

Updating The Hoover Dam Documents

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CHAPTER I

SUMMARY OF "THE LAW OF THE RIVER"

A. "The Law of the River"

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

The Colorado River has been described as the most closely regulated and controlled stream in the United States. Between 1962 and 1979, water has been released from Hoover Dam in quantities sufficient to meet only the requirements for delivery to Mexico under the Mexican Water Treaty and the downstream requirements under water delivery contracts with the Secretary of the Interior. The released water generates power but water is not presently (1978) released for the sole purpose of generating power. Consequently, there are only minimal flows in the Colorado River below Morelos Dam, the last dam on the river which was built by Mexico to divert water for use in Mexico. With anticipated very high runoff in 1979, the situation could change which would cause releases for control purposes to be made. Such additional releases could be used for generation of power.

A.1 Physical Characteristics of the Colorado River

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

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

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

A.2 Water Supply

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

Since more accurate measurements of the flow at Lee Ferry were commenced in 1922, the flows have averaged about 14 maf/yr. This range of flows is significant. For example, the Compact negotiators in 1922 divided what was thought to be a water supply of 16 maf/yr between the Upper and Lower Basins on the assumption that the flows were in excess of that amount. Since 1922 estimates of the river's flow have steadily been revised downward to approximately 14 maf. The lower average river flows; i.e., a shrinking supply coupled with an increasing demand, have contributed greatly to the water problems that arose in later years (see Appendix 1 A.2 for Bar Chart of Water Supply).

A.3 Early River Development

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

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

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

The erratic flows of the river, its tendency to destructive flooding and its high silt load limited its usefulness for a dependable year-round water supply without some flood control and storage facilities, both of which were beyond the means of local entities and the States. Before construction of Hoover Dam, which was completed in 1935, the lower reaches of the Colorado River were subjected to severe annual floods. This menace was fully realized in 1905 when the Colorado River, swollen by floodwaters, broke through a cut several miles below the International Boundary, which had been made by the early developers of the Imperial Valley in California. For 16 months it flowed into the fields of the Imperial Valley enlarging the Salton Sea, approximately 490 square miles in area, and threatened to engulf the entire valley. The break was finally closed largely through the efforts of the Southern Pacific Railroad Company but only after 30,000 acres of arable land had been inundated, farms ruined, homes destroyed, highways washed away, and railroad tracks destroyed. This tragic occurrence, indicating the need for flood control of the lower Colorado River, became a motivating reason for the construction of Hoover Dam. That, plus problems in maintenance of the distribution facilities to Imperial Valley because its diversions of water were through facilities in Mexico, led to demands for a canal within the United States.

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

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

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

B. Colorado River Compact

B.1 Background

The rapidly expanding use of Colorado River water in California was viewed with increasing alarm by officials in the Upper Basin States. As a consequence of their concern, the League of the Southwest was organized in 1919 to promote the orderly development and equitable division of the waters of the Colorado River. Congress approved the Kincaid Act in 1920 (41 Stat. 600) directing the Secretary of the Interior to make a full and comprehensive study and to report on the possible diversion and use of waters of the Colorado River.

During the period when the studies by the Secretary were being conducted, negotiations were underway by the seven Basin States for an inter-State agreement on the waters of the river which led to the Colorado River Compact. While it was recognized that storage on the river was essential, the Upper Basin States faced the possibility that water conserved by storage would be put to use in the Lower Basin more rapidly than the Upper Basin could utilize its share of the normal flow and thus form the basis for Lower Basin claims of appropriate rights in the water. Hence, the Upper Basin insisted that rights to some of the Colorado River flows be reserved for their future benefit. This could be done by a suit in the Supreme Court for equitable apportionment or by agreement of the parties, although the latter had never been used to allocate waters of an inter-State stream.

B.2 Negotiations

As a result of negotiations among the seven Basin States, it was agreed that an inter-State compact would establish an equitable apportionment of the waters and protect the Upper Basin States. Each of the seven Basin States adopted the authorizing legislation in 1921 and Congress consented to the negotiations by legislation enacted on August 19, 1921 (42 Stat. 171). The Colorado River Compact Commission convened in January 1922. Herbert Hoover, then Secretary of Commerce, was elected chairman.

The Upper Basin's fears and the wisdom of the decision to attempt an inter-State agreement was demonstrated when the Supreme Court of the United States on June 5, 1922, in *Wyoming v. Colorado*, 259 U.S. 419, upheld the doctrine of priority of appropriations regardless of State lines.

B.3 Major Compact Provisions

After 27 meetings, a final agreement on the Compact was signed in Santa Fe, New Mexico, on November 24, 1922. Although the States had hoped to allocate the Colorado River waters among each of the seven Basin States, such agreement was not possible. However, the Colorado River Compact did negotiate a historic document. It had the following major provisions:

- (1) Article I states the purposes of the Compact.
- (2) Article II(a) defines the "Colorado River System" as "that portion of the Colorado River and its tributaries within the United States of America."

UPDATING THE HOOVER DAM DOCUMENTS

(3) Article II(b) defines the "Colorado River Basin" as "all of the drainage area of the Colorado River System and all other territory within the United States of America to which the water of the Colorado River System shall be beneficially applied."

(4) Article II(c) defines the term "States of the Upper Division" as "the States of Colorado, New Mexico, Utah, and Wyoming."

(5) Article II(d) defines the term "States of the Lower Division" as "the States of Arizona, California, and Nevada."

(6) Article II(e) defines "Lee Ferry" as "a point in the mainstream of the Colorado River one mile below the mouth of the Paria River."

(7) Articles II(f) and (g) define the terms "Upper Basin" and "Lower Basin," thus dividing the Colorado River Basin into these two basins.

(8) Article II(h) defines "domestic use" as including "the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power."

(9) Article III(a) apportions from the Colorado River System, in perpetuity, the exclusive beneficial consumptive use of 7.5 maf/yr to each of the two Basins for beneficial consumptive use.

(10) Article III(b) provides that, in addition to the III(a) apportionment, the Lower Basin was given the right to increase its beneficial consumptive use by 1 maf/yr.

(11) Article III(c) provides that if (as has proved to be the case) the United States shall recognize the right of Mexico to the use of any waters of the Colorado River System, such waters shall first be supplied from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs III(a) and (b). It also provided that if such surplus shall prove insufficient for this purpose, the Mexican deficiency is to be borne equally by the Upper and Lower Basins, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half the deficiency so recognized in addition to that provided in paragraph (d).

(12) Article III(d) provides that the Upper Division States "will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years..."

(13) Article III(e) provides that the Upper Division States shall not withhold water, and the Lower Division States shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural use.

(14) Article IV(a) provides that since the Colorado River had ceased to be navigable the use of Colorado River water for navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes.

(15) Article IV(b) provides that the impoundment and use of waters for the generation of electrical power shall be subservient to the use and consumption of such water for agricultural and domestic purposes.

(16) Article VII provides that nothing in the Compact shall be construed as affecting the obligations of the United States to Indian Tribes.

(17) Article VIII provides that present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact.

(18) Article XI provides that the compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory States and by the Congress of the United States.

Although the river had produced an average flow for the two decades preceding 1922 that would have accommodated 16 maf/yr in beneficial consumptive use annually from the waters of the Colorado River System for the two Basins, the Upper Basin (by virtue of Article III(d) of the Compact) assumed the burden of drier cycles occurring thereafter. Hence, the Lower Basin has received a guaranteed 10-year (not annual) minimum flow of 75 maf at the Lee Ferry compact point. The Upper Basin became a guarantor in the sense that its depletions may not reduce the 10-year aggregate flow below the 75 maf at the Lee Ferry compact point.

B.4 Compact Approval

The Compact was signed by each of the seven Basin States. Six of the seven States ratified the Compact in 1923 but Arizona did not ratify it until 1944, 21 years later. In 1925, four ratifying States modified the requirement for seven State approval and ratified the Compact which was to become effective upon approval

of at least six States and the consent of the United States. Utah and California took the required action in 1929. The United States approval of the Compact was contained in Section 13(a) of the Boulder Canyon Project Act of 1928 (see House of Representatives Document No. 605, 67th Congress, 4th Session, March 2, 1923; see Appendix 1 B.4 for text of Compact).

B.5 California Limitation Act

The consent of the United States to the Compact was conditioned by Section 4(a) of the Boulder Canyon Project Act upon California passing a Limitation Act whereby the required storage dam would be built only if California would agree "irrevocably and unconditionally" to limit her annual consumptive use of Colorado River water to 4.4 maf/yr of the 7.5 maf/yr apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by the Compact. California met this requirement by passing the California Limitation Act on March 4, 1929 (see Appendix 1 B.5).

In the interim period following the Colorado River Compact and the passage of the California Limitation Act, the seven Basin States attempted to settle the division of the Lower Basin water supply and to bring about a seven State ratification of the Compact. The failure to resolve these points delayed action by Congress on legislation authorizing the construction of Hoover Dam. Finally, on December 21, 1928, the Boulder Canyon Project Act was enacted (45 Stat. 1057) notwithstanding the failure of Arizona to ratify the Compact and the inability of the States of the Lower Basin to agree on the division among themselves of the allocation of Colorado River water. By proclamation dated June 25, 1929, President Hoover declared the Boulder Canyon Project Act effective as of that date (see Appendix 1 B.6 for text of the Boulder Canyon Project Act).

C. Boulder Canyon Project Act (45 Stat. 1057)

C.1 Major Impact

The purposes of the Act, as stated in Section 1, were controlling the floods, improving navigation, regulation of flows, the storage and delivery of stored water for reclamation of public lands and other beneficial uses "exclusively within the United States, and for the generation of electrical energy...to make the project self-supporting and solvent."

In Section 1 Congress authorized the construction of Hoover Dam and Powerplant and the All-American Canal to Imperial and Coachella Valleys in California. Congress also consented to the Colorado River Compact (Section 13(a)). However, as noted above, Section 4(a) of the Act provided that in the absence of the seven State approval of the Compact the Act would become effective only when the Compact was approved by California and five of the other seven States, and it further provided that California would be required to limit its consumptive use to 4.4 maf of the 7.5 maf/yr apportioned to the Lower Basin by Article III(a) of the Compact, plus not more than one-half of any surplus. California did so by enactment of the California Limitation Act on March 4, 1929 (see B.5).

The Project Act, with this limitation on California, not only reserved Lower Basin water for the States of Arizona and Nevada, but it provided protection to the Upper Basin against unlimited development in the Lower Basin with prior appropriative rights to the water so used, as well as assurance that the Colorado River Compact would not be nullified.

C.2 Division of Lower Basin Water

Section 4(a) of the Boulder Canyon Project Act authorized the Lower Basin States of Arizona, California and Nevada to enter into an agreement providing that of the 7.5 maf/yr annually apportioned to the Lower Basin by Article III(a) of the Compact there shall be apportioned to:

- (1) Nevada, 300,000 acre-feet annually;

UPDATING THE HOOVER DAM DOCUMENTS

(2) Arizona, 2.8 million acre-feet annually, plus one-half of any excess or surplus waters unapportioned by the Compact, and exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of Arizona; and

(3) California, 4.4 million acre-feet annually, plus one-half of any surplus waters unapportioned by the Compact.

The three State apportionment proposal was never agreed upon by the Lower Basin States despite negotiations in 1929 and 1930. However, the Supreme Court Opinion of June 3, 1963, in *Arizona v. California* (373 U.S. 546) concluded that Congress had made such an apportionment by authorizing the Secretary of the Interior to accomplish this division. This was done by the Secretary's contracts for the delivery of water in the Lower Basin States and by providing (Section 5) that no person could have the use of Colorado River water without a contract with the Secretary for permanent service. This Opinion and Decree are further discussed in sections I and J hereof.

C.3 Conditions Precedent to Act

Section 4(a) of the Boulder Canyon Project Act provided that the Act shall not take effect until either all seven States signatory to the Compact had ratified the Compact or, if that ratification did not occur within 6 months from the passage of the Act, then until six States, including California, shall have ratified, and California shall have enacted legislation irrevocably limiting its consumptive use to 4.4 maf of the waters apportioned to the Lower Basin States by Article III(a) of the Compact plus one-half of any excess or surplus waters (see B.4 and B.5 above).

Section 4(b) provided that before any money should be appropriated for the construction of the dam or powerplant, or any construction work done or contracted for, the Secretary of the Interior should make provision for revenues by contract adequate to assure repayment of all expenses of operation and maintenance and the repayment of the Federal investment within 50 years from the date of completion of such works, together with interest thereon. Similarly, before any money was appropriated for construction or construction work was done on the main canal to Imperial and Coachella Valleys, the Secretary had to provide for revenues, by contract or otherwise, adequate to assure payment of all expenses of construction, operation and maintenance in the manner provided in the Reclamation Law.

C.4 Other Major Provisions

Section 2 created the Colorado River Dam Fund through which all appropriations (\$165 million were authorized) and income were to pass. Hoover Dam and the All-American Canal accounts were to be separately maintained. Hoover power revenues were not to pay for any canal costs; lands benefiting from the canal were to repay its costs but were not to be charged for water or for its use, storage or delivery.

All costs of Hoover Dam, its powerplant, and appurtenant structures, including interest at 4 percent, were reimbursable, but \$25 million was allocated to flood control to be repayable out of 62½ percent of the surplus revenues during the 50-year amortization period. Pursuant to Section 4(b), 18-¾ percent of excess revenues was to be paid to each of the States of Arizona and Nevada, in lieu of taxes which the States might have collected if the project had been built with other than Federal funds. After repayment of all costs, charges were to be made on such basis and revenues expended within the Basin as hereafter prescribed by Congress. These provisions were changed by the Boulder Canyon Project Adjustment Act (see C.6).

The All-American Canal costs were required to be repaid under Reclamation Law in 40 years without interest. In addition, the \$1.6 million of Laguna Dam costs were also to be repaid, even though it was never used as a diversion structure for Imperial Valley.

C.5 Power Contracts

Section 6 of the Act provided that energy was to be disposed of by contract. Section 5 provided that the disposition of energy by the Secretary be done under general and uniform regulations conforming essentially to those of the Federal Power Commission to "responsible applicants" under established standards of

preference; e.g., to public bodies and States. The contracts were not to be longer than 50 years from the date at which energy is ready for delivery. The contracts were to be subject to readjustment at the end of 15 years and each 10 years thereafter as justified by competitive conditions at distributing points or competitive centers.

Arbitration of disputes was provided for in Section 5(a). Section 5(b) contained provisions dealing with renewal of the contracts.

C.5.1 Implementation of Power Contract Authority

Before negotiating the power contracts, the Secretary had to determine: the project costs (estimated at \$206 million to be repaid in 50 years at 4 percent interest); the quantity of water available for power generation and the quantity of energy (estimated at 4.24 billion kilowatt-hours (kWh), diminishing 8.76 million kWh annually due to increased Upper Basin use of water and silting at Hoover Dam); and the competitive value of energy in southern California as fixed by oil and gas (estimated at 1.63 mils per kWh).

On April 26, 1930, the Secretary executed two contracts for 64 percent of the firm energy which was enough to satisfy the revenue requirements of the Boulder Canyon Project Act; a lease of power privileges with the City of Los Angeles Department of Water and Power and the Southern California Edison Company, Ltd.; and a contract for the purchase of energy with The Metropolitan Water District of Southern California (MWD).

By November 1931, the contracts for the sale of energy were executed under which the following allocations were made in terms of 4,240,000,000 kWh of firm energy annually:

| | |
|------------------------|--------------|
| Arizona | 18 percent |
| Nevada | 18 percent |
| MWD | 36 percent |
| Los Angeles | 14.9 percent |
| Pasadena | 1.61 percent |
| Glendale | 1.88 percent |
| Burbank | .58 percent |
| So. Cal. Edison | 7.2 percent |
| So. Sierra Power Co. | .9 percent |
| L.A. Gas and Elec. Co. | .9 percent |

These percentages were later changed slightly when 90 million kWh were added to firm energy generation estimates with the height of the dam increased.

The California contractors were obligated for 100 percent of the firm energy but were required to yield 36 percent thereof to Arizona and Nevada when required by those States. Los Angeles and Southern California Edison Company were required to take all energy not contracted for by the States.

By 1940 Nevada had contracted for its 18 percent allotment. Arizona contracted for its 18 percent allotment in 1945.

Storage of water began in Lake Mead on February 1, 1935. Power generation began September 11, 1936, although the 50-year period covered by the power contracts began June 1, 1937 (for more details on Boulder Canyon Project power contracts see Chapter III).

