

COLORADO RIVER BASIN PROJECT ACT

An act to authorize the construction, operation, and maintenance of the Colorado River Basin project, and for other purposes. (Act of September 30, 1968, Public Law 90-537, 82 Stat. 885.)

TITLE I—COLORADO RIVER BASIN PROJECT: OBJECTIVES

Sec. 101. [Short title.]—This Act may be cited as the “Colorado River Basin Project Act”. (82 Stat. 885; 43 U.S.C. § 1501 note)

Sec. 102. (a)[Purposes.]—It is the object of this Act 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.

NOTE OF OPINION

1. Environmental impact statements

It is reasonable for the Bureau of Reclamation to issue a comprehensive environmental impact statement for the continuing operation of the entire Colorado River Basin Project and not to prepare a site-specific environmental impact statement for the Glen Canyon Dam and Reservoir component of the project, whose impounded waters form Lake Powell. The Colorado River Basin Project Act itself recognizes the comprehensive nature of the project 1) by providing in section 102(a) that the purpose of the Act is the further comprehensive development of the water resources of the Colorado River Basin, and 2) by requiring, in section 602(a), that the Sec-

retary of the Interior promulgate criteria for the storage of and release of water from all of the storage units of the Colorado River Project which include units authorized by the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. There is no proposal for criteria or any other major action under the National Environmental Policy Act which involves the Glen Canyon Project singly. Moreover, the courts have recognized the interrelated and comprehensive development of this water resource project. *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

(b) [Congressional policy.]—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 Act 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

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may be made available for such projects, whether heretofore, herein, or hereafter authorized. (82 Stat. 886; 43 U.S.C. § 1501)

TITLE II—INVESTIGATIONS AND PLANNING

Sec. 201. [Secretary to study future Western water needs—Report required—Limitation.]—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, 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 the date of enactment of the Reclamation Safety of Dams Act of 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. (82 Stat. 886; Act of November 2, 1978, 92 Stat. 2471; Act of October 3, 1980, 94 Stat. 1505; 43 U.S.C. § 1511)

EXPLANATORY NOTES

1980 Amendment. Section 10 of the Act of October 3, 1980 (P.L. 96-375, 94 Stat. 1505), amended the fourth sentence of section 201 by striking out the words "the Secretary" and inserting in lieu thereof "any Federal official". The 1980 Act appears in Volume IV in chronological order.

1978 Amendment. Section 10 of the Reclamation Safety of Dams Act of 1978 (Act of November 2, 1978, Public Law 95-578, 92

Stat. 2471) amended the fourth sentence of section 201 by deleting the words "from the date of this Act" following the word "years" and preceding the word "the Secretary" and inserting in lieu thereof the words "from the date of enactment of the Reclamation Safety of Dams Act of 1978" as they appear above. The 1978 Act appears in Volume IV in chronological order.

NOTE OF OPINION

1. Studies of regional transfers

The Secretary may not approve a grant under Title II of the Water Resources Research Act of 1964 to assist in financing a research project, proposed by the Federation of Rocky Mountain States, Inc. in 1971, a principal feature of which is a study of augmenting the

water resources of the Colorado River Basin by regional water transfers from Canada. The Act specifically limits financial assistance to research which is "related to the mission of the Department of the Interior." As section 201 of the Colorado River Basin Project Act expressly prohibits the Secretary from un-

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undertaking studies for the importation of water into the Colorado River Basin from areas outside certain States during the ten years after its enactment, the proposed project cannot be related to the Department's mission. Solicitor Melich Opinion, M-36830 (June 29, 1971).

Sec. 202. [Requirements of Mexican Water Treaty a national obligation—States relieved of obligations—Limitations.]—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 201 of this Act 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 Act. (82 Stat. 887; 43 U.S.C. § 1512)

EXPLANATORY NOTE

References in the Text. The Mexican Water Treaty of February 3, 1944, referred to in the text, appears in Volume II at page 750. The requirements of the Treaty concerning the Colorado River appear in Volume II at page 759. Article III(c) of the Colorado River Compact, also referred to in the text, appears in Volume I at page 443.

Sec. 203. (a) [Importation of water to Colorado River system—Plans required.]—In the event that the Secretary shall, pursuant to section 201, 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 Act, 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) [Priority of rights to use of exported water.]—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 Act 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

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otherwise provided by interstate agreement. (82 Stat. 887; 43 U.S.C. § 1513)

Sec. 204. [Appropriation authorization.]—There are hereby authorized to be appropriated such sums as are required to carry out the purposes of this title. (82 Stat. 887; 43 U.S.C. § 1514)

TITLE III—AUTHORIZED UNITS: PROTECTION OF
EXISTING USES

Sec. 301. (a) [Central Arizona Project authorized—Features—Limitations.]—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 Granite Reef 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 602(a) (3) of this Act: *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 subsection 403(f) of this Act, 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 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 304; (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.

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1. Distribution and drainage systems

Since section 301(a) of the Colorado River Basin Project Act authorizes the Secretary to construct "related water distribution and drainage works" and the legislative history of that Act demonstrates that Congress intended to give the Secretary flexibility in choosing the program under which non-Indian distribution and drainage systems for the Central Arizona Project would be financed and constructed, those systems may be financed and constructed pursuant to repayment contracts under section 9(d) of the Reclamation Project Act of 1939 as well as loan contracts under the Distribution System Loans Act. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

2. Indian preference clause

Section 7(b) of the Indian Self-Determination Act of 1975, 25 U.S.C. § 450e(b), does not require the Secretary to include a clause requiring Indian preference in training and employment and awarding of subcontracts in a contract for the construction of a pumping plant on the Granite Reef Aqueduct. Regulations implementing that Act require the preference clause to be included in contracts authorized by acts "other" than the Self-Determination Act where such contracts are specifically "for the benefit of Indians." Accordingly, the clause is not required in contracts such as this, which is only for the purpose of pumping water down the mainstem of the project and cannot be said to have any specific intended beneficiary. It would be unreasonable to conclude that all contracts entered into pursuant to the CAP authorizing act are specifically for the benefit of Indians merely because Indians will receive water from the project. A more reasonable interpretation is that the clause must be included only in contracts whose specific purpose is to benefit Indians, e.g., contracts to construct the Indian distribution facilities. Memorandum of Assistant Solicitor Mauro to Assistant Solicitor, Procurement, Division of General Law, February 26, 1980.

