a valid subcontract with an entitlement holder that is authorized by the Secretary to subcontract for the delivery of all or a portion of its entitlement.

(2) For storing entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be stored, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.
(3) For consuming entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be released by the Secretary as ICUA, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(f) Anticipatory release of ICUA. The Secretary may release ICUA to a consuming entity before the actual development of ICUA by the storing entity if the storing entity certifies to the Secretary that ICUA will be developed during that same year that otherwise would not have existed.

(1) These anticipatory releases will only be made in the same year that the ICUA is developed.
(2) Before an anticipatory release, the Secretary must be satisfied that the storing entity will develop the necessary ICUA in the same year that the ICUA is to be released.

(g) Treaty obligations. Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission under the boundary water treaties and other applicable international agreements in force between the two countries.

Sec. 414.4 Reporting requirements and accounting under Storage and Interstate Release Agreements.

(a) Annual report to the Secretary. Each storing entity will submit an annual report to the Secretary containing the material required by this section. The report will be due on a date to be agreed upon by the parties to the Storage and Interstate Release Agreement. The report must include:

(1) The quantity of water diverted and stored during the prior year under all Storage and Interstate Release Agreements; and
(2) The total quantity of stored water available to support the development of ICUA under each Storage and Interstate Release Agreement to which the storing entity is a party as of December 31 of the prior calendar year.

(b) How the Secretary accounts for diverted and stored water. The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the Decree.

(1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored.

(2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State.
(3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The appropriate balances will be reduced when ICUA is developed by the storing entity and released by the Secretary for use by a consuming entity.

Subpart C--Water Quality and Environmental Compliance

Sec. 414.5 Water quality.

(a) Water Quality is not guaranteed. The Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States is not under any obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

(b) Required water quality standards. All entities, in diverting, using, and returning Colorado River water, must:

(1) Comply with all applicable water pollution laws and regulations of the United States, the Storing State, and the Consuming State; and
(2) Obtain all applicable permits or licenses from the appropriate Federal, State, or local authorities regarding water quality and water pollution matters.

Sec. 414.6 Environmental compliance and funding of Federal costs.

(a) Ensuring environmental compliance. The Secretary will complete environmental compliance documentation, compliance with the National Environmental Policy Act of 1969, as amended, and the Endangered Species Act of 1973, as amended; and will integrate the requirements of other statutes, laws, and executive orders as required for Federal actions to be taken under this part.

(b) Responsibility for environmental compliance work. Authorized entities seeking to enter into a Storage and Interstate Release Agreement under this part may prepare the appropriate documentation and compliance document for a proposed Federal action, such as execution of a proposed Storage and Interstate Release Agreement. The compliance documents must meet the standards set forth in Reclamation's national environmental policy guidance before they can be adopted.

(c) Responsibility for funding of Federal costs. All costs incurred by the United States in evaluating, processing, and/or executing a Storage and Interstate Release Agreement under

this part must be funded in advance by the authorized entities that are party to that agreement.