C.6 Boulder Canyon Project Adjustment Act

This Act of July 19, 1940, 54 Stat. 774, was prompted by a request from the power allottees for a review of the power rates. During the 7 years between execution of the power contracts and the delivery of energy several factors had developed. The competitive value of Boulder Dam energy had fallen because of improvements in the art of generating power by steam, decreases in the cost of fuel and in the capital costs of steamplants. Further, the Bureau of Reclamation in the Reclamation Project Act of 1939 adopted the policy

of dropping the competitive rate base for a rate fixed by the amount needed to amortize the investment allocated to power, plus costs of operation, maintenance and replacement.

The Adjustment Act substituted for the old rate adjusted periodically by competitive conditions a rate stabilized for the 50-year period from June 1, 1937, to May 31, 1987, sufficient to meet: operation, maintenance, and replacement costs; repayment to the Treasury of reimbursable advances, including interest which was reduced from 4 percent to 3 percent; \$300,000 paid annually to each of the States of Arizona and Nevada in commutation of the share of excess revenues provided for those States by Section 4(b) of the Project Act; and payment of \$500,000 annually to the Colorado River Development Fund.

Repayment of the \$25,000,000 allocated to flood control by Section 2(b) of the Project Act was deferred until June 1, 1987, without interest, after the 50-year repayment period, after which time repayment shall be as determined by Congress.

Among other features of the Act was a provision (Section 2(b)) for reduction of payments to Arizona and Nevada if the project or features of it were taxed by the States or its political subdivisions. This provision was utilized in 1970 when Clark County, Nevada, attempted (unsuccessfully) to tax the interests of the City of Los Angeles and The Metropolitan Water District in the Project.

Another provision (Section 9) authorized the Secretary to substitute an agency operating agreement for the lease held by the City of Los Angeles and the Southern California Edison Company. The agency contract was executed May 29, 1941. Nine energy contracts were entered into on the same date (the Arizona contract was executed November 23, 1945). These were with the States of Nevada and Arizona; the public agencies of Pasadena, Burbank, Glendale, Los Angeles and The Metropolitan Water District; and these utilities: Southern California Edison Company and California Electric Power Company (see Appendix 1 C.6 for text of Boulder Canyon Project Adjustment Act).

C.7 Water Delivery Contracts - General

The basis of the Secretary's contracting authority is Section 5 of the Boulder Canyon Project Act. It authorizes the Secretary of the Interior to contract for the storage of water in the reservoir created by the Dam and for the delivery thereof for irrigation and domestic use. The Act further provides that such contracts shall be for "permanent service." And, of particular importance, the Act provides:

"No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

C.7.1 Implementation of Water Delivery Contract Authority

Since The Metropolitan Water District was assumed to be a major purchaser of Hoover Dam energy for the purpose of pumping water to southern California via its proposed Colorado River Aqueduct, a power contract for that purpose required a water delivery contract between the Secretary and MWD. Also, to permit Imperial Irrigation District (IID) to contract for repayment of construction of the All-American Canal, a water delivery contract with IID was needed. Hence the need arose for negotiation of water delivery contracts by the Secretary.

D. California Seven Party Agreement

Before the Secretary entered into water delivery contracts under the Boulder Canyon Project Act with users in California, he requested the State to agree on a listing of the relative priorities of rights among the major users of Colorado River waters. This was done by the "California Seven-Party Agreement" of August 18, 1931, which contained the following priorities:

| <u>Priority</u> | <u>Description</u> | <u>Acre-feet Annually</u> |
|-----------------|--|-------------------------------|
| 1 | Palo Verde irrigation District -) gross area of 104,500 acres) | |
| 2 | Yuma Project (Reservation Division) -) not exceeding a gross area of 25,000 acres) | 3,850,000 |
| 3(a) | Imperial Irrigation District and lands in) Imperial and Coachella Valleys to be served) by AAC) | |
| 3(b) | Palo Verde Irrigation District— 16,000 acres of) mesa lands) | |
| 4 | Metropolitan Water District and/or City of Los) Angeles and/or others on coastal plain) | 550,000 |
| 5(a) | Metropolitan Water District and/or City of Los) Angeles and/or others on coastal plain) | 550,000 |
| 5(b) | City and/or County of San Diego) | 112,000 |
| 6(a) | Imperial Irrigation District and lands in) Imperial and Coachella Valley) | 300,000 |
| 6(b) | Palo Verde Irrigation District— 16,000 acres of) mesa lands) | |
| TOTAL | | 5,362,000 |

The Secretary of the Interior placed the California Seven Party Agreement of August 18, 1931, in effect by general regulations dated September 28, 1931. The provisions of the Seven Party Agreement were also incorporated by the Secretary in substantially the same form in each of the subsequent California water delivery contracts entered into by the Secretary.

Note that the first three California priorities total 3.85 maf/yr and are for agricultural uses. Note also that the first four California priorities total 4.4 maf and equate to that quantity to which California is held by its Limitation Act. The 4.4 maf is also the quantity accorded a priority over the Central Arizona Project by Section 301(b) of the Colorado River Basin Project Act (see Part M.; see Appendix 1 D.1 for text of California Seven Party Agreement).

E. Water Delivery Contracts For Colorado River Water in the Lower Colorado River Basin

During the period 1930-1934 the Secretary of the Interior, pursuant to the Boulder Canyon Project Act, executed contracts on behalf of the United States with five California agencies (Imperial Irrigation District, Palo Verde Irrigation District, The Metropolitan Water District of Southern California, Coachella Valley County Water District and the City of San Diego) for the delivery of water from Lake Mead, subject to the availability thereof, for use in California under the Compact and Project Act. As noted in D. above, the priorities assigned to each contractor and the quantities of water to be made available therefor under these contracts could, in the aggregate, call for the delivery of 5,362,000 acre-feet of water per year. There is no water delivery contract with the State of California itself similar to those with the States of Nevada and Arizona.

By contracts dated March 30, 1942, and January 3, 1944, made by the Secretary of the Interior with the State of Nevada, the United States agreed to deliver to Nevada from Lake Mead storage so much water as might be necessary to supply the State with a total quantity of water from the Colorado River System not to exceed 300,000 acre-feet per year, subject to the availability thereof for use in Nevada under the Compact and Project Act.

The State of Arizona entered into a contract with the Secretary of the Interior on February 9, 1944, wherein the United States agreed to deliver annually to Arizona and its water users from storage in Lake Mead so much water as might be necessary for irrigation and domestic uses in Arizona of a maximum of

2.8 maf/yr plus one-half of any surplus water unapportioned by the Compact, subject to the availability thereof for use in Arizona under the Compact and Project Act. Nevada was accorded the right under Article 7(f) to contract for 1/25th of any surplus water available in the Lower Basin.

The details of these contracts and of the Secretary's contracts with agencies and water users in Arizona and Nevada may be found in Chapter II hereof.

F. The Mexican Water Treaty

The possibility of a future Treaty with Mexico concerning Colorado River waters was recognized in Article III(c) of the Colorado River Compact of 1922. This provided that any right to the use of such waters accorded Mexico shall be supplied first from surplus over and above the aggregate of the quantities specified in paragraphs III(a) and (b), and if insufficient, then the deficiency shall be borne equally by the Upper and Lower Basins and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d). It was assumed at that time that a surplus of 2 maf annually would be available. (The respective obligations of the Basins under this provision is still subject to different interpretations.)

The possibility of a Treaty was again mentioned in the Boulder Canyon Project Act of 1928. Section 20 provided that nothing in the Act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of waters of the Colorado River System.

In 1922 Mexico used 500,000 acre-feet of Colorado River waters annually. By 1935, when Hoover Dam was finished, Mexico used 750,000 acre-feet annually. By 1944 that use had risen to 1.5 maf annually. Efforts to negotiate an agreement with Mexico failed in 1930 when Mexico claimed 4.5 maf and the United States offered 750,000 acre-feet. However, negotiations initiated in 1941 did result in the 1944 Treaty. That Treaty linked the waters of the Rio Grande River (much of whose waters originate in Mexico but is used in the United States) with the Colorado River waters (all of which originates in the United States). Impetus to a Treaty was provided by the scheduled organizational meeting of the United Nations and by the fact that Mexico was a wartime ally of the United States.

The Committee of Fourteen (two representatives from each of the seven Basin States) had proposed deliveries to Mexico of 800,000 acre-feet each year the releases from Lake Mead total 10 maf plus a percentage change when Lake Mead releases were more or less than 10 maf. Of the seven Basin States California and Nevada opposed the 1.5 maf adopted by the two countries. The other Basin States supported it in order to limit Mexico before her increasing uses invaded their share of Compact water.

Article 10 of the Treaty guarantees to Mexico a minimum quantity of 1.5 maf of Colorado River water annually, to be delivered in accordance with schedules furnished in advance by Mexico. The need for the schedules was to require Mexico to take minimum flows which comprised leakage from Imperial Dam and return flows below Imperial Dam which could not be controlled in any event. If there is a surplus, as determined by the United States, an additional 200,000 acre-feet may be provided, but Mexico acquires no rights to more than 1.5 maf.

In the event of an extraordinary drought, Mexican deliveries will be reduced in the same proportion as consumptive uses in the United States are reduced. Even in the drought years of 1976-77 this provision was not utilized nor is it settled whether water in storage in United States reservoirs may be protected or must be released to satisfy the Treaty obligation.

The question of the quality of the water has been a source of controversy. Article 10 refers to "waters of the Colorado River, from any and all sources..." Article 11 states that the waters to be delivered shall be made up of the waters of the river, "whatever their origin..." The United States has construed the Treaty to mean that Mexico can be given waters of any quality; i.e., return flow or seepage, whether usable or not. The Mexican view is that the water has to be usable and of a quality equal to that delivered to the United States users. The Mexican salinity problems are covered in O. of this Chapter I and in Chapter VI hereof.

Mexico was required by Article 12 to construct a diversion structure below the upper boundary line, which it did by building Morelos Dam, and protective works to prevent damage to United States lands. The United States was to build a regulating dam which it did by constructing Davis Dam.

Article 13 dealt with flood control plans. Article 15 contained schedules of deliveries.

Article 24(d) authorized the International Boundary and Water Commission to settle all differences that may arise in the "interpretation or application of this Treaty, subject to the approval of the two Governments." This provision was relied upon by Ambassador Brownell after negotiating Minute No. 242 to explain why Senate approval was not sought in the final and permanent solution to the salinity problem. The Ambassador stated that the approval of the United States Government to the required authorizing legislation and Congressional appropriation of funds would satisfy the provisions of the Treaty.

On April 18, 1945, the Senate ratified the Treaty with reservations. On November 27, 1945, President Truman proclaimed the Treaty in force as of November 8, 1945 (see Appendix 1 F.1 for text of Mexican Water Treaty).

G. The Upper Colorado River Basin Compact

While the Lower Basin States were unable to agree upon an internal division of the Colorado River waters apportioned to the Lower Basin by the Colorado River Compact of 1922, the Upper Basin States were able to agree upon such a division in order that development could be initiated in those States.

On October 11, 1948, the Upper Basin States entered into a Compact which followed the format and was subject to the provisions of the 1922 Colorado River Compact.

Article III apportioned to Arizona the consumptive use of 50,000 acre-feet of water annually and to the following States the following percentages of the total quantity available for use each year by the Upper Basin under the Colorado River Compact and remaining after deduction of the use, not to exceed 50,000 acre-feet per annum, made in Arizona;

| | |
|------------|---------------|
| Colorado | 51.75 percent |
| New Mexico | 11.25 percent |
| Utah | 23.00 percent |
| Wyoming | 14.00 percent |

Article IV provides that in the event curtailment of use of water by the Upper Division States becomes necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the 1922 Compact, the extent of curtailment by each State shall be determined by the Commission (established at Article VIII) upon the application of stated principles.

Article V established principles governing the application of the loss of water from storage in reservoirs.

Article VI provided that the Commission shall determine the quantity of the consumptive use of water by the inflow-outflow method in terms of manmade depletions of the virgin flow at Lee Ferry, unless a different method of determination is adopted by unanimous action. This differs from the Lower Basin formula of "diversions less return flows" (see Senate Document No. 8, 81st Congress, 1st Session, January 31, 1949).

Article VIII created an inter-State administrative agency known as the "Upper Colorado River Commission" and enumerated its powers. The Commission is composed of one member from each of the above-named four States and one Commissioner named by the President of the United States (see Appendix 1 G.1 for text of Upper Colorado River Basin Compact).

H. The Colorado River Storage Project Act

Following the Upper Colorado River Basin Compact of 1948, Upper Basin Project reports were prepared in 1951 and 1952. However, it was not until April 11, 1956, that the Colorado River Storage Project Act became law, 70 Stat. 105. At the time of passage of the Act, Lower Basin development had proceeded more rapidly than had the Upper Basin. Laguna Dam, Hoover Dam, Davis Dam, Parker Dam, Imperial Dam, the Colorado River Aqueduct and the All-American Canal had been constructed in the Lower Basin.

The purpose of the Colorado River Storage Project Act was to develop the water resources of the Upper Basin. It provided a comprehensive, multiple-purpose, Basin-wide water resource development plan.

UPDATING THE HOOVER DAM DOCUMENTS

Section 1 provided for four storage projects for river regulation and power production:

| | |
|---------------|--|
| Glen Canyon | on the Colorado River in Arizona; |
| Flaming Gorge | on the Green River in Utah; |
| Navajo | on the San Juan River in New Mexico; and |
| Curecanti | on the Gunnison River in Colorado. |

It also authorized 11 participating projects for irrigation and related uses and further investigation of other projects.

Section 5 established the Upper Colorado River Basin Fund into which revenues collected in connection with the operation of the storage project and participating projects are to be credited and are to be available for repaying the costs of operation, maintenance, and replacement of, and emergency expenditures for, all facilities of said projects, payment from which for Hoover Dam Powerplant deficiencies pursuant to the Filling Criteria has upset the Upper Basin States.

Section 7 provided that the hydroelectric powerplants and transmission lines authorized by the Act shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates, but in the exercise of that authority the Secretary shall not affect or interfere with the operation of the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act and any contract lawfully entered into under said Compacts and Acts. This section was relied upon by the Lower Basin States as protecting their power contracts when the Filling Criteria was promulgated on April 12, 1962 (see L. hereof).

Section 14 required that in the operation and maintenance of all facilities authorized by Federal law in the Colorado River Basin, the Secretary is directed to comply with the Compacts and Acts enumerated in Section 7 and with the Mexican Water Treaty in the storage and release of water from reservoirs in the Basin. It further authorized any Basin State to sue in the Supreme Court to enforce these provisions and consented to the joinder of the United States as a party.

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

The Project Storage Units have these major functions:

- (1) To regulate streamflows so that water commitments to the Lower Basin can be met in dry periods without curtailment of development of water uses apportioned to the Upper Basin; and
- (2) To provide hydroelectric power and produce revenues to assist in the payment of the participating projects.

Further details are contained in Chapter III entitled "Power Contracts" (see Appendix 1 H.1 for text of Colorado River Project Storage Act).

I. Arizona v. California

Following execution of the Arizona Water Delivery Contract on February 9, 1944, the Bureau of Reclamation, in cooperation with Arizona, studied the Central Arizona Project (CAP). An Interior report submitted to Congress on September 16, 1948, concluded that CAP was feasible if Arizona's claim to water were valid, but if California's contention was found correct that Arizona's claims to water were not valid, there would be no dependable water supply for diversion to Arizona.

In the 79th through the 82nd Congresses, Arizona sought approval of CAP. Although the Senate passed CAP bills in 1950 and 1951, the House never did act. On April 18, 1951, the House Interior and Insular Affairs Committee adopted a resolution that CAP action be deferred until rights to the use of water are adjudicated or agreed upon.

The inability of the three Lower Basin States to agree on the sharing of the Colorado River Compact water and the position adopted by Congress in 1951 that it would not authorize the long sought Central Arizona Project, opposed by California until Arizona's right to the necessary Colorado River water supply was clarified, led to the Supreme Court suit filed by Arizona in 1952.

As a result of that Congressional action, Arizona filed a motion in the Supreme Court on August 13, 1952, for leave to file a Bill of Complaint against California and seven public agencies in the State. It alleged that Arizona's entitlement to Colorado River water was adversely affected by the California claimants and that Arizona's existing and prospective projects were threatened. The United States was permitted to intervene as was Nevada. Utah and New Mexico were joined to the extent of their capacity as Lower Basin States.

On June 1, 1954, the Court appointed George I. Haight as Special Master and on his death appointed Judge Simon H. Rifkind as Special Master on October 10, 1955. The trial before the Special Master began on June 14, 1956, in the United States Courthouse in San Francisco and concluded August 28, 1958. Following circulation among the parties of a draft report by the Special Master dated May 5, 1960, and the receipt of comments and oral arguments, the Special Master submitted his Report dated December 5, 1960, to the Supreme Court.