3. Lake Powell, Rainbow Bridge

Congress has repealed the last sentence of section 3 of the Colorado River Storage Proj-

ect Act and the proviso of section 1(2) of that same Act, both designed to protect the Rainbow Bridge, by (1) disallowing from the Public Works Appropriation Act, 1961, an appropriation to initiate construction of facilities to protect Rainbow Bridge National Monument after specifically finding that the impoundment of water in Glen Canyon Reservoir would not result in any structural damage to the bridge, and (2) by including in the 1961 Appropriations Act and all subsequent public works appropriations acts through 1973 a proviso prohibiting the use of funds appropriated for the Upper Colorado River Basin Fund for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument. Nor can a court order that the Glen Canyon Dam be operated at a reduced level so that the lake would not exceed the level at which it reaches the outer boundary of the monument, as this would have the effect of placing the Glen Canyon facilities, as related to others in the overall system, at about one-half design capacity. To so radically change the effectiveness of the principal regulating reservoir would prevent the attainment of the objectives of the Colorado River Compacts, the Colorado River Storage Project Act and the Colorado River Basin Project Act. *Friends of the Earth v. Armstrong*, 485 F.2d 1 (10th Cir. 1974), cert. denied, 414 U.S. 1171 (1974); accord, *Badoni v. Higginson*, 455 F. Supp. 641 (D. Utah 1977), aff'd, 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

4. Orme Dam—Alternatives

The authorization of the "Orme Dam . . . or suitable alternative" as part of the Central Arizona Project in section 301(a)(2) of the Colorado River Basin Project Act gives the Secretary wide discretion in selecting a site and does not require that an alternative accomplish the same results as if the Orme Dam had been constructed as specified in Chapter IV of the 1964 project Supplemental Information Report. The Secretarial decision must, however, be consistent with the stated Congressional purposes, including flood control, regulatory storage, recreation, and fish and wildlife conservation, and any alternative which provided for only one of these purposes would not be authorized. But nothing in the Act or legislative history indicates that the authorization of a "suitable alternative" precludes the selection of a singular, multiple-site or non-structural alternative such as the proposed Confluence Dam, which would inun-

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date more lands than contemplated by the 1964 report. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

Considering the requirement in section 8 of the Federal Water Project Recreation Act that there be specific authority for the preparation of a feasibility report with respect to any water resource project, the language of section 301(a) of the Colorado River Basin Project Act directing the construction of "Orme Dam and Reservoir or suitable alternative" is adequate for the study of alternatives to Orme Dam but not for the preparation of a feasibility report on the raising of Roosevelt Dam by itself. Memorandum of Assistant Solicitor Mauro to Assistant Secretary, Land and Water Resources, February 26, 1980.

5. Cost ceiling

Although section 301(a)(2) of the Colorado River Basin Project Act authorizes the "Orme Dam . . . or suitable alternative," and while the individual project features set forth in the legislative history are not inflexible, the history does demonstrate that Congress viewed the total dollar amount of the Central Arizona Project as being the sum of the individual costs of each of its various features, including that of the Orme Dam. Consequently, if the indexed cost of an alternative would significantly increase the cost of this project feature beyond that originally contemplated by Congress, Congress should be so informed and additional appropriations authority requested. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

6. Fort McDowell Indian Reservation

In selecting a "suitable alternative" to the Orme Dam, as authorized by section 301(a)(2) of the Colorado River Basin Project Act, it is clear that the total area of the Fort McDowell Indian Reservation that Chapter IV of the January 1964 Supplemental Information Report on the Central Arizona Project expected to be flooded if the Dam was built as proposed was not intended to establish a ceiling on the acreage permitted to be inundated by an alternative. Rather, the Act expressly gives the Secretary authority to acquire such reservation lands as he deems necessary and permits the use of eminent domain, if needed for their acquisition. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

9. Relationship with other laws—

Federal Water Project Recreation Act

Considering the requirement in section 8

of the Federal Water Project Recreation Act that there be specific authority for the preparation of a feasibility report with respect to any water resource project, the language of section 301(a) of the Colorado River Basin Project Act directing the construction of "Orme Dam and Reservoir or suitable alternative" is adequate for the study of alternatives to Orme Dam but not for the preparation of a feasibility report on the raising of Roosevelt Dam by itself. Memorandum of Assistant Solicitor Mauro to Assistant Secretary, Land and Water Resources, February 26, 1980.

14. Transmission facilities

To the extent that electrical transmission facilities are required to accomplish Central Arizona Project purposes and not power marketing purposes, the Secretary continues to have the authority to construct, operate, and maintain these facilities and such authority is unaffected by Section 302 of the Department of Energy Organization Act. Memorandum of Solicitor Krulitz to Assistant Secretary, Land and Water Resources, and Commissioner, September 24, 1979.

15. Tucson Aqueducts

The Secretary has authority to specify the terminus and capacity of the Tucson Aqueduct/Colorado River source (Colorado Aqueduct) as the Act itself does not do so, nor does it incorporate by reference any reports which do so. Memorandum of Associate Solicitor Little to Assistant Secretary, Land and Water Resources, July 21, 1980, in re Central Arizona Project.