The Supreme Court heard oral arguments in January 1962 and reargument. On June 3, 1963, it rendered its decision, 373 U.S. 546.

The Special Master's Report and Recommended Decree were in large measure adopted by the Supreme Court, although departures were made in important areas. The major conclusions of the Court follow.

Congress, in enacting the Boulder Canyon Project Act, under its powers granted by the Commerce and Property Clauses of the Constitution, provided a solution of the Lower Basin water controversy by establishing a statutory apportionment of mainstream waters among the Lower Basin States.

The Special Master was correct in holding that the Colorado River Compact, the law of prior appropriation, and the doctrine of equitable apportionment do not control the issues of the case. Equitable apportionment was inapplicable because of the Congressional statutory allocation. The Compact was inapplicable since it provided an inter-Basin division of water and did not determine the further division of the Lower Basin's share. It was, however, relevant for some purposes, e.g., some of its terms are incorporated in the Project Act and are applicable to the Lower Basin.

The Court stated that the Project Act dealt only with the waters of the mainstream and that the tributaries were reserved to the exclusive use of the State wherein the tributaries are located.

Congress made it clear that no one should use mainstream water except in strict compliance with the scheme set up in the Act; i.e., Section 5 provided that no water could be used except under contract with the Secretary; the Secretary is bound to observe the Act's limitation of 4.4 maf on California's consumptive uses out of the first 7.5 maf of mainstream water, leaving the remaining 3.1 maf for the use of Arizona and Nevada; that Nevada's needs were 300,000 acre-feet, which left 2.8 maf for Arizona; the Congress intended that the Secretary carry out the allocation of mainstream waters among the Lower Basin States and to decide which users within each State would get water; that the Secretary has, by his contracts, made this apportionment.

The Secretary is not controlled by State law in contracting with water users within each State nor do State law priorities govern. Thus, contrary to the Master's conclusion, the priorities accorded to the water supply to Boulder City, Nevada, by the Act of September 2, 1958, were not to be determined by Nevada law.

The Court agreed with the Special Master's conclusion that the Secretary cannot reduce water deliveries to Arizona and Nevada by the amounts of their uses from tributaries above Lake Mead, since Congress intended to apportion only the mainstream waters, leaving to each State its own tributaries. The Court disagreed, however, with the Master's holding that the Secretary is powerless to charge States for diversions from the mainstream above Lake Mead (the Special Master had held that Lower Basin apportionment was to be made out of waters stored in Lake Mead or flowing in the mainstream below Lake Mead, and that the Secretary was without power to charge Arizona and Nevada for diversions made by them from the 275-mile stretch of river between Lee Ferry and Lake Mead or from the tributaries above Lake Mead). The Court held that mainstream uses between Lee Ferry and Lake Mead are subject to the Secretary's control.

The Court upheld the Secretary's right to subcontract with Nevada water users since to do otherwise would transfer to Nevada the Secretary's power to determine with whom he will contract and on what terms.

The Court disagreed with the Master and held that the Secretary had the authority to determine the methods of apportioning shortages. The Special Master had held that shortages be pro rated among the three States in accordance with the percentages allocated to them out of the 7.5 maf apportioned to the Lower

Basin. (The Court's holding was later modified by Section 301(b) of the Colorado River Basin Project Act which also provided California with a 4.4 maf priority over diversions for the Central Arizona Project.)

The Court upheld the Master's finding that the Arizona-New Mexico dispute regarding Gila River waters be decided by equitable apportionment (since the Congressional statutory apportionment of mainstream water was not applicable thereto) and that the States compromise settlement be included in the Decree.

The Court followed the "Winters Right Doctrine" that the United States, when it created the Indian Reservations along the Lower Colorado River, intended to reserve for them the waters without which their lands would have been useless. It upheld the United States claims for the quantity of water necessary to irrigate all the practicably irrigable acreage on the five Reservations along the Lower Colorado River. This was about 905,496 acre-feet for 136,636 irrigable acres.

The Court disagreed with the Special Master's decision to determine the disputed boundaries of the Colorado River Indian Reservation and the Fort Mohave Indian Reservation and delayed a ruling until a dispute develops over title because of some future refusal by the Secretary to deliver water.

The Court agreed with the Special Master that the principle underlying the reservation of water rights for Indian Reservations was equally applicable to other Federal establishments such as the Lake Mead National Recreation Area, the Lake Havasu and Imperial National Wildlife Refuges, and the Gila National Forest, and that sufficient water was reserved for the purposes for which these reservations were created.

The United States cannot claim the entitlement to the use without charge against its consumption of any waters that would have been wasted but for salvage by the Government on its wildlife refuges, because of the Project Act's command that consumptive use from the mainstream be measured by diversions less returns to the river.

Finally, the Court agreed with the Special Master that all uses of mainstream water within a State are to be charged against that State's apportionment and that included uses by the United States.

The Special Master's Report is elaborated on in Chapter VIII and the Supreme Court Opinion in Chapter IX.

J. The Supreme Court Decree in Arizona v. California

An analysis of the Report of the Special Master in *Arizona v. California*, dated December 5, 1960, and of the Supreme Court's Opinion dated June 3, 1963, 373 U.S. 546, appears in Chapters VIII and IX, respectively.

The Supreme Court Decree dated March 9, 1964, 376 U.S. 340, confirms Arizona's right to 2.8 maf/yr when there was sufficient mainstream water available for release, as determined by the Secretary of the Interior, to satisfy 7.5 maf/yr of consumptive use in the three Lower Basin States. The Decree apportioned 4.4 maf/yr thereof for use in California and 300,000 acre-feet annually was apportioned for use in Nevada (Article II(B)(1)).

The Decree defines "consumptive use" as "...diversions from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation" (Article I(A)). The Decree also defined a "Perfected right" (Article I(G)) and "Present perfected rights" (Article I(H)) as a water right acquired in accordance with State law and existing as of June 25, 1929 (the effective date of the Boulder Canyon Project Act), which has been exercised by the actual diversion of water that has been applied to a defined area of land or to defined municipal or industrial works and including rights reserved for Federal establishments.

Article II(A) enjoins the United States and its officers from releasing water other than in accordance with the following order of priority:

- (1) For river regulation, improvement of navigation and flood control;
- (2) For irrigation and domestic uses, including the satisfaction of present perfected rights; and
- (3) For power.

Provided, however, that the United States may release water for Mexico without regard to the aforesaid priorities. Note that the above order of priorities follows the provisions of Section 6 of the Boulder Canyon Project Act.

Article II(B)(2) also apportions water in excess of the 7.5 maf/yr as follows: 50 percent for use in Arizona and 50 percent for use in California, provided that if the United States so contracts with Nevada, then 46 percent of such surplus shall be apportioned for use in Arizona and 4 percent for use in Nevada.

Article II(B)(3) provides that if less than 7.5 maf/yr was available, then the Secretary, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to State lines, and after consultation with the parties to major delivery contracts and State representatives, may apportion the amount remaining available, in such manner as is consistent with the Boulder Canyon Project Act and with other applicable Federal statutes, but in no event shall more than 4.4 maf/yr be apportioned for use in California including all present perfected rights.

The Decree also provides for delivery to water users only pursuant to valid contracts therefor made with such users by the Secretary (Article II(B)(5)). Article II(B)(5) does not apply to "any Federal establishment" named in Article II(D).

Article II(D) provides the following quantities of water for the benefit of the named Federal establishments:

(1) The Chemehuevi Indian Reservation—the lesser of either 11,340 acre-feet of diversions or water necessary to supply the consumptive use required to irrigate 1,900 acres;

(2) The Cocopah Indian Reservation—the lesser of either 2,744 acre-feet of diversions or water necessary to supply the consumptive use required to irrigate 431 acres;

(3) The Yuma Indian Reservation—the lesser of either 51,616 acre-feet of diversions or water necessary to supply the consumptive use required to irrigate 7,743 acres;

(4) The Colorado River Indian Reservation—the lesser of either 717,148 acre-feet of diversions or water necessary to supply the consumptive use required to irrigate 107,588 acres;

(5) The Fort Mohave Indian Reservation—the lesser of either 122,648 acre-feet of diversions or water necessary to supply the consumptive use required to irrigate 18,974 acres;

(6) Lake Mead National Recreation Area—annual quantities reasonably necessary to fulfill the purposes of the Recreation Area;

(7) Lake Havasu National Wildlife Refuge—annual quantities reasonably necessary to fulfill the purpose of the Refuge, not to exceed 41,839 acre-feet of diversions or 37,339 acre-feet of consumptive use, whichever is less;

(8) Imperial National Wildlife Refuge—annual quantities reasonably necessary to fulfill the purposes of the Refuge, not to exceed 28,000 acre-feet of diversions or 23,000 acre-feet of consumptive use of mainstream water, whichever is less; and

(9) Boulder City, Nevada—as authorized by the Act of September 2, 1958, 72 Stat. 1726.

Article III enjoins all the States and all other users of water in said States from diverting water from the mainstream, the diversion of which has not been authorized by the United States for its particular use.

Article IV deals with diversions by the State of New Mexico of tributary water available to it.

Article V requires the United States to prepare annual reports of water releases, diversions of water from the mainstream, return flows, consumptive use of such water, and the quantities delivered to Mexico, in satisfaction of the 1944 Treaty and, separately stated, in excess of Treaty requirements.

Article VI provides that the States are to furnish the Court a list of present perfected rights with claims of priority dates within each State, except those relating to Federal establishments. The Secretary is to supply similar information with respect to United States claims within each State. These States and the Secretary are to agree on "Present perfected rights" with their claimed priority dates, in terms of consumptive use, except those relating to Federal establishments. Lacking agreement, any party may apply to the Court for determination for such rights by the Court.

Article IX provides that any of the parties may apply at the foot of the Decree for its amendment or for further relief.

K. Present Perfected Rights

K.1 Background

(See Chapter X for an elaboration of the events leading up to the formulation of the Decree on Present perfected rights, dated January 9, 1979, which resolved the major aspects of this issue.)

"Present perfected rights" (PPRs) were first referred to, but not defined, in Article VIII of the Compact of 1922 as "unimpaired by this compact." The term next appeared in Section 6 of the Boulder Canyon Project Act as part of the second priority in the use of Hoover Dam and reservoir. The Special Master's Report in *Arizona v. California* discusses the term (see pages 152-153, 161, 234-235, and 305-310) and the Supreme Court Decree of March 9, 1964, 376 U.S. 340, defines the term in Articles I(G) and (H).

Article VI of the Decree gave the parties 2 years to agree on PPRs but this was increased to 3 years by a Supreme Court order of February 28, 1966, 383 U.S. 268.

PPRs are important because in years in which there is less than 7.5 maf of Colorado River water for consumptive use in the Lower Basin States, which has not yet occurred, PPRs are satisfied first (Article II(B)(3) of the Decree). Further, PPRs, as well as users served under existing contracts and Federal reservations, have rights prior to the Central Arizona Project, with California's priority limited to 4.4 maf/yr (Section 301(b) of the Colorado River Basin Project Act, September 30, 1968, 82 Stat. 885). PPRs will be viable after the Central Arizona Project is operational.

K.2 Negotiations

Negotiations proceeded in 1964 between the United States Departments of Interior and Justice and State representatives. The Arizona Interstate Stream Commission took the lead role for Arizona as did the California Attorney General's Office for California.

Problems were soon apparent in attempting to comply with the Decree definition of PPRs in recreating events which occurred over 30 years ago; e.g., the acres irrigated pre-June 25, 1929, or the quantities of water applied to lands pre-June 25, 1929; the fact that current points of water diversion had changed since June 25, 1929; whether the PPRs would be written with a dual limitation similar to that in the Decree, or with a single diversion figure urged by the States; and whether the "defined area of land" could be the entire area within a district.

Each State and the United States filed lists of claims with the Court. A Federal-State Task Force was created to develop relevant facts. Information was exchanged and questioned. Finally, on April 12, 1973, Interior provided Justice with a draft of proposed stipulation with a single number of acre-feet of diversions (not a dual limitation) and priority dates assigned to each claimant. Justice suggested in turn that the 1964 Decree be modified so that the PPRs for the Indian Reservations would similarly be stated in terms of a single diversion figure.

In an effort to meet Justice's objections, the States agreed to insert in each claim the number of acres to be irrigated. Due to objections from the Indian Tribes further negotiations were postponed. The Tribes challenged the accuracy of their own decreed PPRs as inadequately presented to the Master by the United States and the validity of the non-Indian claims as to their quantities of water and priority dates. They challenged the States assertion that the water supply was ample to satisfy all PPRs and claimed that the doctrine of "relation back" used by the States did not apply to the United States.

The Bureau of Indian Affairs in behalf of the Tribes also provided a study by Earth Environmental Consultants, Inc., which charged that no claim of water right had been made by the United States in their behalf during *Arizona v. California* for approximately 50,000 acres of land on the five Reservations even though they were irrigable. (The study did not assert that these lands were "practicably irrigable" which was the test adopted by the Court. Reclamation and the State parties questioned the adequacy of the EEC study.)

On July 2, 1976, the States reversed their prior position and agreed to subordinate all major non-Indian PPR claims (but not the miscellaneous claims which were numerous but minor) to PPRs of the Indians as stated in the Decree and to list all non-Indian claims in terms of a dual limitation. The subordination would also extend to not more than 4,225 acres of land within boundaries of Reservations which were enlarged "or are hereafter established by decree or future stipulation"; i.e., the States were not accepting the validity of the enlargements but only the formula for determining their right to water.

Further negotiations were unsuccessful and on January 19, 1977, Interior's Solicitor Austin advised the States that he was rejecting their proposed Stipulation as well as any agreement on the miscellaneous claims as urged by the States. The rejection, according to the States, was because of alleged prejudice to the Indian claims.

K.3 Back to the Supreme Court

On May 3, 1977, a joint motion was filed with the Supreme Court by Arizona, Nevada, California and the seven California public agencies which were the California defendants in *Arizona v. California*, seeking the Court's determination of the non-Indian PPRs under Article VI of the Court's 1964 Decree. Objections raised by the United States in its November Response to several provisions of the proposed supplemental decree (e.g., to a reference to "reasonable" use of water; to a limitation of Reservation Boundary changes by Secretarial orders; and to a cutoff date for boundary changes) were resolved by the parties. On May 30, 1978, a Joint Motion by all of the aforesaid parties, which now included the United States, was filed with the Court which moved that the Court enter the agreed upon Proposed Supplemental Decree. This included provisions which gave a priority to all Indian PPRs over the non-Indian PPR claimants except for the miscellaneous claims which were relatively minor (approximately 17,504 acre-feet) and largely subsequent to most Indian PPRs. It also contained provisions for recognition of Indian claims based on adjustments of Reservation boundaries.

K.4 Indian Intervention Motions

On December 23, 1977, the Fort Mohave, the Chemehuevi, and the Quechan Tribes (the "Three Tribes") filed a Motion for Leave to Intervene, and on April 7, 1978, filed the required Petition for Intervention. (The Petition included the Colorado River Indian Tribe which had itself removed as petitioner.) The Three Tribes claimed in their Motion to be the real parties in interest and opposed entry of the proposed supplemental decree because it irreparably damaged the Indian PPRs; that it did not solve all the issues, such as the Indian PPRs; that the proposed decree contained ambiguities; that the proposed subordination provisions which gave priority to Indian PPRs were not effective; that the Court was not fully advised by the United States of the status of the boundary claims of the Tribes; that Justice failed to present for the Tribes all of the irrigable acreage in the Reservations totalling 51,253,260 acres ("omitted acreage"); that they denied the accuracy of each major non-Indian PPR claim; and that their representation by Justice was inadequate.

The Petition of the Three Tribes also asserted much of the foregoing as well as the conflicts of interest confronting the Secretary of the Interior and the Solicitor General, the failure to communicate with the Indians, and the Government's policy of preventing full development of Indian PPRs to the detriment of the Tribes. An exhibit to the Petition showing claims for 91,400 acres and 605,300 acre-feet of water for Indian lands was presented to the Court.

On April 10, 1978, the two remaining Tribes, the Cocopah and the Colorado River Indian Tribes (the "Two Tribes") filed a separate Motion for Leave to Intervene and a Petition in Intervention. Contrary to the position of the Three Tribes, the Two Tribes stated that they approve and request the entry of the proposed supplemental decree. However, they, too, sought intervention in the litigation in order to solve all rights, both Indian and non-Indian, and asserted that the Government has inadequately discharged its duty to them and had a conflict of interest.

The Two Tribes seek to present claims under Article II(D)(5) and IX of the Decree for additional PPRs for lands that have been finally determined to be within the boundaries of their Reservations and to present PPR claims for "omitted" lands in the presentation before the Special Master. These included Cocopah claims for 883.53 acres, of which 780 acres are practicably irrigable with a diversion right of 4,969 acre-feet, and Colorado River claims for 4,439 acres, of which 2,710 are practicably irrigable with a diversion right of 18,076 acre-feet.

K.5 United States Position on Indian Intervention

The United States opposed the Three Tribes' Motion for intervention (but favored submission of their views as *amici curiae*) by a Memorandum filed February 1978 and denied each Indian argument. The United States stated it would later seek a determination of additional Indian PPR claims for land involved in Reservation boundary adjustments but would do so under Articles II(D)(5) and IX of the Decree (rather than Article VI of the Decree pursuant to which the States Joint Motion was filed). It urged that the proceedings under Article VI should be concluded which would not foreclose a later claim for "omitted" lands under Article IX.

In a later Memorandum in Opposition filed May 1978, the United States continued to oppose the Motion of the Three Tribes to intervene in order to object to the entry of the proposed decree under Article VI but stated that new non-Article VI matters, such as additional Indian PPR claims for lands in boundary adjustments and omitted lands, would not be opposed after the current Article VI proceedings were concluded by the entry of the proposed supplemental decree.

K.6 States and Other Defendants Positions on Indian Interventions

On January 25, 1978, the three States of Arizona, California, and Nevada, and the California Defendants, filed a response to the Motion of the Three Tribes for Leave to Intervene. They opposed the intervention, which they stated should be denied, because it would constitute a suit against the States without their necessary consent and because the Tribes do not qualify to intervene as a matter of right or for permissive intervention. They argued that the Tribes are adequately represented by the United States and that the Tribes should proceed under Article II(D)(5) and/or IX for recalculation of their irrigable acreage. However, they argued that *res judicata* bars any added claims for "omitted" acreages within the 1964 boundaries. They also questioned whether Secretarial orders finally determine Indian Reservation boundaries as the basis for asserting water rights which impinge on those of the State parties.

In a Response dated May 22, 1978, to the Petition of the Three Tribes for Intervention dated April 7, 1978, the three States and the California Defendants repeated their views of January 25, 1978. They called attention to the fact that the Two Tribes had contrary views to those of the Three Tribes and to the fact that the Colorado River Indian Tribes, which have almost three-quarters of the total water rights quantified for the Indian Tribes in the Court's decree, are apparently satisfied they are not prejudiced by the proceedings under Article VI.

In a response dated June 1, 1978, to the April 10, 1978, Motion of the Two Tribes to Intervene, California, Nevada, the Coachella Valley County Water District and the Imperial Irrigation District stated they still oppose the intervention motion of the Three Tribes. They again raised the argument of the States' immunity to suit and urged forthwith entry of the proposed supplemental decree. These parties, however, were willing to accede to the position of the United States on intervention: if the United States supports (or does not oppose) intervention, they will not, but only subject to condition:

- Intervention must be permissive and not as a matter of right;
- Intervention must be for limited purposes; i.e., to assert additional claims under Articles II(D)(5) and/or IX only and not to attack other, previously quantified claims, or other parts of the Decree; and
- To avoid multiple legal representation and undue delay, the United States should no longer represent the Tribes who would have private counsel.

Arizona's Response, dated June 5, 1978, to the Motion of the Two Tribes, adopted California's and Nevada's Response above, except that, on the grounds of State immunity to suit, it would not consent to intervention even though the United States will consent. It also concurred with the view that intervention must be permissive and not as a matter of right. Therefore, Arizona argued, since the United States representation of the Tribes has been adequate and zealous, private counsel is not necessary. Arizona further maintained that in large part the claims sought to be asserted by the Tribes depend for their validity upon the determination of land title disputes which should first be finalized in lower Court decisions before the United States makes claims for water rights therefor. And, finally, if intervention is allowed it should be subject to the conditions asserted by California and Nevada, above.

On June 1, 1978, The Metropolitan Water District of Southern California (MWD), City of Los Angeles, City of San Diego, and County of San Diego (collectively termed "the Urban Agencies"), filed their Response.

The Urban Agencies adopted the Response of California and Nevada, as had Arizona, and, in addition, challenged the Indian claims of increased water rights based on (1) "omitted" lands within the undisputed boundaries, and (2) additional irrigable acreage resulting from alleged boundary changes. They charged that all the increased claims in California, if allowed, would result in an Indian consumptive use entitlement exceeding the Decree rights by 237,860 acre-feet. Because of MWD's priority position in the California Seven-Party Agreement, this would potentially reduce MWD's allocation of Colorado River water by approximately 20 percent.

Although the Urban Agencies opposed redetermination of irrigable acreages within the undisputed Reservation boundaries; i.e., the "omitted" lands, they believed it timely to determine the Reservation boundary issues, including those of the Three Tribes.

However, the Urban Agencies repeated the arguments of the States Response to the effect that the Secretarial orders as to boundary changes were not binding for the purpose of establishing a claim for a Federally reserved water right which would impinge on MWD's water rights, and that this argument applied to similar claims of the Three Tribes as well. They also maintained that *res judicata* barred all claims for "omitted" lands as that issue had been fully tried in *Arizona v. California*.

The Urban Agencies did not oppose permissive intervention of the Two Tribes solely for the purpose of litigating additional water rights based on alleged expansion of Indian Reservation boundaries, nor the similar claims of the Three Tribes, and requested the appointment of a Special Master to adjudicate all these boundary disputes under Articles II(D)(5) and IX of the 1964 Decree. However, as did California, Nevada, Coachella Valley County Water District and Imperial Irrigation District, they attached conditions thereto. The proposed supplemental decree should, they said, be entered now under Article VI and if the Tribes are allowed to intervene with independent counsel that the United States not be allowed concurrently to represent the Tribes as trustee.

K.7 Supreme Court Hearing and Supplemental Decree

On October 10, 1978, the Supreme Court heard oral arguments from the various parties to the aforesaid Motions, Petitions and Responses. On January 9, 1979, in a Per Curiam Opinion, the Court ordered that the Joint Motion of the United States, Arizona, the California Defendants, and Nevada to enter a supplemental decree (filed May 30, 1978) is granted, and entered the supplemental decree which was the subject of Article VI of the 1964 Decree and of negotiation and argument since that time.

The Court appointed Judge Elbert P. Tuttle as Special Master with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings.

The Court denied the motion of the Fort Mohave Indian Tribe, *et al.*, for leave to intervene to oppose entry to the supplemental decree, and referred this motion in all other aspects and the motion of the Colorado River Indian Tribes, *et al.*, to the Special Master.

A copy of the supplemental decree appears in Appendix 1005.

K.8 New Phase of Decreed Rights

Even before the Supreme Court had resolved the Article VI PPRs by its supplemental decree of January 9, 1979, the United States on December 21, 1978, filed a Motion for Modification of the Decree (of March 9, 1964) and Supporting Memorandum. The motion sought to permit additional diversions of mainstream water for the five Reservations.

The reasons therefore were:

(1) The boundaries of the Reservations "have been finally determined..."

(2) The boundary adjustments, effected since the Decree of March 9, 1964, have confirmed additionally practicably irrigable lands for which the United States reserved water rights, as follows:

| | |
|----------------------------|---------------------------|
| Fort Mohave Reservation | 3,000 acres in California |
| Chemehuevi Reservation | 150 acres in California |
| Colorado River Reservation | 3,110 acres in California |
| Fort Yuma Reservation | 4,200 acres in California |
| | 1,300 acres in Arizona |
| Cocopah Reservation | 1,112 acres in Arizona |

(3) There are within the boundaries of the Reservations practicably irrigable lands which, in approximate numbers, were erroneously omitted from consideration and are entitled to reserved water rights:

UPDATING THE HOOVER DAM DOCUMENTS

| | |
|----------------------------|--|
| Fort Mohave Reservation | 100 acres in California 1,000 acres in Arizona 150 acres in Nevada |
| Chemehuevi Reservation | 500 acres in California |
| Colorado River Reservation | 2,000 acres in California 13,000 acres in Arizona |
| Fort Yuma Reservation | 500 acres in California |
| Cocopah Reservation | 33 acres in Arizona |

(4) The Reservations are entitled, with the priority dates recited in Article II of the March 9, 1964, Decree, to additional annual diversions for:

| | |
|----------------------------|---|
| Fort Mohave Reservation | 20,026 acre-feet in California 6,460 acre-feet in Arizona 969 acre-feet in Nevada |
| Chemehuevi Reservation | 3,880 acre-feet in California |
| Colorado River Reservation | 30,854 acre-feet in California 89,940 acre-feet in Arizona |
| Fort Yuma Reservation | 31,352 acre-feet in California 8,668 acre-feet in Arizona |
| Cocopah Reservation | 7,294 acre-feet in Arizona |

The Motion alleged jurisdiction under Articles II(D)(5) and IX of the Decree.

The United States Memorandum in Support stated that its Motion did not seek to reexamine the prior allocations; that the court need not redetermine the boundaries or review administrative action fixing them; that the Court decree additional water, at a rate per acre previously fixed, for the acres confirmed to each Reservation; that the only issue is whether the acreage is "practicably irrigable"; and that a similar process be used for the "omitted" lands.

Thus, the issues for this subsequent phase of Present Perfected Rights are taking shape.

L. Filling Criteria

As construction progressed on the Upper Basin storage units authorized by the Colorado River Storage Project Act of April 11, 1956, 70 Stat. 105, including Glen Canyon Dam, Secretary of the Interior Udall, in consultation with various interests in the Colorado River Basin, initiated studies to determine how Lake Powell could accumulate storage with the least possible disruption of the many activities, including power production at Hoover Dam, then dependent upon the flow of the river not being restricted in the Upper Basin.

Starting in October 1957, meetings of Basin States representatives were held with Interior officials at which hydrological data was considered. These were later refined by engineering groups of both Basins. Among the conflicting Upper and Lower Basin views were the obtaining of minimum power head at Glen Canyon Reservoir (elevation 3490 or 6.1 maf) at the earliest practicable time and at the same time dealing with any deficiency that might occur in the firm energy generation at Hoover Powerplant incident to filling the Upper Basin Storage Project reservoirs.

On January 16, 1960, Reclamation proposed a set of principles and operating criteria (later termed "Filling Criteria"). These, it should be noted, were based upon a reasonable exercise of Secretarial discretion without attempting to define the outer limits of either rights or obligations of any of the States or of the United States. These principles were issued February 12, 1960, and were revised following receipt of comments and suggested modifications in a series of meetings extending from March 1960 to May 1961.

On April 2, 1962, Secretary Udall approved Reclamation's redraft of the general principles which appeared in the Federal Register of July 19, 1962, 27 F.R. 6851.

The most controversial of the principles was No. 5, which was that an allowance should be made for computed deficiency in firm energy generation at Hoover which might be caused by the four storage units in the Upper Basin; i.e., Glen Canyon, Flaming Gorge, Curecanti, and Navajo, but excluding the effects of evaporation from the surface of such reservoirs as a part of the theoretical streamflow used in the formula for computing allowance. (The initial draft considered only the presence of Glen Canyon on the river and was silent regarding evaporation losses.)

The allowance for computed deficiencies in Hoover firm energy is the difference between two calculations—the first in the so-called Hoover basic firm, which is the firm energy that would have been produced at Hoover without the four storage reservoirs on the river and using an overall efficiency factor for power operations of 83 percent. The second calculation would be to adjust the energy actually generated at Hoover to an efficiency factor of 83 percent (rather than 70-78 percent efficiency actually experienced).

The Secretary would determine how the allowance would be accomplished; i.e., (1) monetarily, if the incremental cost, that is, fuel replacement cost of generating substitute energy, is less than the selling rate for power from the Upper Basin projects, or (2) whether it might be well to compensate the Hoover Dam power contractors with kilowatt hours through the interconnection of the two power systems.

This principle, in particular, was vigorously attacked by the Upper Basin States as without legal basis and as implying a responsibility on the Upper Basin for energy deficiencies at Hoover which they denied. However, Principle No. 5 made provision for reimbursing the Upper Basin Fund after 1987 from Hoover Dam power revenues for purchasing power to meet Hoover deficiencies, but not for nonfirm or other energy from the storage project's powerplants. Interior's intention to secure reimbursement was reflected in an Additional Regulation No. 1 to the General Regulations for Generation and Sale of Power in accordance with the Boulder Canyon Project Adjustment Act, adopted by Secretary Udall on July 12, 1962, 27 F.R. 6850, which stated that the rates to be charged for electric energy after 1987 would include a component to return to the United States funds adequate to reimburse the Upper Basin Fund. No interest would be included in the reimbursement. Reclamation indicated its intention to make minimum use of dollars and maximum use of energy from Federal powerplants, but not firm energy which would otherwise be sold at firm power rates.

The principles would be applicable during the filling period, defined as the time required to fill Glen Canyon (elevation 3700), with a cutoff date of May 31, 1987, the date when the Hoover power contracts expire. Provision was also made for earlier termination if conditions warranted and called for consultation with the States before such action.

During the filling period, uses of water below Hoover Dam, other than power, will be satisfied, including delivery of not more than 1.5 maf/yr to Mexico.

Minimum power head (elevation 3490 - 6.1 maf available surface storage) would be sought at Glen Canyon at the earliest practicable time without drawing Lake Mead below its rated head (elevation 1123 - 14.5 maf available surface storage).

The partial closure of Glen Canyon Dam was accomplished March 31, 1963, when computation of Hoover deficiencies began, at which time Lake Mead held 22.3 maf. This dropped to 15.4 maf at the end of January 1964. Lake Powell was about 3410 (80 feet short of the minimum power point of 3490). With the forecast of another poor runoff in 1964 the gates of Glen Canyon were ordered opened on March 26, 1964, by the Secretary to maintain elevation 1123 at Lake Mead, despite Upper Basin requests that water be retained in Lake Powell in order to start generation of energy by August 1, 1964.

However, 6 weeks after the gates were opened, on May 11, 1964, the Secretary announced the closure of the gates at Glen Canyon and the modification of the 1962 Filling Criteria to reduce by 40 feet, from elevation 1123 (rated power head) to elevation 1083 (minimum power pool), the water level below which Lake Mead would not be drawn. This was conditioned on the fact that, in addition to the allowance for deficiencies in firm energy pursuant to the 1962 Filling Criteria, the United States would replace impairments in Hoover Powerplant capacity and energy which result from lowering Lake Mead below elevation 1123 by reason of storage of water in Lake Powell, and would also relieve the allottees of the costs of extraordinary maintenance of the turbines and generators resulting from such lowering. These costs would be charged to the Upper Basin Fund but were not subject to reimbursement as was the case for deficiencies in firm energy as determined pursuant to the 1962 Filling Criteria.

Minimum power operating level (6.1 maf at elevation 3490) was achieved in Lake Powell on August 18, 1964. Energy generation began September 4, 1964. To obtain this minimum power pool at Glen Canyon Dam the flow at Lee Ferry was restricted to 2,520,000 acre-feet in water year 1963 and 2,427,000 acre-feet in water year 1964. Because of the tight water situation, Secretary Udall also directed Lower Basin water users, on May 16, 1964, to reduce their water demands by 10 percent for the period of July through December 1964. The Metropolitan Water District of Southern California was exempted from the 10 percent cutback. Also, a suit by the Yuma Valley water users to overturn the decision was unsuccessful.

The water surface elevation of Lake Mead dropped to a low of 1088.1 in December 1964, but was restored to rated power head elevation of 1123 on June 23, 1965.

The Upper Basin has repeatedly sought termination of the Filling Criteria or relief from use of the Upper Colorado River Basin Fund for payment for energy deficiencies at Hoover Dam. This led to Section 502 of the Colorado River Basin Project Act which provides for reimbursement to the Upper Basin Fund for monies used therefrom and replaced Additional Regulation No. 1.

During discussions on the formulation of the Operating Criteria, Upper Basin efforts to terminate the Filling Criteria were unsuccessful, as were other attempts in 1975 and 1978.

The Filling Criteria are elaborated on in Chapter VI.

M. The Colorado River Basin Project Act - Public Law 90-537

This Act was signed September 30, 1968, 82 Stat. 885, and was the result of many years of negotiation and compromise between California, the other Colorado River Basin States, the Columbia River Basin States, the Federal Government, and conservation groups and others.