In the event that the Charleston Dam and Reservoir and the Tucson Aqueduct/San Pedro source (San Pedro Aqueduct) are deleted from the Tucson Division, Central Arizona Project, costs allocated to these two components cannot be used to offset the increased costs of an enlarged Colorado Aqueduct unless it is determined that a portion of the cost of those two components will serve the same project purposes as the revised Colorado Aqueduct, i.e., delivery of a supplemental water supply to the Tucson metropolitan area. The Secretary should specifically notify Congress of this cost ceiling adjustment. Memorandum of Associate Solicitor Little to Assistant Secretary, Land and Water Resources, July 21, 1980.

Where Congress specifically designates in authorizing legislation the features to be a part of the total project, the Secretary may

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not substantially deviate from those general requirements without Congressional approval. Thus, as the act specifically lists the Charleston Dam and Reservoir as a principal work and the legislative history refers to the San Pedro Aqueduct as a "major project fea-

ture," these project components cannot be deleted without Congressional approval. Memorandum of Associate Solicitor Little to Assistant Secretary, Land and Water Resources, July 21, 1980, in re Central Arizona Project: Tucson Aqueduct.

(b) [Limitation on Central Arizona Project diversions—Priority of water users unaffected.]—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 301(b). 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) [Limitation not to apply if sufficient mainstream water available.]—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. (82 Stat. 887; 43 U.S.C. § 1521)

Sec. 302. (a) [Acquisition of Indian lands for Orme Dam and Reservoir—Compensation.]—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

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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 States 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., 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) [Title to acquired land subject to use or lease by former owner—Conditions.]—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) shall reflect the right to extract and dispose of minerals and all other uses permitted by this section.

(c) [Addition of lands to Fort McDowell Indian Reservation.]—In view of the fact that a substantial portion of the lands of the Fort McDowell Mohave-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 Mohave-Apache Indian Community.

(d) [Development and operation of recreational facilities—Master plan.]—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

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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 from 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. (82 Stat. 888; 43 U.S.C. § 1522)

EXPLANATORY NOTE

References in the Text. Sections 257 and 258a of Title 40, United States Code, referred to in subsection (a) of the text, provide for the taking of realty for public use. The

sections appear in Volume III, Appendix, at page 1974 and in the new Appendix in Supplement I.

NOTE OF OPINION

1. Orme Dam

In selecting a "suitable alternative" to the Orme Dam, as authorized by section 301(a)(2) of the Colorado River Basin Project Act, it is clear that the total area of the Fort McDowell Indian Reservation that Chapter IV of the January 1964 Supplemental Information Report on the Central Arizona Project expected to be flooded if the Dam was built as proposed

was not intended to establish a ceiling on the acreage permitted to be inundated by an alternative. Rather, the Act expressly gives the Secretary authority to acquire such reservation lands as he deems necessary and permits the use of eminent domain, if needed for their acquisition. Memorandum of Solicitor Colclon to Secretary, September 16, 1981.

Sec. 303. (a) [Hydroelectric study authorized—Limitations.]—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 Act 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) **[Thermal generating powerplants—Provisions of agreements.]**—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

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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) [Submission of plan to Congress.]—No later than one year from the effective date of this Act, 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 Congress.

(d) [Conditions if thermal generating plant located in Arizona.]—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). (82 Stat. 889; 43 U.S.C. § 1523)

EXPLANATORY NOTE

Reference in the Text. Article III(a) of the Upper Colorado River Basin Compact, referred to in subsection (d) of the text, appears in Volume II at page 911.

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NOTES OF OPINIONS

Anti-deficiency Act 1
Navajo Project 2
Preference clause 3

1. Anti-deficiency Act

Where Congress expressly authorizes the Secretary to enter into agreements with non-Federal interests to acquire the right to portions of the capacity of new powerplants, sets forth specific conditions for the payment of funds during the construction period, and authorizes appropriations for prepayment of power generation and transmission facilities, the Secretary has authority to obligate the United States in excess of current appropriations and in advance of future appropriations where necessary to obtain thermal generating capacity to provide pumping power for the Central Arizona Project. By singling out for such detailed treatment the agreements for acquiring thermal generating capacity, the Congress recognized the peculiar problems inherent in this feature of the project and manifested its intent to remove these agreements from the restrictions otherwise imposed by the Anti-deficiency Act (31 U.S.C. § 665). Solicitor Melich Opinion, April 18, 1969, in re authority to obligate the United States.

2. Navajo Project

The 34,100 acre-feet a year of Colorado River water to be supplied under a water service contract to the coal-fueled Navajo Project must be charged to the 50,000 acre-feet a year of Upper Basin water that has been apportioned to Arizona by Article III of the Upper Colorado River Basin Compact. The Navajo Tribe may not demand water in excess of the apportionment to satisfy its reserved water rights, as the Tribe has agreed to such water use in the plant site lease, has encouraged the project to go forward, and will re-

alize substantial benefit from the project. Solicitor Melich Opinion, 76 I.D. 357 (December 10, 1969).

3. Preference clause

A request for a preliminary injunction against the continued sale of "interim power" from the Navajo powerplant to a nonpreference customer will be denied where the requesting cities had not made an offer to buy the power at the time the contract was entered into. *City of Anaheim, California v. Kleppe*, 590 F.2d 285 (9th Cir. 1978).

The sale of "interim power" from the coal-fired Navajo plant from the time it begins operation in 1974 until the power is needed for pumping for the Central Arizona Project, estimated to occur in 1980, is governed by the preference clause. The direction in section 303(d) of the Colorado River Basin Project Act to the Secretary to recommend "the most feasible plan" for obtaining pumping power for the Central Arizona Project does not comprehend the right to sell "interim power" in a manner that is in conflict with the preference clause. *Arizona Power Pooling Association v. Morton*, 527 F.2d 721, 725, 728-29 (9th Cir. 1975), cert. denied sub. nom. *Arizona Public Service Co. v. Arizona Power Pooling Association*, 425 U.S. 911 (1976).

The fact that Congress appropriated funds to finance the Federal share of the cost of constructing the coal-fired Navajo plant did not constitute Congressional ratification of an alleged departure from the preference clause in the negotiation of contracts for the sale of "interim power" from the plant. *Arizona Power Pooling Association v. Morton*, 527 F.2d 721, 725-26 (9th Cir. 1975), cert. denied sub. nom. *Arizona Public Service Company v. Arizona Power Pooling Association*, 425 U.S. 911 (1976).

Sec 304. (a) [Limitation 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)(1) [Contracts for irrigation and municipal and industrial water supply in Arizona.]—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

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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 Act, 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) **[Repayment period.]**—Any obligation assumed pursuant to section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) 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 9(e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(e)) 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) **[Provisions of municipal and industrial water supply contracts.]**—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 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); 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.

Supplementary Provision: Pricing of Irrigation Water Delivered to Lands Under Recordable Contract. Section 218 of the Reclamation Reform Act of 1982 (Act of October 12, 1982, 96 Stat. 1261, 1271, 43 U.S.C. § 390rr) provides that lands receiving irrigation water pursuant to a contract as authorized under the Colorado River Basin Project Act which are placed under recordable contract shall be eligible to receive irrigation water upon terms and conditions related to pricing established by the Secretary pursuant to Reclamation law in effect immediately prior to the date of enactment of the

1982 Act, for a period of time not to exceed 10 years from the date such lands are capable of being served with irrigation water, as determined by the Secretary. The 1982 Act appears in Volume IV in chronological order.

References in the Text. Section 9(d) of the Reclamation Project Act of 1939 (53 Stat. 1187), referred to in subsection (b)(2) of the text, requires the execution of a repayment contract prior to water delivery to an irrigation block and provides for a repayment period not exceeding forty years. Section 9(e) of the Reclamation Project Act of 1939, also referred to in subsection (b)(2) of the text,

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provides for short- or long-term contracts to furnish irrigation water in lieu of the provisions of section 9(d), for a period not to exceed forty years. The 1939 Act appears in Volume I at page 634.

Reference in the Text. The last sentence of subsection (c) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187),

referred to in subsection 304(b)(3) of the text, reads: "No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made, unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes." The sentence appears in Volume I at page 648.

NOTE OF OPINION

1. Indian tribes, water use priorities

Section 304(b) (1) of the Colorado River Basin Project Act, which states that "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," does not preclude the United States from establishing priorities for Indians as well as non-Indian lands in a master repayment contract between the United States and the Central Arizona Water Conservation District. The legislative history and the language of the Act itself indicate that the only significance of this sentence is that the ad valorem taxing authority provided in the legislation to assist

in repayment of the costs of the Central Arizona Project shall not apply to the supplying of water to Indian lands. While the Act contemplated that Central Arizona Project water would be delivered to Indian lands, it did not accord any priority rights to the Indians but rather granted complete discretion to the Secretary to allocate water for any authorized purpose subject only to limited restrictions not applicable here. Memorandum of Solicitor Melich to Assistant Secretary, Water and Power Resources, November 28, 1972, in re water use priorities in connection with Central Arizona Project.

(c) **[Conservation of irrigation water.]**—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 irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the United 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).

(d) **[Exchange or replacement of existing water supplies.]**—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

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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) **[Priority in time of shortage.]**—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.

NOTE OF OPINION

1. **Water use priorities**

Aside from the specific priority rights granted by section 304(e) of the Colorado River Basin Project Act, the Secretary has complete discretion to allocate project water for any authorized purpose in such amounts

and under such conditions as he deems appropriate. Memorandum of Solicitor Melich to Assistant Secretary, Water and Power Resources, November 28, 1972, in re water use priorities in connection with Central Arizona Project.

(f) (1) **[Use of Gila River water—Limitations.]**—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 Act, 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) **[Additional use of Gila River water.]**—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.

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(3) **[Use subject to existing rights.]**—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 the effective date of this Act 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.

(g) **[Surplus crops.]**—For a period of ten years from the date of enactment of this Act, no water from the projects authorized by this Act 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 (52 Stat. 38), as amended (7 U.S.C. 1301), unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. (82 Stat. 891; 43 U.S.C. § 1524)

EXPLANATORY NOTE

Reference in the Text. The definition of "basic agricultural commodity" in the Agricultural Act of 1949, as amended, referred to in subsection (g) of the text, is found at 63 Stat. 1056, 7 U.S.C. § 1428(c). The definition of "normal supply" in section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, also referred to in subsection (g) of the text, is found at 62 Stat. 1251, 7 U.S.C. § 1301(b)(10). Neither Act appears herein.

Sec. 305. [Mainstream water cost.]—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 403 of this Act) 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. (82 Stat. 893; 43 U.S.C. § 1525)

Sec. 306. [Water salvage program.]—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

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with maintenance of a reasonable degree of undisturbed habitat for fish and wildlife in the area, as determined by the Secretary. (82 Stat. 893; 43 U.S.C. § 1526)

Sec. 307. [Dixie project reauthorized.]—The Dixie Project, heretofore authorized in the State of Utah, is hereby reauthorized for construction at the site determined feasible by the Secretary, and the Secretary shall integrate such project into the repayment arrangement and participation in the Lower Colorado River Basin Development Fund established by title IV of this Act consistent with the provisions of the Act: *Provided*, That section 8 of Public law 88-565 (78 Stat. 848) is hereby amended by deleting the figure “\$42,700,000” and inserting in lieu thereof the figure “\$58,000,000”. (82 Stat. 893; 43 U.S.C. § 616aa-1)

EXPLANATORY NOTE

Cross Reference, Dixie Project. The Dixie project was initially authorized by the Act of September 2, 1964 (78 Stat. 848) to provide for the development of the Virgin and Santa

Clara Rivers to supply irrigation water to approximately 21,000 acres in southwestern Utah. The 1964 Act appears in Volume III at page 1768.