Immediately after the Supreme Court Opinion in *Arizona v. California* on June 3, 1963, and even before the Decree issued March 9, 1964, the Senate Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs met to consider S.1658, introduced by Senators Hayden and Goldwater of Arizona on June 4, 1963, to authorize the Central Arizona Project (CAP). Arizona's need for the project was based on the claim that Arizona's economy was threatened unless additional water was available to it and that ground-water pumping of 3.5 maf far exceeded the annual recharge of 1.0 maf.

The hearings proceeded over the protests of California's Senator Kuchel that Interior had not yet reported on the pending legislation as required by law and that Secretary Udall had just completed his Basin-wide proposal, the Pacific Southwest Water Plan, of which CAP was a part. California also was seeking a rehearing in *Arizona v. California*. Senator Kuchel also stressed the need to give existing California water uses a priority over CAP similar to that recognized by Arizona for existing Arizona water uses, and the need for augmenting the river.

Several different versions of legislation were considered over the next several Congresses, ranging from a bare bones CAP, a Lower Colorado River Basin Project, to a Basin-wide project. The various versions revolved around inclusion of Bridge Canyon and Marble Canyon Dams as a source of power to pump CAP water and to aid CAP financially, both of which were strenuously opposed by environmental groups, the adequacy of the water supplies and its availability for additional projects, and the need for the extent of (2.5 to 8 maf) augmentation of the river which was opposed by the Columbia River Basin States because this Basin was a possible source of augmentation. In addition, the question of a priority for California's 4.4 maf and the length of such priority were key issues. It was suggested that such a priority would give California the victory it was denied in *Arizona v. California*.

In the back of the debates were studies by Arizona of the possibility that Arizona would finance and build CAP with its own funds—a "go it alone" concept that had enormous potential impacts on all future Reclamation projects. Other Upper and Lower Basin differences revolved around the rate of development in the Upper Basin, the use of Upper Colorado River Basin Fund revenues to purchase power to meet Hoover Powerplant deficiencies, the continuation of the Filling Criteria, the inclusion of Gila River flows as part of the water supply available to satisfy the Mexican Water Treaty, and whether the Mexican Treaty burden should be made a national obligation, and the Upper Basin's desire to protect their water supplies for later use against the temporary use in the Lower Basin.

An interesting fact in the evolution of CAP is that municipal and industrial water use planned from the project was only 1 percent of the total in the 1947 plan, but increased to 33 percent in 1963 and an even higher percentage in 1968.

The Colorado River Basin Project bill was enacted and became law on September 30, 1968, as Public Law 90-537, 82 Stat. 885. CAP was finally enacted after decades of controversy.

The background of the Colorado River Basin Project Act is elaborated on in Chapter XII.

Major features of the Act are as follows:

(1) It directed the Secretary to conduct reconnaissance investigations in order to develop a general plan to meet future water needs of the Western States and to make a final reconnaissance report in 1977 (see Chapter XII, Part H.9.1, for reports thereunder). It provided, however, that for a period of 10 years the Secretary 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 (Section 201). This 10-year period was extended an additional 10 years by the Act of November 2, 1978, Public Law 95-578. Thus, the Pacific Northwest States protected their water sources.

(2) Title II declared that the satisfaction 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 the Act and authorized by Congress. However, the Basin States are not relieved of this obligation until such time as an augmentation plan is developed and in operation to bring 2.5 maf to the river (Section 202). This was premised on the argument that the water for Mexico was originally assumed to be satisfied from "surplus" waters but that assumption was later negated by a decrease in Basin water supplies below that assumed during Colorado River Compact negotiations, therefore, Mexico's water really came from water needed by the Basin States. Thus, the Basin States should not be penalized by the Treaty obligation which should be a national responsibility.

(3) It authorized the Central Arizona Project (Section 301(a)), reauthorized the Dixie Project in Utah (Section 307), and conditionally authorized five Upper Basin projects (Section 501). Specific conditions were stipulated for the delivery of water to the Central Arizona Project (Section 304).

For example, expansion of irrigation on non-Indian lands was to be prohibited; canals were to be lined to prevent excessive conveyance losses; ground-water pumping controlled; and local water exchanged for mainstream supply.

(4) In the event of a water shortage, California's 4.4 maf/yr has priority over the Central Arizona Project (Section 301(b)). This achieved California's long sought objective and modified the administration of Article II(B)(3) of the Supreme Court Decree in *Arizona v. California*.

(5) It authorized the Secretary to enter into an agreement with non-Federal interests to construct a thermal generating powerplant whereby the United States shall acquire the right to such portions of that capacity as the Secretary determines is required in connection with the operation of the Central Arizona Project (Section 303). This was done by the United States participation and acquisition of a 24.3 percent share in the Navajo Generating Station near Page, Arizona.

(6) Title IV established the Lower Colorado River Basin Development Fund and provided for the allocation and repayment of the costs of the authorized projects. Costs incurred to replenish the depletion of the Colorado River flows available for use in the United States occasioned by compliance with the Mexican Water Treaty are to be nonreimbursable (Section 401).

(7) It provided for reimbursement of the Upper Colorado River Basin Fund from the Colorado River Development Fund for money expended heretofore or hereafter 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. It provided for the transfer of \$500,000 for each year of operation of Hoover Dam and Powerplant, commencing with fiscal year 1970, to the Upper Colorado River Basin Fund from the Colorado River Development Fund until reimbursement is accomplished. The amount of any deficiency remaining as of June 1, 1987, shall then be transferred to the Upper Colorado River Basin Fund from the Lower Colorado River Basin Development Fund (Section 502).

(8) It required that, in the storage and release of water and in the operation of Federal reservoirs, the Secretary and Federal officials comply with the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, the Mexican Water Treaty, the Decree of the Supreme Court in *Arizona v. California*, and the Colorado River Storage Project Act. In the event of failure to so comply any affected State may sue, and consent was given to the joinder of the United States as a party. The Secretary is directed to report to the President, the Congress, and to the Basin States on the annual consumptive uses and losses of water from the Colorado River System after each successive 5-year period. All contracts for the delivery of water from Federal reservoirs are conditioned upon the availability of water under the Colorado River Compact (Section 601).

(9) It directed the Secretary to propose criteria for the coordinated long-range operations of Federal reservoirs, and provided that the criteria make provisions for the storage of water in storage units of the Colorado River Storage Project and releases of water from Lake Powell in a stated order of priority: (1) the Treaty obligation to Mexico, chargeable to the States of the Upper Division, if any exists; (2) the Upper Basin guarantee of 75 maf every 10 years to the Lower Basin; and (3) carryover storage to meet these obligations were to be given preference. Parity in storage between Lake Mead and Lake Powell was also provided. Following the adoption of the criteria, the Secretary is to report on the actual operation for the preceding compact water year and the project operation for the current year (Section 602).

The criteria were adopted by the Secretary on June 8, 1970.

(10) It reaffirmed the rights of the Upper Basin to the consumptive use of water from the Colorado River System available to that Basin under the Compact and provided that such rights shall not be reduced or prejudiced by any use of such water in the Lower Basin. Further, that the Act shall not be construed to impair the duties and powers of the Upper Colorado River Commission (Section 603).

(11) It defined terms such as "active storage" and "augmentation" (Section 606).

Further details regarding the Colorado River Basin Project Act are contained in Chapter XII hereof.

N. Operating Criteria

Section 602(a) of the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, directed the Secretary of the Interior to "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..." and to receive comments from the States.

The need for the criteria was the concern of the Upper Basin States as to their ability to recapture from a new project in the Lower Basin presently unused water apportioned to the Upper Basin when needed for their own development. As a result of negotiations the Basin Project Act contained a list of priorities to govern the storage of water in storage units of the Storage Project and releases of water from Lake Powell. The Act also provided that the Upper Basin's rights to the consumptive use of water apportioned to that Basin by the Colorado River Compact would not be prejudiced or reduced by any use thereof in the Lower Basin.

In other words, storage in Lake Powell is the cornerstone of the Upper Basin's ability to deliver water to the Lower Basin to fulfill the requirements of Articles III(c) and (d) of the Compact and, at the same time; permit Upper Basin consumptive uses. Article III(c) deals with deliveries to Mexico and III(d) deals with deliveries of 75 maf to the Lower Basin each 10 years.

The criteria were to be prepared and reviewed each year after an exchange of views with the States and affected parties. The objective of the legislative requirements for the criteria was more efficient and reasonable river management. At the same time augmentation was emphasized in an effort to minimize the controversy over the Upper Basin's share of contribution to Mexico and whether the Gila River flows are accountable therefor. An example was the requirement that the first priority for the release of water from Lake Powell is to satisfy one-half of the deficiency in deliveries of water to Mexico, if any such deficiency exists and is chargeable to the States of the Upper Basin, but that the priority shall not apply in any year that the river is augmented sufficiently to satisfy the Treaty requirements and associated losses.

Among other major issues involved in the discussions over the criteria were: Lake Powell bank storage; estimates of Upper and Lower Basin depletions; the use and magnitude of a specific figure for releases from Lake Powell (e.g., 8.23 maf); continuation of the Filling Criteria; and the use of a rule curve to accumulate storage in the Upper Basin reservoirs.

On June 8, 1970, after evaluation of the comments of the Upper and Lower Basin States, Secretary Hickel adopted the Operating Criteria. A letter of June 9, 1970, from the Commissioner of Reclamation explained the rationale of the decisions on these comments.

The Secretary concluded that the Filling Criteria would be continued, that energy needed to replace Hoover Dam deficiencies would be purchased, that the Upper Colorado River Basin Fund will be reimbursed pursuant to Section 502 of the Basin Project Act for monies used therefrom to purchase energy, except that the costs incurred in connection with impairment of capacity and energy resulting from the drawdown of Lake Mead below elevation 1123 feet incident to the attainment of minimum power pool in Lake Powell would not be repaid.

The criteria for coordinated long-range operation of Colorado River reservoirs, approved June 8, 1970, include the following provisions:

The Secretary may modify them from time to time and will sponsor a formal review at least every 5 years with the States participation.

The Secretary shall transmit to Congress and the Basin States Governors an annual report, starting January 1, 1972, and each January 1 thereafter, describing actual operations for the preceding compact water year and the projected plan of operation for the current year (Article I(1)).

The plan of operation shall include a determination by the Secretary of the quantity of water considered necessary to be in storage as of September 30 of that year as required by Section 602(a) of Public Law 90-537 ("602(a) Storage"). The factors to be considered in arriving at that determination are listed; e.g., historic streamflow, the most critical periods of record, and probabilities of water supply, estimated storage depletions in the Upper Basin, including the effects of recurrence of critical periods of water supply, the report of the committee on probabilities and test studies dated October 30, 1967, and the necessity to assure that Upper Basin consumptive uses not be impaired because of failure to store sufficient water to assure delivery under Section 602(A)(1) and (2), Public Law 90-537 (Article II(1)).

If, in the plan of operation, either

(a) the Upper Basin storage reservoirs active storage forecast for September 30 of the current year is less than the quantity of Section 602(a) storage determined for that date, or

(b) the Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date, the objective shall be to maintain a minimum release from Lake Powell of 8.23 maf for that year (Article II(2)).

But if the Upper Basin storage reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) storage, water shall be released annually from Lake Powell at a rate greater than 8.23 maf to accomplish the following objectives:

(a) To the extent it can be reasonably applied in the Lower Division States, but no such release shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead;

(b) To maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell; and

(c) To avoid anticipated spills from Lake Powell (Article II(3)).

In the application of Article II(3) the objective will be to pass the releases through Glen Canyon Powerplant as soon as practicable, utilizing the available capability of the powerplant, in order to equalize the active storage in Lake Powell and Lake Mead (Article II(4)).

Releases from Lake Powell pursuant to the criteria shall not prejudice either Basin's interests with respect to required deliveries at Lee Ferry pursuant to the Compact (Article II(5)).

Lake Mead is to be operated to meet Mexican Treaty obligations, reasonable consumptive use requirements of mainstream users in the Lower Basin, net river and net reservoir losses, and regulatory waste (Article III(1)).

Until Central Arizona Project water deliveries are made, Lower Basin reasonable consumptive use requirements will be met (Article III(2)). Thereafter, the consumptive use requirements will be met in light of the following situations: normal (7.5 maf); surplus (i.e., quantities greater than normal); and shortage (i.e., insufficient water to satisfy 7.5 maf annual consumptive use requirements) (Article III(5)). The criteria specified the relevant factors to consider in connection with "surplus" and "shortages."

Definitions are contained in Article IV.

UPDATING THE HOOVER DAM DOCUMENTS

In the actual operations under the Operating Criteria the annual reports have avoided the determination of the numerical value for Section 602(a) storage by stating that "the accumulation of 602(a) storage is not the criteria governing the release of water during the current year."

In 1975 the first formal 5-year review of the criteria was made, but after receipt of comments, the Secretary announced their continuation without change.

The Operating Criteria are elaborated on in Chapter VII.

O. Mexican Salinity Problems

No problems arose with regard to water deliveries to Mexico between 1945 and 1961 since the salinity of the waters delivered at the Northerly Boundary was generally within 100 parts per million (p/m) of the water at Imperial Dam, the last major diversion point for users in the United States.

In 1961 two unrelated events occurred which affected the salinity of the Mexican water deliveries. First, the Wellton-Mohawk Irrigation and Drainage District (part of Gila Project authorized in 1947 and whose construction was completed in 1952) commenced operation of a system of drainage wells which discharged saline waters with approximately 6,000 p/m into the Colorado River below Imperial Dam but above the Mexican diversion point.

Second, there was a sizable reduction in river flows to Mexico in 1961 because of increased storage in Lake Mead in anticipation of the closure of the gates at Glen Canyon Dam in the Upper Basin in order to store water in Lake Powell. This increased the salinity of the water delivered to Mexico from an average of 800 p/m in 1960 to nearly 1,400 p/m in 1961 and to 1,500 p/m in 1962. The daily salinity readings at times exceeded 2,000 p/m.

In November 1961 Mexico strongly objected to the salinity of the Colorado River waters received by it and negotiations between the two governments took place to resolve the matter. The negotiations resulted in Minute No. 218.

O.1 Minute No. 218

On March 22, 1965, a 5-year agreement, designated Minute No. 218, was concluded on practical measures to reduce the salinity of waters reaching Mexico, with each side reserving its legal rights. Under it the United States took the following actions at a cost to it of \$12 million:

(1) Construction and operation of an extension to the existing Wellton-Mohawk drain so that the Wellton-Mohawk drainage water could either be bypassed at Morelos Dam or, at Mexico's option, received above Morelos Dam where it would be mingled with other Colorado River waters delivered to Mexico.

(2) Construction of additional drainage wells in the Wellton-Mohawk Division which allowed selective pumping of the most saline drainage waters at times when Mexico would be bypassing Wellton-Mohawk drainage waters; i.e., during the winter months, and allowed the pumping of higher quality ground water at times when Mexico would be using Wellton-Mohawk water.

(3) Replacement of a portion of the bypassed Wellton-Mohawk drainage waters—which resulted in the release of approximately 40,000 acre-feet per year of "stored water" from Imperial Dam in excess of the 1.5 maf per year guaranteed by the Treaty.

Under the above measures taken by the United States, the quality of the water delivered to Mexico was improved from about an average of 1,500 p/m in 1962 to 1,240 p/m in 1971.

Minute No. 218 was to expire in November 1970, and provided for consideration of a new Minute after the review of the conditions which gave rise to the problems. However, the Mexican officials did not want to enter into a long-term agreement in November 1970 since a new administration was assuming power in Mexico in December 1970. Minute No. 218 therefor was extended for a 1-year period.

Negotiations commenced in 1971 with the new Echeverria administration. The United States, supported by the Committee of Fourteen, proposed a new Minute which would have provided Colorado River water to Mexico having the same salt concentration as would exist were the Wellton-Mohawk Division, and all other projects in the United States below the Imperial Dam, in salt balance; i.e., that the tonnage of salt in drainage waters delivered to Mexico would not exceed the tonnage of the salt in the water applied to these lands below

the Imperial Dam in the United States, which contribute to the drainage waters. Under this proposal average salinity would have been reduced to about 1,130 p/m in 1973.

Mexico rejected this proposal because of the difference in quality between Colorado River water delivered to the United States water users at Imperial Dam and the quality of the waters delivered to Mexico. In the interim, Minute No. 218 was again continued.

O.2 Minute No. 241

Following meetings on June 15 and 16, 1972, between Presidents Nixon and Echeverria, Minute No. 241 of the International Boundary and Water Commission, dated July 14, 1972, replaced Minute No. 218.

Minute No. 241 provided that the United States would discharge Wellton-Mohawk water below Morelos Dam at the annual rate of 118,000 acre-feet per year (amounting to 73,000 acre-feet during the balance of 1972). In place thereof the United States would substitute an equal quantity of other waters, or an additional 41,000 acre-feet of water released from above Imperial Dam and 32,000 acre-feet of water pumped from 12 wells on the Yuma Mesa. The result was that the total deliveries exceeded the 1.5 million acre-feet per year guaranteed by the Treaty since the bypassed Wellton-Mohawk drainage waters were not counted as part of the Treaty water. This process reduced the average annual salinity of water delivered to Mexico from 1,242 p/m in 1971 to 1,141 p/m for the year ending June 30, 1972.

Under Minute No. 241 Mexico further requested that the United States discharge the balance of Wellton-Mohawk drainage water (approximately 95,000 acre-feet) below Morelos Dam, for which no substitution of fresh water was to be made, and which was charged to Mexico's 1.5 maf deliveries. This resulted in a further decrease of the average salinity from 1,140 p/m to 980 p/m for the year ending June 30, 1973, which was about 130 p/m higher than the average salinity of water arriving at Imperial Dam for a similar period.

O.3 Minute No. 242

As promised in the June 1972 meetings by President Nixon, on August 16, 1972, he appointed Mr. Brownell as his special representative and later as a Special Ambassador and Minute No. 242, dated August 30, 1973, evolved.

Its principal provisions were: the United States would adopt measures to assure that Mexico received water with an average salinity of no more than 115 p/m, plus or minus 30 p/m, over the annual average salinity at Imperial Dam;

the United States would bypass Wellton-Mohawk drainage water at the annual rate of 118,000 acre-feet per year without charge against Mexico's Treaty allotment, and substitute therefor an equal volume of other waters to be discharged to the Colorado River above Morelos Dam;

the United States will continue to deliver approximately 140,000 acre-feet per year on the land boundary at San Luis Mexico, in partial satisfaction of the Treaty obligation;

the existing Wellton-Mohawk drain would be extended approximately 53 miles to the Santa Clara Slough on the Gulf of Mexico at United States expense;

ground-water pumping within 5 miles of the Arizona-Sonora boundary would be limited by each country to 160,000 acre-feet per year;

the United States would support Mexican efforts to finance improvement of the Mexicali Valley; and

the new Minute is the permanent and definitive solution to the salinity problem.

The Mexican salinity problems are elaborated on in Chapter XIII.

P. The Colorado River Basin Salinity Control Act

The measures to be taken by the United States pursuant to Minute No. 242 included construction of a major desalting plant near Yuma, Arizona, to treat the bulk of the Wellton-Mohawk drainage water; lining or construction of a new lined Coachella Canal in California to salvage approximately 132,000 acre-feet of water annually; reduction of the irrigable acreage in Wellton-Mohawk from 75,000 to 65,000 irrigable acres and improved efficiency in the District; and construction of a well field along the southern border of the

United States similar to that constructed by Mexico on its side of the border. All of these measures are in progress as a result of the enactment of the Colorado River Basin Salinity Control Act, signed by the President on June 24, 1974, 88 Stat. 266. In addition, the Act made replacement of the reject stream from the desalting plant a national obligation (approximately 40,000 acre-feet per year) similar to the national obligation to satisfy the Mexican Treaty obligation in the Colorado River Basin Project Act. A key provision is the right of the United States to use water salvaged by the Coachella Canal lining during an interim period until California's water deliveries are reduced. This would compensate for the overdeliveries to Mexico caused by the bypass of drainage waters.

Although the Administration had preferred a bill to deal only with the Mexican salinity problem, the Congress, at the urging of the Basin States, authorized salinity control programs upstream from Imperial Dam.

These comprised the Paradox Valley Unit and the Grand Valley Unit, both in Colorado; the Crystal Geyser Unit in Utah; and the Las Vegas Wash Unit in Nevada. Planning reports were to be expedited for four irrigation source control units, three point source control units, and five diffuse source control units.

A Colorado River Basin Salinity Control Advisory Council was created by the Act which would receive, as would the President and Congress, the biennial reports from the Secretary on the progress of the salinity control program. The Council would review and comment thereon and make recommendations to the Secretary and the Environmental Protection Agency.

P.1 Operations Pursuant to Minute No. 242 During 1977

The IBWC report on operations under Minute No. 242 showed delivery to Mexico of 1,478,823 acre-feet with an average salinity of 943 p/m for 1977. During 1977 the average salinity differential between Morelos and Imperial Dam was 123 p/m, in accord with Minute No. 242.

During 1977, 206,822 acre-feet of Wellton-Mohawk drainage water were discharged below Morelos Dam and other waters were substituted in making deliveries to Mexico.

Also during 1977, 93,259 acre-feet of water were delivered across the land boundary at San Luis, Sonora, Mexico. This is less than 140,000 acre-feet delivered in prior years and referred to in Minute No. 242.

Mexico pumped 129,636 acre-feet during 1977 from its well field within 5 miles of the International Boundary, a quantity less than the 160,000 acre-feet limit provided in Minute No. 242.

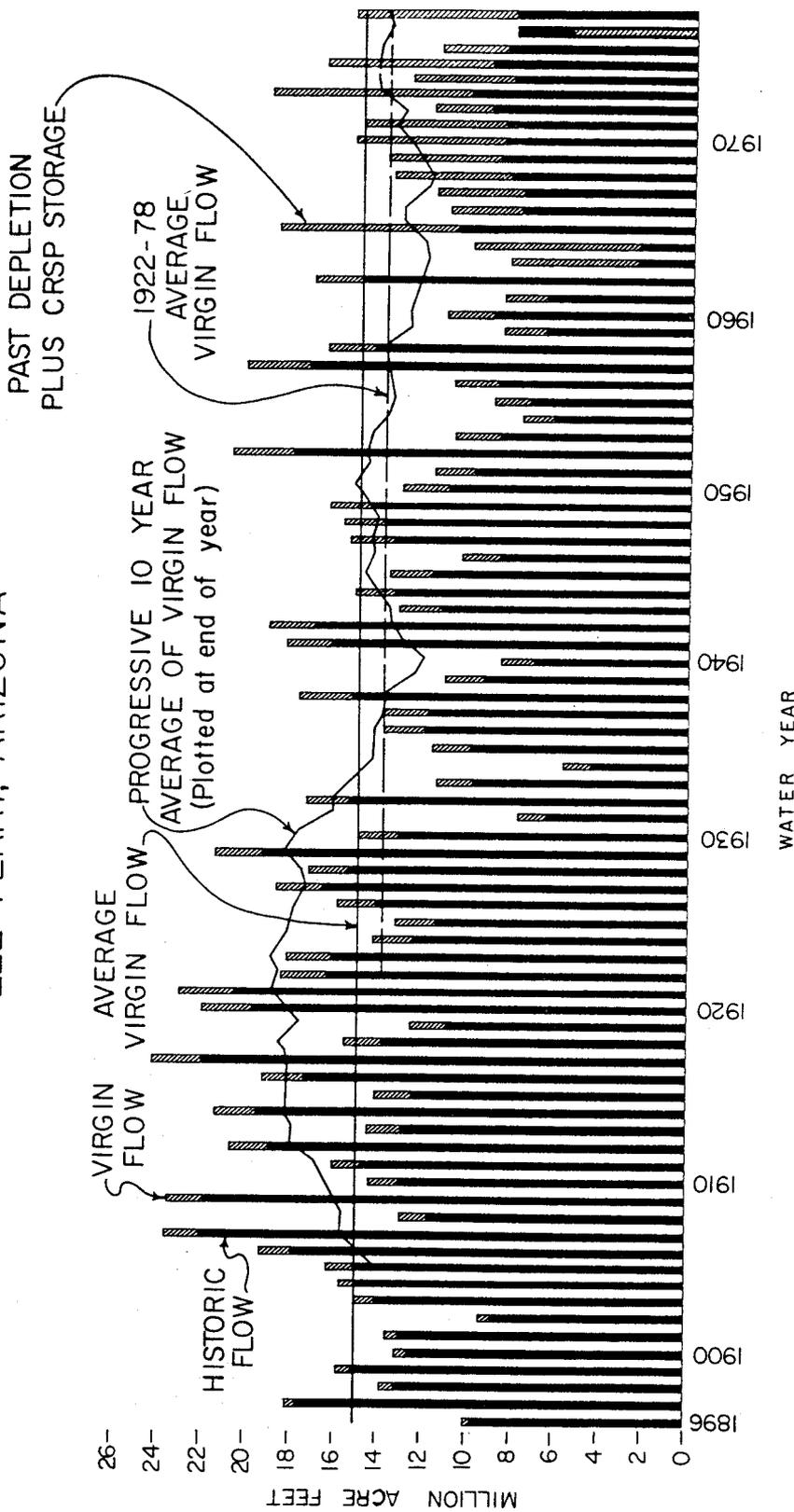
The Colorado River Basin Salinity Control Act is elaborated on in Chapter XIV.

APPENDIX I - THE LAW OF THE RIVER

- 1 A.2 - Bar Chart of Water Supply
- 1 B.4 - 1922 Compact
- 1 B.5 - The California Limitation Act, approved March 4, 1929
- 1 B.6 - The Boulder Canyon Project Act, December 21, 1928
- 1 C.6 - The Boulder Canyon Project Adjustment Act, July 19, 1940
- 1 D.1 - The California Seven-Party Agreement, August 18, 1931
- 1 F.1 - The Mexican Water Treaty, February 3, 1944
- 1 G.1 - The Upper Colorado River Basin Compact, October 11, 1948
- 1 H.1 - The Colorado River Storage Project Act, April 11, 1956

1 A.2 - Bar Chart of Water Supply

COLORADO RIVER FLOW AT LEE FERRY, ARIZONA



Colorado River Compact, 1922

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W.S. Norviel for the State of Arizona,
W.F. McClure for the State of California,
Delph E. Carpenter for the State of Colorado,
J.G. Scrugham for the State of Nevada,
Stephen B. Davis, Jr., for the State of New Mexico,
R.E. Caldwell for the State of Utah,
Frank C. Emerson for the State of Wyoming,

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

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

ARTICLE II

As used in this compact—

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

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

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

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

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

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

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

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

ARTICLE III

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

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

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

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

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

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

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

ARTICLE IV

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

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

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

ARTICLE V

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

UPDATING THE HOOVER DAM DOCUMENTS

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

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

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

ARTICLE VI

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

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

ARTICLE VII

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

ARTICLE VIII

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

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

ARTICLE IX

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

ARTICLE X

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

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to

the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

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

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

W. S. NORVIEL
W. F. McCLURE
DELPH E. CARPENTER
J. G. SCRUGHAM
STEPHEN G. DAVIS, JR.
R. E. CALDWELL
FRANK C. EMERSON

Approved:

HERBERT HOOVER

NOTES

Congressional consent to negotiations.—The Act of August 19, 1921 (42 Stat. 171), gave Congress' consent to the negotiation by the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming of "a compact or agreement not later than January 1, 1923, providing for an equitable division and apportionment among said States of the water supply of the Colorado River and of the streams tributary thereto * * *." Provision was made in the Act for appointment by the President of a person to participate in the negotiations "as the representative of and for the protection of the interests of the United States * * *." It was also provided that no compact so negotiated should become effective "unless and until the same shall have been approved by the legislature of each of said States and by the Congress of the United States."

Congressional consent to compact.—By section 13, subsection (a), of the Boulder Canyon Project Act (45 Stat. 1057, 1064), the Congress "approved" the Colorado River Compact and waived the provision of Article XI requiring that it be ratified by the legislatures of all seven States. In so doing, it provided that the Congress' approval should "become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact * * * and shall consent to such waiver * * *." Section 4, subsection (a), of the same Act provided, among other things, that the Act should not be effective until the compact had been ratified by all seven States or until it had been ratified by California and five other States and "until the State of California by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact." For the Act of the California legislature agreeing to this condition, see its Act of March 4, 1929, Cal. Stats. 1929, p. 38. For the President's proclamation of June 25, 1929, declaring that the conditions of the Boulder Canyon Project Act had been fulfilled, see 46 Stat. 3000.

The evolution of the Boulder Canyon Project Act can be traced in the following bills and the hearings, committee reports and floor debate thereon indicated:

- H.R. 11449, 67th Congress (Hearings before House Committee on Irrigation of Arid Lands, 1922-23).
- H.R. 2903, 68th Congress (Hearings before House Committee on Irrigation of Arid Lands, 1923, and before House Committee on Irrigation and Reclamation; 1923-24).
- S. 727, 68th Congress (Hearings before Senate Committee on Irrigation and Reclamation, 1924-25).

H.R. 6251 and H.R. 9826, 69th Congress (Hearings before House Committee on Irrigation and Reclamation, 1926; H. Rept. No. 1657 on H.R. 9826, 1926; Hearings before House Committee on Rules, 1927; 67 *Cong. Rec.* 5424-5427; 68 *Cong. Rec.* 2633-2637, 2652-2654, 3073-3080, 3272-3273, 3292-3294, 5822-5832).

S. 3331, 69th Congress (Hearings before Senate Committee on Irrigation and Reclamation, acting pursuant to S. Res. 320, 68th Congress, 1925-26; S. Rept. No. 654, 1926; 67 *Cong. Rec.* 8139-8150, 12619-12627; 68 *Cong. Rec.* 2369-2374, 2761-2765, 4156-4161, 4290-4307, 4309-4326, 4405-4416, 4421-4424, 4426-4456, 4495-4523, 4529-4530, 4541-4542, 4652-4653, 4655, 4763-4766, 4892, 4896-4900).

H.R. 5770, 70th Congress (Hearings before House Committee on Irrigation and Reclamation, 1928).

S. 728 and S. 1274, 70th Congress (Hearings before Senate Committee on Irrigation and Reclamation, 1928; S. Rept. No. 592 on S. 728, 1928; 69 *Cong. Rec.* 7245-7253, 7387-7397, 7515-7544, 7622-7627, 7630-7638, 9433-9443, 9449-9464, 9886-9891, 10200-10202, 10257-10266, 10271-10282, 10287-10302, 10462-10510, 10511-10513).

H.R. 5773, 70th Congress (Hearings before House Committee on Irrigation and Reclamation, 1928; H. Rept. No. 918, 1928; Hearings before Committee on Rules, 1928; 69 *Cong. Rec.* 9486-9513, 9622-9658, 9662-9664, 9760-9769, 9770-9786, 9975-9991; 70 *Cong. Rec.* 67-80, 227-245, 264-269, 277-298, 314-340, 381-402, 458-474, 518-530, 565-603, 615-621, 830-838; P.L. 642, 70th Congress).

State ratifications.—Arizona, Act of February 24, 1944 (Sess. L. 1944, p. 428; *Ariz. Rev. Stat. Ann.* 1956, sec. 45-571).

California, Act of March 4, 1929 (Stats. 1929, p. 37; Deering's Gen. L. (1944), Act 1491).

Colorado, Act of February 26, 1925 (Sess. L. 1925, p. 525; *Colo. Rev. Stat.* 1963, sec. 149-2-1).

Nevada, Act of March 18, 1925 (Stat. 1925, p. 134; *Nev. Rev. Stat.* 1957, sec. 538.010).

New Mexico, Act of March 17, 1925 (Laws 1925, p. 116; N.M. Stat. 1953 Ann., sec. 75-34-3 note).

Utah, Act of March 6, 1929 (Laws 1929, p. 25), on which see 36 Op. Atty. Gen. 72 (1929), holding this act in conformity with the requirements of the Boulder Canyon Project Act.

Wyoming, Act of February 25, 1925 (Sess. L. 1925, p. 85; *Wyo. Stat.* 1957, sec. 41-505).

The foregoing citations are to the final ratifications by the States concerned. Those of California, Colorado, Nevada, New Mexico, Utah, and Wyoming contained a waiver of the seven-State approval provision of Article XI of the compact. For earlier ratifications of the compact as a seven-State instrument, see *Cal. Stat.* 1923, p. 1530; *Cal. Stats.* 1929, p. 1; *Colo. Sess. L.* 1923, p. 684; *Nev. Stat.* 1923, p. 393; *N. Mex. Laws* 1923, p. 7; *Utah Laws*, 1923, p. 4; *Wyo. Sess. L.* 1923, p. 3. And, for earlier ratifications of the compact as a six-State instrument, see *Cal. Stats.* 1925, p. 1321; *Utah Laws* 1925, p. 127, repealed *Utah Laws* 1927, p. 1.