Sec. 308. [Fish and wildlife conservation and development—Recreation enhancement.]—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 title shall be in accordance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213), except as provided in section 302 of this Act. (82 Stat. 893; 43 U.S.C. § 1527)

Sec. 309. [Appropriation authorization.]—(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.

NOTES OF OPINIONS

Anti-deficiency Act 1
Orme Dam, cost ceiling 2
1. Anti-deficiency Act

Where Congress expressly authorizes the Secretary to enter into agreements with non-Federal interests to acquire the right to portions of the capacity of new powerplants, sets forth specific conditions for the payment of funds during the construction period, and authorizes appropriations for prepayment of power generation and transmission facilities, the Secretary has authority to obligate the

United States in excess of current appropriations and in advance of future appropriations where necessary to obtain thermal generating capacity to provide pumping power for the Central Arizona Project. By singling out for such detailed treatment the agreements for acquiring thermal generating capacity, the Congress recognized the peculiar problems inherent in this feature of the project and manifested its intent to remove these agreements from the restrictions otherwise imposed by the Anti-deficiency Act (31 U.S.C.

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§ 665). Solicitor Melich Opinion, April 18, 1969, in re authority to obligate the United States.

2. Orme Dam, cost ceiling

Although section 301(a)(2) of the Colorado River Basin Project Act authorizes the "Orme Dam . . . or suitable alternative," and while the individual project features set forth in the legislative history are not inflexible, the history does demonstrate that Congress viewed the total dollar amount of the Central Arizona

Project as being the sum of the individual costs of each of its various features, including that of the Orme Dam. Consequently, if the indexed cost of an alternative would significantly increase the cost of this project feature beyond that originally contemplated by Congress, Congress should be so informed and additional appropriations authority requested. Memorandum of Solicitor Coldiron to Secretary, September 16, 1981.

(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 the date of the Colorado River Basin Project Act: *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 403 of this Act, neither appropriations made pursuant to the authorization contained in this subsection (b) 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. (82 Stat. 893; Act of December 20, 1982, 96 Stat. 1817; 43 U.S.C. § 1528)

EXPLANATORY NOTE

1982 Amendment. The Act of December 20, 1982 (Public Law 97-373, 96 Stat. 1817) amended section 309(b) to permit cost indexing of the \$100 million authorized to be appropriated for construction of distribution and drainage systems on non-Indian lands and

to require the Secretary to enter into agreements with non-Federal interests to provide not less than 20% of the total cost of such facilities during their construction. The 1982 Act appears in Volume IV in chronological order.

NOTES OF OPINIONS

Non-Indian distribution systems 1-5

Appropriations ceiling 1

Indexing 2

Relationship with other laws 6-9

Reclamation Project Act of 1939 6

1. Non-Indian distribution systems—

Appropriations ceiling

Applications for loans under the Distribution System Loans Act, 43 U.S.C. § 421a *et seq.*, that individually exceed the total amount authorized to be appropriated by section 309(b) may not be approved if such approval would constitute an obligation to expend

funds. Even if approval would constitute only a preliminary action allowing the proposal to move forward through the contracting process, Congress should be asked for additional authority before any action leading to commitment or obligation of funds is taken. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

2.—Indexing

Since Congress explicitly excluded construction of non-Indian distribution and drainage systems from the purposes for which

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the indexed general project appropriations were authorized in section 309 (a) and specifically authorized a separate, unindexed appropriation in section 309(b) for construction of those systems, it is clear that the amount authorized to be appropriated for construction of Central Arizona Project non-Indian distribution and drainage systems cannot be indexed. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

6. Relationship with other laws—

Reclamation Project Act of 1939

Since section 301(a) of the Colorado River Basin Project Act authorizes the Secretary to

construct "related water distribution and drainage works" and the legislative history of that Act demonstrates that Congress intended to give the Secretary flexibility in choosing the program under which non-Indian distribution and drainage systems for the Central Arizona Project would be financed and constructed, those systems may be financed and constructed pursuant to repayment contracts under section 9(d) of the Reclamation Project Act of 1939 as well as loan contracts under the Distribution System Loans Act. Memorandum of Acting Associate Solicitor Fisher to Commissioner of Reclamation, March 12, 1982.

TITLE IV—LOWER COLORADO RIVER BASIN DEVELOPMENT FUND: ALLOCATION AND REPAYMENT OF COSTS: CONTRACTS

Sec. 401. [Allocation of costs—Certain costs nonreimbursable.]—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 title II of this Act 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): *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 Act. (82 Stat. 894; 43 U.S.C. § 1541)

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EXPLANATORY NOTE

Reference in the Text. The Water Treaty Stat. 1219), referred to in the text, appears in of 1944 with the United Mexican States (59 Volume II at page 750.

Sec. 402. [Cost allocation for 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 the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), and such costs that are beyond repayment capability of such lands shall be nonreimbursable. (82 Stat. 894; 43 U.S.C. § 1542)

EXPLANATORY NOTE

Reference in the Text. The Act of July 1, 1932 (47 Stat. 564), referred to in the text, is the so-called Leavitt Act, which provides, among other things, that the collection of all construction costs against any Indian-owned lands within any Government irrigation project be deferred, and no assessments be made

on behalf of such charges against such lands, until the Indian title thereto shall have been extinguished. It further provides for the cancellation of certain construction assessments previously levied. The 1932 Act appears in Volume I at page 504.

NOTE OF OPINION

1. Use of power revenues

Power revenues of the Central Arizona Project may not lawfully be used to return to the Treasury all or a part of the construction

costs allocated to Indian lands irrigated from that project. Memorandum of Assistant Solicitor Pelz, July 24, 1974.