Related legislation.—In addition to the Boulder Canyon Project Act (45 Stat. 1057), sections 4(a), 6, 8, 13 and 18, see the Acts of August 30, 1935 (49 Stat. 1028, 1039) (Headgate Rock dam, Arizona), July 30, 1947 (61 Stat. 628) (Gila project, Arizona), October 11, 1951 (65 Stat. 404) (San Diego Aqueduct, California), July 3, 1952 (66 Stat. 325) (Collbran project, Colorado), August 31, 1954 (68 Stat. 1045) (Palo Verde weir, California), April 11, 1956 (70 Stat. 105) (Colorado River storage project and participating projects), September 2, 1958 (72 Stat. 1726) (Boulder City, Nevada), June 13, 1962 (76 Stat. 96) (Navajo and San Juan-Chama projects, New Mexico-Colorado), August 6, 1962 (76 Stat. 389) (Fryingpan-Arkansas project, Colorado), September 2, 1964 (78 Stat. 848) (Dixie project, Utah), October 22, 1965 (79 Stat. 1068) (Southern Nevada project, Nevada), and September 30, 1968 (82 Stat. 885) (Colorado River Basin project).

Section 6 of the Boulder Canyon Project Act, cited in the preceding paragraph, provides that Hoover dam shall be used "First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power." See *Arizona v. California*, pp. 531, 534f, *post* on the relation between this provision and Article IV, paragraph (a), of the Colorado River Compact.

Litigation.—In addition to the four cases entitled *Arizona v. California*, pp. 531ff *post*, all of which involve aspects of the Colorado River Compact, see *United States v. Arizona*, 295 U.S. 174 (1935), dealing with the authority of the Secretary of the Interior to construct Parker Dam on the Colorado River.

Departmental decisions.—Solicitor's opinion M. 28389 (April 4, 1936), advising that the Colorado River Compact authorizes the diversion of water from the natural watershed into another watershed "if the diverted water is to be used within the boundaries of the States through which the Colorado River system extends and . . . if the amount of that diversion does not create a use of Colorado River water in excess of that allowed by the provisions of the compact." See also Solicitor's opinion dated August 30, 1934 (54 I.D. 593), advising that section 4(a) of the Boulder Canyon Project Act, taken with Article III(a) of the compact, limits the authority of the Secretary of the Interior in making contracts for the sale and delivery of water impounded behind Hoover Dam to users outside of California to such quantities as will not "interfere with the apportionment to California" made in the section of the Boulder Canyon Project Act cited.

Proposed Lower Colorado River Compact.—By its Act of March 3, 1939 (Ariz. Laws 1939, p. 71), the legislature of Arizona proposed and "approved and accepted" a compact with the States of California and Nevada, neither of which has ratified the document. The proposed compact reads as follows:

"The states of Arizona, California and Nevada, desiring to enter into a compact or agreement under the Act of Congress of the United States of America approved December 21, 1928 (45 Statutes at Large, page 1057, 'Boulder Canyon Project Act'), have agreed upon the following articles:

"ARTICLE I

"The major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System apportioned to the Lower Basin under the Colorado River Compact; to establish the relative importance of different beneficial uses of such water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Lower Basin, the storage of its waters, and the protection of life and property from floods.

"ARTICLE II

"As used in this compact:

" 'Colorado River System' means that portion of the Colorado River and its tributaries within the United States of America;

" 'Colorado River Basin' means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied:

" 'States of the Upper Division' means the states of Colorado, New Mexico, Utah, and Wyoming;

" 'States of the Lower Division' means the states of Arizona, California and Nevada;

" 'Lee's Ferry' means a point in the main stream of the Colorado River one mile below the mouth of the Paria River;

" 'Upper Basin' means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee's Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee's Ferry;

" 'Lower Basin' means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee's Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system below Lee's Ferry;

" 'Domestic Use' includes the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but excludes the generation of electrical power.

"ARTICLE III

"(a) The aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the state of California, including all uses under contracts made under the provisions

UPDATING THE HOOVER DAM DOCUMENTS

of the Boulder Canyon Project Act and all waters necessary for the supply of any rights which may now exist, shall not exceed four million, four hundred thousand acre feet of the waters apportioned to the Lower Basin States by paragraph (a) of Article III of the Colorado River Compact, plus not more than one-half of any excess or surplus waters unapportioned by said Colorado River Compact, such uses always to be subject to the terms of said compact.

"(b) Of the seven million, five hundred thousand acre feet annually apportioned to the Lower Basin by paragraph (a) of Article III of the Colorado River Compact, there is hereby apportioned annually to the state of Nevada three hundred thousand acre feet and annually to the state of Arizona two million, eight hundred thousand acre feet for the exclusive beneficial consumptive use by said states of Nevada and Arizona, respectively, in perpetuity.

"(c) The state of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River Compact.

"(d) In addition to the water covered by paragraphs (b) and (c) hereof, the state of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of the state of Arizona in perpetuity.

"(e) The waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico, but if, as provided in paragraph (c) of Article III of the Colorado River Compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said Colorado River Compact, then the state of California shall and does mutually agree with the state of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the Lower Basin.

"(f) Neither the states of Arizona, California nor Nevada will withhold water nor require the delivery of water which can not reasonably be applied to domestic and agricultural uses.

"(g) All the provisions of this compact or agreement shall be subject in all particulars to the provisions of the Colorado Compact.

"ARTICLE IV

"This compact or agreement shall take effect and become binding and obligatory when it shall have been approved by the Congress of the United States of America, by the legislatures of each of the states of Arizona, California and Nevada and when the States of Arizona, California and Nevada shall have ratified the Colorado River Compact. When approved by the legislature of a signatory state the original and four copies of this compact or agreement shall be signed by the governor of such state and notice of such approval and signing shall be given by such governor to the governors of the other signatory states and to the President of the United States of America. The governor last signing shall forward the original copy for deposit in the archives of the Department of State of the United States of America and one copy to the governor of each of the other signatory states."

By the second paragraph of section 4, subsection (a), of the Boulder Canyon Project Act (45 Stat. 1057, 1059), the Congress "authorized" Arizona, California, and Nevada "to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency

which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River Compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada."

Cf. section 8, subsection (b), of the Boulder Canyon Project Act (45 Stat. 1057, 1062) providing that in the event a compact between Arizona, California, and Nevada or any two of them was negotiated and consented to by the Congress on or before January 1, 1929, the United States would be controlled thereby in its construction, management, and operation of Hoover dam and the other works authorized by the Act, but that if such a compact were concluded after that date the compact should be subject to all contracts entered into by the Secretary of the Interior under authority of section 5 of the Act prior to the date of Congress' consent thereto.

Upper Colorado River Compact.—For text, see pp. 339ff post.

Mexican Water Treaty.—For text, see pp. 456ff post.

Bibliography.—Olson, *The Colorado River Compact* (1963); Wilbur and Ely, *The Hoover Dam Documents* (2d ed., 1948; House Document No. 717, 80th Congress). The minutes of the first 18 meetings of the commission which negotiated the Colorado River Compact were published in 1948 by the Colorado State Water Conservation Board; those of the 19th-25th, 26th (first part), and 27th meetings were reproduced by the Department of Justice in 1953. All of these minutes were also reproduced by the Upper Colorado River Commission, Grand Junction, Colo., 1956.

CALIFORNIA LIMITATION ACT

(Act of March 4, 1929; Ch. 16, 48th Sess.; Statutes and Amendments to the Codes, 1929, pp. 38-39)

Chapter 16

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

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

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

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

Sec. 2. By the act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4(a) of the said "Boulder canyon project act" and this act shall be so construed.

1 B.6

BOULDER CANYON PROJECT ACT

[PUBLIC—No. 642—70TH CONGRESS]
[H. R. 5773]

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

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

SEC. 2. (a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this Act. All revenues received in carrying out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of \$165,000,000. Of this amount the sum of \$25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of \$25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

UPDATING THE HOOVER DAM DOCUMENTS

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

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

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

SEC. 3. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate \$165,000,000.

SEC. 4. (a) This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United

States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada.

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

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

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this Act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona $18\frac{3}{4}$ per centum of such excess revenues and to the State of Nevada $18\frac{3}{4}$ per centum of such excess revenues.

SEC. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

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

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

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery.

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either

party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

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

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

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

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

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

SEC. 6. That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as

herein otherwise provided: *Provided, however,* That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this Act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

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

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

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

SEC. 8. (a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

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

UPDATING THE HOOVER DAM DOCUMENTS

and consented to by Congress after said date: *Provided*, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

SEC. 9. All lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute revenue from said project and be covered into the fund herein provided for: *Provided*, That all persons who served in the United States Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4 of the Act of December 5, 1924 (43 Stat. 672, 702; 43 U.S.C., sec. 433); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this chapter: *Provided further*, That the above exclusive preference rights shall apply to veteran settlers on lands watered from the Gila canal in Arizona the same as to veteran settlers on lands watered from the All-American canal in California: *Provided further*, That in the event such entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be open to entry, subject to the preference in the section provided.¹

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 15. The Secretary of the Interior is authorized and directed to make investigation and public reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said States and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colorado River and its tributaries. The sum of \$250,000 is hereby authorized to be appropriated from said Colorado River Dam fund, created by section 2 of this Act, for such purposes.

UPDATING THE HOOVER DAM DOCUMENTS

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

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

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

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

(a) Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into.

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

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

SEC. 21. That the short title of this Act shall be "Boulder Canyon Project Act."

Approved, December 21, 1928.

[CHAPTER 643]

1 C.6

AN ACT

July 19, 1940

[H. R. 9877]

[Public, No. 756]

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

Boulder Canyon
Project Adjustment
Act.

Promulgation of
charges for electrical
energy.

Purposes.

45 Stat. 1057.

43 U.S.C. §617a
(b).

Revisions, etc., of
charges.

Disposition of re-
ceipts; availability.

Annual appropria-
tion.

Repayment of ad-
vances, etc.

45 Stat. 1057.
43 U.S.C.
§617a(b).

Payments to Ari-
zona and Nevada.

45 Stat. 1059.
43 U.S.C.
§617c(b).

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

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

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

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

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

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

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

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

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

(c) Payment subject to the provisions of section 3 hereof, in commutation of the payments now provided for the States of Arizona and Nevada in section 4 (b) of the Project Act, to each of said States of the sum of \$300,000 for each year of operation, beginning with the year of operation ending May 31, 1938, and continuing annually thereafter until and including the year of operation ending May 31, 1987, and such payments for any year of operation which shall have expired at the time when this subdivision (c) shall become effective shall be due immediately, and be paid, without interest, as expeditiously as administration of this Act will permit, and each such payment

UPDATING THE HOOVER DAM DOCUMENTS

for subsequent years of operation shall be made on or before July 31, following the close of the year of operation for which it is made. All such payments shall be made from revenues hereafter received in the Colorado River Dam Fund.

Deductions from payments for taxes collected.

Notwithstanding the foregoing provisions of this subsection, in the event that there are levied and collected by or under authority of Arizona or Nevada or by any lawful taxing political subdivision thereof, taxes upon—

(i) the project as herein defined;

(ii) the electrical energy generated at Boulder Dam by means of facilities, machinery, or equipment both owned and operated by the United States, or owned by the United States and operated under contract with the United States;

(iii) the privilege of generating or transforming such electrical energy or of use of such facilities, machinery, or equipment or of falling water for such generation or transforming; or

(iv) the transmission or control of such electrical energy so generated or transformed (as distinguished from the transmission lines and other physical properties used for such transmission or control) or the use of such transmission lines or other physical properties for such transmission or control,

payments made hereunder to the State or by or under the authority of which such taxes are collected shall be reduced by an amount equivalent to such taxes. Nothing herein shall in anywise impair the right of either the State of Arizona or the State of Nevada, or any lawful taxing political subdivision of either of them, to collect nondiscriminatory taxes upon that portion of the transmission lines and all other physical properties, situated within such State and such political subdivision, respectively, and belonging to any of the lessees and/or allottees under the Project Act and/or under this Act, and nothing herein shall exempt or be construed so as to exempt any such property from nondiscriminatory taxation, all in the manner provided by the constitution and laws of such State. Sums, if any, received by each State under the provisions of the Project Act shall be deducted from the first payment or payments to said State authorized by this Act. Payments under this section 2 (c) shall be deemed contractual obligations of the United States, subject to the provisions of section 3 of this Act.

Right to collect nondiscriminatory taxes.

45 Stat. 1057.
43 U.S.C. §§617-617t.

Payments deemed contractual obligations of U.S.

Transfer to Colorado River Development Fund.

Proviso.
Expeditious transfer in certain cases.

Appropriation of receipts for designated purposes authorized.

(d) Transfer, subject to the provisions of section 3 hereof, from the Colorado River Dam Fund to a special fund in the Treasury, hereby established and designated the "Colorado River Development Fund", of the sum of \$500,000 for the year of operation ending May 31, 1938, and the like sum of \$500,000 for each year of operation thereafter, until and including the year of operation ending May 31, 1987. The transfer of the said sum of \$500,000 for each year of operation shall be made on or before July 31, next following the close of the year of operation for which it is made: *Provided*, That any such transfer for any year of operation which shall have ended at the time this section 2 (d) shall become effective, shall be made, without interest, from revenues received in the Colorado River Dam Fund, as expeditiously as administration of this Act will permit, and without readvances from the general funds of the Treasury. Receipts of the Colorado River Development Fund for the years of operation ending in 1938, 1939, and 1940 (or in the event of reduced receipts during any of said years, due to adjustments under section 3 hereof, then the first receipts of said fund up to \$1,500,000), are authorized

to be appropriated only for the continuation and extension, under the direction of the Secretary, of studies and investigations by the Bureau of Reclamation for the formulation of a comprehensive plan for the utilization of waters of the Colorado River system for irrigation, electrical power, and other purposes, in the States of the upper division and the States of the lower division, including studies of quantity and quality of water and all other relevant factors. The next such receipts up to and including the receipts for the year of operation ending in 1955 are authorized to be appropriated only for the investigation and construction of projects for such utilization in and equitably distributed among the four States of the upper division. Such receipts for the years of operation ending in 1956 to 1987, inclusive, are authorized to be appropriated for the investigation and construction of projects for such utilization in and equitably distributed among the States of the upper division and the States of the lower division. The terms "Colorado River system", "States of the upper division", and "States of the lower division" as so used shall have the respective meanings defined in the Colorado River compact mentioned in the Project Act. Such projects shall be only such as are found by the Secretary to be physically feasible, economically justified, and consistent with such formulation of a comprehensive plan. Nothing in this Act shall be construed so as to prevent the authorization and construction of any such projects prior to the completion of said plan of comprehensive development; nor shall this Act be construed as affecting the right of any State to proceed independently of this Act or its provisions with the investigation or construction of any project or projects. Transfers under this section 2 (d) shall be deemed contractual obligations of the United States, subject to the provisions of section 3 of this Act.

Terms defined.

45 Stat. 1057.
43 U.S.C. §§617-617t.

Transfers deemed contractual obligations of U.S.

Reduction of payments and transfers.

Effective date of charges; adjustment of accounts.

Proviso.
Adjustments with contractors by means of credits.

Adjustments with allottees for taxes paid.

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

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

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

UPDATING THE HOOVER DAM DOCUMENTS

Treasury read-
vances for replace-
ment costs, etc.,
limitation.

Appropriation
authorized.

Interest rate.

Deferment of re-
payment of advances
for flood control.

45 Stat. 1057.
43 Stat. U.S.C.
§617a(b).

Regulations and
contracts.

Proviso.
Consent of allottee
to modification of al-
lotment of energy.

Boulder Power
Plant.

Negotiations for
termination of ex-
isting lease.

Court jurisdiction.

amount of the payments of such taxes by such allottee bears to the total amount of such taxes collected.

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

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

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

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

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

suits or proceedings and to grant such relief or remedies is hereby conferred upon, the District Court of the United States for the District of Columbia, with the like right of appeal or review as in other like suits or proceedings in said court. The Secretary is hereby authorized to act for the United States in such arbitration proceedings.

Effective date of Act.

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

Act to become inoperative if specified contracts not entered into.

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

Refusal, etc., of contractor to execute modifying contract, effect.

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

45 Stat. 1057.
43 U.S.C. §§617-617t.

Definitions.

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

"Project Act."

"Project Act" shall mean the Boulder Canyon Project Act;

"Project."

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

"Secretary."

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

"Firm energy," "allottees."

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

"Replacements."

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

"Year of operation."

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

Report, etc., to Congress.

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

UPDATING THE HOOVER DAM DOCUMENTS

Noninterference
with designated State
rights, etc.

45 Stat. 1064.
43 U.S.C.
§617(b),(c),(d).

Wage rates for
laborers, etc.

Short title.

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

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

SEC. 16. This Act may be cited as "Boulder Canyon Project Adjustment Act".