Sec. 403. [Lower Colorado River Basin Development Fund established—Credits—Provisions.]—(a) 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) All appropriations made for the purpose of carrying out the provisions of title III of this Act shall be credited to the development fund as advances from the general fund of the Treasury, and shall be available for such purpose.

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

(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), 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:

(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

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by the Secretary, to the operation, maintenance, and replacement requirements of those projects: *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 2(c) of the Boulder Canyon Project Adjustment Act 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) 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 304(f) of this Act.

(e) 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) 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 title III of this Act which are allocated to irrigation, commercial power, or municipal and industrial water supply, pursuant to this Act 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 cost, if any, required by section 307 shall not be made until after the payout period of the Central Arizona Project as authorized herein; and

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(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) 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 307 and 502 of this Act, (2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a) (2), 205(a) (3), and 205(b) (1) of the Colorado River Salinity Control Act 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 section 201 and subsection 203(a) of this Act.

(h) 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) Business-type budgets shall be submitted to the Congress annually for all operations financed by the development fund. (82 Stat. 894; § 205(b)(2), Act of June 24, 1974, 88 Stat. 266; 43 U.S.C. § 1543)

EXPLANATORY NOTE

1974 Amendment. Section 205(b)(2) of the Colorado River Basin Salinity Control Act (Act of June 24, 1974, 88 Stat. 266, 43 U.S.C. § 1571 *et seq.*) amended section 403(g) to provide for the repayment from the Lower Colorado River Basin Development Fund of

certain costs of salinity control units by (1) adding paragraph (2) as it appears above, and (2) redesignating former paragraph (2) as paragraph (3). The 1974 Act appears in Volume IV in chronological order.

NOTES OF OPINIONS

Meaning of "unit" 1

Use of Reclamation fund 2

1. Meaning of "unit"

The legislative history of the Colorado River Basin Project Act demonstrates that the

"unit" referred to in section 403(h) is the Central Arizona Project and the "project" referred to is the Colorado River Basin Project. The section refers to "each unit of the project" even though the Central Arizona Project

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is the only unit authorized, as earlier versions of the bill provided for other units which were deleted before enactment and appropriate stylistic revisions of section 403(h) were apparently not made. Memorandum of Associate Solicitor Leshy to Assistant Solicitor, Audit and Inspection, October 11, 1979, in re interest charges for the Central Arizona Project.

2. Use of Reclamation fund

Although the reclamation fund has received advances from the general fund of the Treasury, it remains separate and distinct from the general fund. As a general rule, if a project is authorized under Reclamation

law, or is supplementary to Reclamation law, the reclamation fund is available to finance the costs thereof, absent evidence of Congressional intent to the contrary. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

The specific references to the general fund of the Treasury in section 403 show clearly that Congress intended the Lower Colorado River Basin Development Fund to be financed from the general fund and therefore preclude transfer of funds in the reclamation fund to the Development Fund. Memorandum of Associate Solicitor Good to Commissioner, September 8, 1982.

Sec. 404. [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. (82 Stat. 896; 43 U.S.C. § 1544)

TITLE V—UPPER COLORADO RIVER BASIN: AUTHORIZATIONS AND REIMBURSEMENTS

Sec. 501. (a) [Colorado River Storage Project Act amended to provide for construction of Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel, and Central Utah (Uintah unit) projects.]—In order to provide for the construction, operation, and maintenance of the Animas-La Plata Federal reclamation project, Colorado-New Mexico; the Dolores, Dallas Creek, West Divide, and San Miguel Federal reclamation projects, Colorado; and the Central Utah project (Uintah unit), Utah, as participating projects under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), and to provide for the completion of planning reports on other participating projects, clause (2) of section 1 of said Act is hereby further amended by (i) inserting the words “and the Uintah unit” after the word “phase” within the parenthesis following “Central Utah”, (ii) deleting the words “Pine River Extension” and inserting in lieu thereof the words “Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel”, (iii) adding after the words “Smith Fork:” the proviso “*Provided, That construction of the Uintah unit of the Central Utah project shall not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted such report to the Congress along with his certification that, in his judgment, the benefits of such unit or segment will exceed the costs and that such unit is physically and financially feasible, and the Congress has authorized the appropriation of funds for the construction thereof:*”. Sec-

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tion 2 of said Act is hereby further amended by (i) deleting the words "Parshall, Troublesome, Rabbit Ear, San Miguel, West Divide, Tomichi Creek, East River, Ohio Creek, Dallas Creek, Dolores, Fruit Growers Extension, Animas-La Plata", and inserting after the words "Yellow Jacket" the words "Basalt Middle Park (including the Troublesome, Rabbit Ear, and Azure units), Upper Gunnison (including the East River, Ohio Creek, and Tomichi Creek units), Lower Yampa (including the Juniper and Great Northern units), Upper Yampa (including the Hayden Mesa, Wessels, and Toponas units)"; (ii) by inserting after the word "Sublette" the words "(including a diversion of water from the Green River to the North Platte River Basin in Wyoming), Ute Indian unit of the Central Utah Project, San Juan County (Utah), Price River, Grand County (Utah), Gray Canyon, and Juniper (Utah)"; and (iii) changing the period after "projects" to a colon and adding the following proviso: "Provided, That the planning report for the Ute Indian unit of the Central Utah participating project shall be completed on or before December 31, 1974, to enable the United States of America to meet the commitments heretofore made to the Ute Indian Tribe of the Uintah and Ouray Indian Reservation under the agreement dated September 20, 1965 (Contract Numbered 14-06-W-194)." The amount which section 12 of said Act authorizes to be appropriated is hereby further increased by the sum of \$392,000,000, plus or minus such amounts, if any, as may be required, by reason of changes in construction costs as indicated by engineering cost indices applicable to the type of construction involved. This additional sum shall be available solely for the construction of the Animas-La Plata, Dolores, Dallas Creek, West Divide, and San Miguel projects herein authorized. (82 Stat. 896; 43 U.S.C. §§ 620, 620nt, 620a, 620k note)

NOTE OF OPINION

1. Uintah unit, discount rates

In evaluating the financial feasibility of the Uintah Unit of the Central Utah Project in the certification report of April 25, 1975, it was not necessary to use the 5½ percent discount rate then in use as opposed to the 3¼ percent discount rate employed in the feasibility report on which Congress had relied in its September 30, 1968 authorization of the project. The 3¼ percent discount rate was

one of the key assumptions on which the project had received public support and Congressional approval in 1968. Moreover, the use of the lower discount rate has been fully disclosed to Congress, which can withhold appropriation authorization if the lower rate is no longer acceptable. Letter of Solicitor Austin to Representative Gunn McKay, February 24, 1976.

(b) [Construction to be concurrent with Central Arizona Project construction.]—The Secretary is directed to proceed as nearly as practicable with the construction of the Animas-La Plata, Dolores, Dallas Creek, West Divide, and San Miguel participating Federal reclamation projects concurrently with the construction of the Central Arizona Project, to the end that such projects shall be completed not later than the date of the first delivery of water from said Central Arizona Project: *Provided*, That an appropriate repayment contract for each of said participating projects shall have been

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executed as provided in section 4 of the Colorado River Storage Project Act (70 Stat. 107) before construction shall start on that particular project. (82 Stat. 897; 43 U.S.C. § 620a-1)

(c) **[Animas-La Plata Project Compact—Condition precedent to construction—Consent of Congress.]**—The Animas-La Plata Federal reclamation project shall be constructed and operated in substantial accordance with the engineering plans set out in the report of the Secretary transmitted to the Congress on May 4, 1966, and printed as House Document 436, Eighty-ninth Congress: *Provided*, That construction of the Animas-La Plata Federal reclamation project shall not be undertaken until and unless the States of Colorado and New Mexico shall have ratified the following compact to which the consent of Congress is hereby given:

“ANIMAS-LA PLATA PROJECT COMPACT

“The State of Colorado and the State of New Mexico, in order to implement the operation of the Animas-La Plata Federal Reclamation Project, Colorado-New Mexico, a proposed participating project under the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620) and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and have agreed upon the following articles:

“ARTICLE I

“A. The right to store and divert water in Colorado and New Mexico from the La Plata and Animas River systems, including return flow to the La Plata River from Animas River diversions, for uses in New Mexico under the Animas-La Plata Federal Reclamation Project shall be valid and of equal priority with those rights granted by decree of the Colorado state courts for the uses of water in Colorado for that project, providing such uses in New Mexico are within the allocation of water made to that state by articles III and XIV of the Upper Colorado River Basin Compact (63 Stat. 31).

“B. The restrictions of the last sentence of Section (a) of Article IX of the Upper Colorado River Basin Compact shall not be construed to vitiate paragraph A of this article.

“ARTICLE II

“This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States.” (82 Stat. 897)

(d) **[Acreage limitation.]**—The Secretary shall, for the Animas-La Plata, Dolores, Dallas Creek, San Miguel, West Divide, and Seedska-dee participating projects of the Colorado River storage project, establish the nonexcess irrigable acreage for which any single ownership may receive project water at one hundred and sixty acres of class 1 land or the equivalent thereof, as determined by the Secretary, in other land classes. (82 Stat. 898; 43 U.S.C. § 620a-2)

(e) **[Compliance with appropriation priorities.]**—In the diversion and storage of water for any project or any parts thereof constructed under the

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authority of this Act or the Colorado River Storage Project Act within and for the benefit of the State of Colorado only, the Secretary is directed to comply with the constitution and statutes of the State of Colorado relating to priority of appropriation; with State and Federal court decrees entered pursuant thereto; and with operating principles, if any, adopted by the Secretary and approved by the State of Colorado. (82 Stat. 898; 43 U.S.C. § 620c-1)

(f) [Definition of “any western slope appropriations.”]—The words “any western slope appropriations” contained in paragraph (i) of that section of Senate Document Numbered 80, Seventy-fifth Congress, first session, entitled “Manner of Operation of Project Facilities and Auxiliary Features”, shall mean and refer to the appropriation heretofore made for the storage of water in Green Mountain Reservoir, a unit of the Colorado-Big Thompson Federal reclamation project, Colorado; and the Secretary is directed to act in accordance with such meaning and reference. It is the sense of Congress that this directive defines and observes the purpose of said paragraph (i), and does not in any way affect or alter any rights or obligations arising under said Senate Document Numbered 80 or under the laws of the State of Colorado. (82 Stat. 898)

Sec. 502. [Reimbursement to cover Hoover Dam deficiency.]—The Upper Colorado River Basin Fund established under section 5 of the Colorado River Storage Project Act (70 Stat. 107; 43 U.S.C. 620d) shall be reimbursed from the Colorado River Development Fund established by section 2 of the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a) for the money expended heretofore or hereafter from the Upper Colorado River Basin Fund to meet deficiencies in generation at Hoover Dam during the filling period of storage units of the Colorado River storage project pursuant to the criteria for the filling of Glen Canyon Reservoir (27 Fed. Reg. 6851, July 19, 1962). For this purpose, \$500,000 for each year of operation of Hoover Dam and powerplant, commencing with fiscal year 1970, shall be transferred from the Colorado River Development Fund to the Upper Colorado River Basin Fund, in lieu of application of said amounts to the purposes stated in section 2(d) of the Boulder Canyon Project Adjustment Act, until such reimbursement is accomplished. To the extent that any deficiency in such reimbursement remains as of June 1, 1987, the amount of the remaining deficiency shall then be transferred to the Upper Colorado River Basin Fund from the Lower Colorado River Basin Development Fund, as provided in subsection (g) of section 403. (82 Stat. 898; 43 U.S.C. § 620d-1)

TITLE VI—GENERAL PROVISIONS: DEFINITIONS:
CONDITIONS

Sec. 601. (a) [Existing law unaffected.]—Nothing in this Act 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

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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), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a) or the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620).

(b) [Reports required.]—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) [Federal officials and agencies to comply—Suit authorized for lack of compliance.]—All Federal officers and agencies are directed to comply with the applicable provisions of this Act, 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, any 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. (82 Stat. 899; 43 U.S.C. § 1551)

NOTE OF OPINION

1. Navajo Project

The 34,100 acre-feet a year of Colorado River water to be supplied under a water service contract to the coal-fuel Navajo Project must be charged to the 50,000 acre-feet a year of Upper Basin water that has been apportioned to Arizona by Article III of the Upper Colorado River Basin Compact. The

Navajo Tribe may not demand water in excess of the apportionment to satisfy their reserved water rights, as the Tribe has agreed to such water use in the plant site lease, has encouraged the project to go forward, and will realize substantial benefit from the project. Solicitor Melich Opinion, 76 I.D. 357 (December 10, 1969).

Sec. 602. (a) [Coordination of reservoir operations—Criteria.]—In order to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican

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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, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. 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 202 of this Act;

(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. (82 Stat. 900; 43 U.S.C. § 1552)

NOTES OF OPINIONS

Environmental impact statements 1-5

Glen Canyon Dam 1

Lake Powell, Rainbow Bridge 6

**1. Environmental impact statements —
Glen Canyon Dam**

It is reasonable for the Bureau of Reclamation to issue a comprehensive environmental impact statement for the continuing operation of entire Colorado River Basin Project and not to prepare a site-specific environmental impact statement for the Glen

Canyon Dam and Reservoir component of the project, whose impounded waters form Lake Powell. The Colorado River Basin Project Act itself recognizes the comprehensive nature of the project 1) by providing in section 102(a) that the purpose of the Act is the further comprehensive development of the water resources of the Colorado River Basin and 2) by requiring, in section 602(a), that the Secretary of the Interior promulgate criteria for the storage and release of water from all of

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the storage units of the Colorado River Project, which include units authorized by the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. There is no proposal for criteria or any other major action under the National Environmental Policy Act which involves the Glen Canyon Project singly. Moreover, the courts have recognized the interrelated and comprehensive development of this water resource project. *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980), cert. denied, 452 U.S. 954 (1981).

6. Lake Powell, Rainbow Bridge

Congress has repealed the last sentence of section 3 of the Colorado River Storage Project Act and the proviso of section 1(2) of that same Act, both designed to protect the Rainbow Bridge, by (1) disallowing from the Public Works Appropriation Act, 1961, an appropriation to initiate construction of facilities to protect Rainbow Bridge National Monument after specifically finding that the impoundment of water in Glen Canyon Reservoir would not result in any structural damage to the bridge, and (2) by including in the

1961 Appropriations Act and all subsequent public works appropriations acts through 1973 a proviso prohibiting the use of funds appropriated for the Upper Colorado River Basin Fund for construction or operation of facilities to prevent waters of Lake Powell from entering any national monument. Nor can a court order that the Glen Canyon Dam be operated at a reduced level so that the lake would not exceed the level at which it reaches the outer boundary of the monument, as this would have the effect of placing the Glen Canyon facilities, as related to others in the overall system, at about one-half design capacity. To so radically change the effectiveness of the principal regulating reservoir would prevent the attainment of the objectives of the Colorado River Compact, the Colorado River Storage Project Act, and the Colorado River Basin Project Act. *Friends of the Earth v. Armstrong*, 485 F.2d 1 (10th Cir. 1974), cert. denied, 414 U.S. 1171 (1974); accord, *Badoni v. Higginson*, 455 F. Supp. 641 (D. Utah 1977), aff'd, 638 F.2d 172 (10 Cir. 1980), cert. denied, 452 U.S. 954 (1981).

(b) [Submission of Criteria to States—Report required.]—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 operation.]—Section 7 of the Colorado River Storage Project Act shall be administered in accordance with the foregoing criteria. (82. Stat. 900; 43 U.S.C. § 1552)

Sec. 603. (a) [Upper basin rights unaffected.]—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.

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(b)[**Upper Colorado River Commission unaffected.**—Nothing in this Act shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission. (82 Stat. 901; 43 U.S.C. § 1553)

Sec. 604. [Reclamation laws to govern.]—Except as otherwise provided in this Act, 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 Act shall be deemed a supplement. (82 Stat. 901; 43 U.S.C. § 1554)

Sec. 605. [Federal Power Act limited.]—Part I of the Federal Power Act (41 Stat. 1063; 16 U.S.C. 791a–823) 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. (82 Stat. 901; 43 U.S.C. § 1555)

EXPLANATORY NOTE

Reference in the Text. Part I of the Federal Power Act, referred to in the text, appears in Volume I at page 262.

Sec. 606. [Definitions.]—As used in this Act, (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. (82 Stat. 901; 43 U.S.C. § 1556)

EXPLANATORY NOTE

Legislative History. S. 1004, Public Law 90-537 in the 90th Congress. Reported in Senate from Interior and Insular Affairs July 26, 1967; S. Rept. No. 408. Passed Senate August 7, 1967. Passed House, amended, May 16, 1968. Senate asks for a conference July

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15, 1968. House agrees to a conference July 17, 1968. Conference report filed September 4, 1968; H.R. Rept. No. 1861. House agrees to conference report September 5, 1968. Senate agrees to conference report September 12, 1968. Companion bill H.R. 3300 reported in House from Interior and Insular Affairs April 24, 1968; H.R. Rept. No. 1312.