Approved July 19, 1940.

1 D.1

[Item 29]

**BOULDER CANYON PROJECT
AGREEMENT****REQUESTING APPORTIONMENT OF CALIFORNIA'S SHARE OF THE WATERS OF THE
COLORADO RIVER AMONG THE APPLICANTS IN THE STATE**

August 18, 1931

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

WITNESSETH:

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

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

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

ARTICLE I.

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

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

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

SECTION 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa", adjacent to Palo Verde

UPDATING THE HOOVER DAM DOCUMENTS

Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.

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

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

SECTION 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

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

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

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

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

SECTION 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclusion of a supply for both said City and said County, and either or both may use said apportionments as may be agreed by and between said City and said County.

SECTION 12. The priorities hereinbefore set forth shall be in no wise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

ARTICLE II.

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

ARTICLE III.

That each and all of the parties to this agreement respectively request that the contract for delivery of water between The United States of America and The Metropolitan Water District of Southern California under date of April 24, 1930, be amended in conformity with Article I hereof.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized, the day and year first above written. Executed in seven originals.

Recommended for Execution:

PALO VERDE IRRIGATION DISTRICT,
By ED J. WILLIAMS,
ARVIN B. SHAW, JR.

IMPERIAL IRRIGATION DISTRICT,
By MARK ROSE,
CHAS. L. CHILDERS,
M. J. DOWD.

COACHELLA VALLEY COUNTY WATER DISTRICT,
By THOS. C. YAGER.

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA,
By W. B. MATTHEWS,
C. C. ELDER.

WATER CONTRACTS

CITY OF LOS ANGELES,
By W. W. HURLBUT,
C. A. DAVIS.

CITY OF SAN DIEGO,
By C. L. BYERS,
H. N. SAVAGE.

COUNTY OF SAN DIEGO,
By H. N. SAVAGE,
C. L. BYERS.

TREATY SERIES 994

UTILIZATION OF WATERS
OF THE COLORADO AND TIJUANA RIVERS
AND OF THE RIO GRANDE

+

TREATY
BETWEEN THE UNITED STATES OF AMERICA
AND MEXICO

Signed at Washington February 3, 1944.

AND
PROTOCOL

Signed at Washington November 14, 1944.

Ratification advised by the Senate of the United States of America
April 18, 1945, subject to certain understandings.

Ratified by the President of the United States of America November
1, 1945, subject to said understandings.

Ratified by Mexico October 16, 1945.

Ratifications exchanged at Washington November 8, 1945.

Proclaimed by the President of the United States of America
November 27, 1945, subject to said understandings.

Effective November 8, 1945.



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1946

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

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

(1)

UPDATING THE HOOVER DAM DOCUMENTS

The Government of the United States of America and the Government of the United Mexican States: animated by the sincere spirit of cordiality and friendly cooperation which happily governs the relations between them; taking into account the fact that Articles VI and VII of the Treaty of Peace, Friendship and Limits between the United States of America and the United Mexican States signed at Guadalupe Hidalgo on February 2, 1848, [1] and Article IV of the boundary treaty between the two countries signed at the City of Mexico December 30, 1853 [2] regulate the use of the waters of the Rio Grande (Rio Bravo) and the Colorado River for purposes of navigation only; considering that the utilization of these waters for other purposes is desirable in the interest of both countries, and desiring, moreover, to fix and delimit the rights of the two countries with respect to the waters of the Colorado and Tijuana Rivers, and of the Rio Grande (Rio Bravo) from Fort Quitman, Texas, United States of America, to the Gulf of Mexico, in order to obtain the most complete and satisfactory utilization thereof, have resolved to conclude a treaty and for this purpose have named as their plenipotentiaries:

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|---|--|
| <p>The President of the United States of America:</p> | <p>Los Gobiernos de los Estados Unidos de América y de los Estados Unidos Mexicanos: animados por el franco espíritu de cordialidad y de amistosa cooperación que felizmente norma sus relaciones; tomando en cuenta que los Artículos VI y VII del Tratado de Paz, Amistad y Límites entre los Estados Unidos de América y los Estados Unidos Mexicanos, firmado en Guadalupe Hidalgo, el 2 de febrero de 1848, y el Artículo IV del tratado de límites entre los dos países, firmado en la ciudad de México el 30 de diciembre de 1853, reglamentan únicamente para fines de navegación el uso de las aguas de los ríos Bravo (Grande) y Colorado; considerando que a los intereses de ambos países conviene el aprovechamiento de esas aguas en otros usos y consumos y deseando, por otra parte, fijar y delimitar claramente los derechos de las dos Repúblicas sobre los ríos Colorado y Tijuana y sobre el río Bravo (Grande), de Fort Quitman, Texas, Estados Unidos de América, al Golfo de México, a fin de obtener su utilización más completa y satisfactoria, han resuelto celebrar un tratado y, al efecto, han nombrado como sus plenipotenciarios:</p> |
|---|--|

¹ [Treaty Series 207; 9 Stat. 922; 18 Stat. (pt. 2, Public Treaties) 492.]

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

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

The President of the United Mexican States:

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

I - PRELIMINARY PROVISIONS

ARTICLE 1

For the purposes of this Treaty it shall be understood that:

- (a) "The United States" means the United States of America.
- (b) "Mexico" means the United Mexican States.
- (c) "The Commission" means the International Boundary and Water Commission, United States and Mexico, as described in Article 2 of this Treaty.
- (d) "To divert" means the deliberate act of taking water from

Al Señor Cordell Hull, Secretario de Estado de los Estados Unidos de América, al Señor George S. Messersmith, Embajador Extraordinario y Plenipotenciario de los Estados Unidos de América en México, y al Señor Ingeniero Lawrence M. Lawson, Comisionado de los Estados Unidos en la Comisión Internacional de Límites entre los Estados Unidos y México; y

El Presidente de los Estados Unidos Mexicanos:

Al Señor Dr. Francisco Castillo Nájera, Embajador Extraordinario y Plenipotenciario de los Estados Unidos Mexicanos en Washington, y al Señor Ingeniero Rafael Fernández MacGregor, Comisionado Mexicano en la Comisión Internacional de Límites entre los Estados Unidos y México; quienes, después de haberse comunicado sus respectivos Plenos Poderes y haberlos encontrado en buena y debida forma, convienen en lo siguiente:

I - DISPOSICIONES PRELIMINARES

ARTICULO 1

Para los efectos de este Tratado se entenderá:

- a) Por "los Estados Unidos", los Estados Unidos de América.
- b) Por "México", los Estados Unidos Mexicanos.
- c) Por "La Comisión", la Comisión Internacional de Límites y Aguas entre los Estados Unidos y México, según se define en el Artículo 2 de este Tratado.
- d) Por "derivar", el acto deliberado de tomar agua de cualquier

[T.S. 994]

4

any channel in order to convey it elsewhere for storage, or to utilize it for domestic, agricultural, stock-raising or industrial purposes whether this be done by means of dams across the channel, partition weirs, lateral intakes, pumps or any other methods.

(e) "Point of diversion" means the place where the act of diverting the water is effected.

(f) "Conservation capacity of storage reservoirs" means that part of their total capacity devoted to holding and conserving the water for disposal thereof as and when required, that is, capacity additional to that provided for silt retention and flood control.

(g) "Flood discharges and spills" means the voluntary or involuntary discharge of water for flood control as distinguished from releases for other purposes.

(h) "Return flow" means that portion of diverted water that eventually finds its way back to the source from which it was diverted.

(i) "Release" means the deliberate discharge of stored water for conveyance elsewhere or for direct utilization.

(j) "Consumptive use" means the use of water by evaporation, plant transpiration or other manner whereby the water is consumed and does not return to its source of supply. In general it is measured by the amount of water

cauce con objeto de hacerla llegar a otro lugar y almacenarla, o aprovecharla con fines domésticos, agrícolas, ganaderos o industriales; ya sea que dicho acto se lleve a cabo utilizando presas construídas a través del cauce, partidores de corriente, bocatomas laterales, bombas o cualesquier otros medios.

e) Por "punto de derivación", el lugar en que se realiza el acto de derivar el agua.

f) Por "capacidad útil de las presas de almacenamiento", aquella parte de la capacidad total que se dedica a retener y conservar el agua para disponer de ella cuando sea necesario, o sea, la capacidad adicional a las destinadas al azolve y al control de avenidas.

g) Por "desfogue" y por "desfogue", la salida voluntaria o involuntaria de agua para controlar las avenidas o con cualquier otro propósito que no sea de los especificados para la extracción.

h) Por "retornos", la parte de un volumen de agua derivada de una fuente de abastecimiento, que finalmente regresa a su fuente original.

i) Por "extracción", la salida del agua almacenada, deliberadamente realizada para su conducción a otro lugar o para su aprovechamiento directo.

j) Por "consumo", el agua evaporada, transpirada por las plantas, retenida o por cualquier medio perdida y que no puede retornar a su cauce de escurrimiento. En general se mide por el monto del agua derivada menos

diverted less the part thereof el volumen que retorna al cauce. which returns to the stream.

(k) "Lowest major international dam or reservoir" means the major international dam or reservoir situated farthest downstream.

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

ARTICLE 2

The International Boundary Commission established pursuant to the provisions of the Convention between the United States and Mexico signed in Washington March 1, 1889 [1] to facilitate the carrying out of the principles contained in the Treaty of November 12, 1884 [2] and to avoid difficulties occasioned by reason of the changes which take place in the beds of the Rio Grande (Rio Bravo) and the Colorado River shall hereafter be known as the International Boundary and Water Commission, United States and Mexico, which shall continue to function for the entire period during which the present Treaty shall continue in force. Accordingly, the term of the Convention of March 1, 1889 shall be considered to be indefinitely extended, and the Convention of November 21, 1900 [3] between the United States and Mexico regarding that Convention shall be considered completely terminated.

The application of the present Treaty, the regulation and exer-

ARTICULO 2

La Comisión Internacional de Límites establecida por la Convención suscrita en Washington, por los Estados Unidos y México, el primero de marzo de 1889, para facilitar la ejecución de los principios contenidos en el Tratado de 12 de noviembre de 1884, y para evitar las dificultades ocasionadas con motivo de los cambios que tienen lugar en el cauce de los ríos Bravo (Grande) y Colorado, cambiará su nombre por el de Comisión Internacional de Límites y Aguas, entre los Estados Unidos y México, la que continuará en funciones por todo el tiempo que el presente Tratado esté en vigor. En tal virtud se considera prorrogado indefinidamente el término de la Convención de primero de marzo de 1889 y se deroga, por completo, la de 21 de noviembre de 1900, entre los Estados Unidos y México, relativa a aquella Convención.

La aplicación del presente Tratado, la reglamentación y el ejerci-

¹ [Treaty Series 232; 26 Stat. 1512.]

² [Treaty Series 226; 24 Stat. 1011.]

³ [Treaty Series 244; 31 Stat. 1936.]

[T.S. 994]

6

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

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

The Commission or either of its two Sections may employ such assistants and engineering and legal advisers as it may deem necessary. Each Government shall accord diplomatic status to the Commissioner, designated by the other Government. The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Government as members of its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immuni-

cio de los derechos y el cumplimiento de las obligaciones que los dos Gobiernos adquieren en virtud del mismo, y la resolución de todos los conflictos que originen su observancia y ejecución, quedan confiados a la Comisión Internacional de Límites y Aguas que funcionará de conformidad con las facultades y restricciones que se fijan en este Tratado.

La Comisión tendrá plenamente el carácter de un organismo internacional y estará constituida por una Sección de los Estados Unidos y por una Sección Mexicana. Cada Sección será encabezada por un Comisionado Ingeniero. Cuando en este Tratado se establece acción conjunta o el acuerdo de los dos Gobiernos o la presentación a los mismos de informes, estudios o proyectos, u otras estipulaciones similares, se entenderá que dichos asuntos serán de la competencia de la Secretaría de Estado de los Estados Unidos y de la Secretaría de Relaciones Exteriores de México o que se tratarán por su conducto.

La Comisión y cada una de las Secciones que la constituyen podrán emplear a los auxiliares y consejeros técnicos, de ingeniería y legales, que estimen necesarios. Cada Gobierno reconocerá carácter diplomático al Comisionado del otro, y el Comisionado, dos ingenieros principales, un consejero legal y un secretario, designados por el otro Gobierno como miembros de su Sección de la Comisión, tendrán derecho a todos los privilegios e inmunidades pertenecientes a funcionarios diplo-

ties appertaining to diplomatic officers. The Commission and its personnel may freely carry out their observations, studies and field work in the territory of either country.

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

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

máticos. La Comisión y su personal podrán llevar a cabo, con toda libertad, sus observaciones, estudios y trabajos de campo en el territorio de cualquiera de los dos países.

La jurisdicción de la Comisión se ejercerá sobre los tramos limítrofes del río Bravo (Grande) y del río Colorado, sobre la línea divisoria terrestre entre los dos países y sobre las obras construídas en aquéllos y en ésta. Cada una de las Secciones tendrá jurisdicción sobre la parte de las obras situadas dentro de los límites de su nación y ninguna de ellas ejercerá jurisdicción o control sobre obras construídas o situadas dentro de los límites del país de la otra Sección sin el expreso consentimiento del Gobierno de esta última. Las obras construídas, adquiridas o usadas en cumplimiento de las disposiciones de este Tratado y que se encuentren ubicadas totalmente dentro de los límites territoriales de cualquiera de los dos países, aunque de carácter internacional, quedarán, con las excepciones expresamente señaladas en este Tratado, bajo la exclusiva jurisdicción y control de la Sección de la Comisión en cuyo país se encuentren dichas obras.

Las facultades y obligaciones que impone a la Comisión este Tratado serán adicionales a las conferidas a la Comisión Internacional de Límites por la Convención del primero de marzo de 1889 y los demás tratados y convenios pertinentes en vigor entre los dos países, con excepción de

[T.S. 994]

8

may be modified by the present Treaty.

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

ARTICLE 3

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

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

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

II - RIO GRANDE (RIO BRAVO)

ARTICLE 4

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

aquellas estipulaciones de cualquiera de ellos que este Tratado modifica.

Los gastos que demande el sostenimiento de cada Sección de la Comisión serán sufragados por cuenta del Gobierno del cual dependa. Los gastos comunes que acuerde la Comisión serán cubiertos por mitad por ambos Gobiernos.

ARTICULO 3

En los asuntos referentes al uso común de las aguas internacionales, acerca de los cuales deba resolver la Comisión, servirá de guía el siguiente orden de preferencias:

- 1°.- Usos domésticos y municipales.
- 2°.- Agricultura y ganadería.
- 3°.- Energía eléctrica.
- 4°.- Otros usos industriales.
- 5°.- Navegación.
- 6°.- Pesca y caza.
- 7°.- Cualesquiera otros usos benéficos determinados por la Comisión.

Todos los usos anteriores estarán sujetos a las medidas y obras sanitarias que convengan de común acuerdo los dos Gobiernos, los cuales se obligan a resolver preferentemente los problemas fronterizos de saneamiento.

II - RIO BRAVO (GRANDE)

ARTICULO 4

Las aguas del río Bravo (Grande) entre Fort Quitman, Texas, y el Golfo de México se asignan a los dos países de la siguiente manera:

A. To Mexico:

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

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

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

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

B. To the United States:

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

A. - A México:

a) La totalidad de las aguas que lleguen a la corriente principal del río Bravo (Grande), de los ríos San Juan y Alamo; comprendiendo los retornos procedentes de los terrenos que rieguen estos dos últimos ríos.

b) La mitad del escurrimiento del cauce principal del río Bravo (Grande) abajo de la presa inferior principal internacional de almacenamiento, siempre que dicho escurrimiento no esté asignado expresamente en este Tratado a alguno de los dos países.

c) Las dos terceras partes del caudal que llegue a la corriente principal del río Bravo (Grande) de los ríos Conchos, San Diego, San Rodrigo, Escondido y Salado y Arroyo de Las Vacas, en concordancia con lo establecido en el inciso c) del párrafo B de este Artículo.

d) La mitad de cualquier otro escurrimiento en el cauce principal del río Bravo (Grande), no asignado específicamente en este Artículo, y la mitad de las aportaciones de todos los afluentes no aforados—que son aquellos no denominados en este Artículo—entre Fort Quitman y la presa inferior principal internacional.

B. - A los Estados Unidos:

a) La totalidad de las aguas que lleguen a la corriente principal del río Bravo (Grande) procedentes de los ríos Pecos, Devils, manantial Goodenough y arroyos Alamito, Terlingua, San Felipe y Pinto.

[T.S. 994]

10

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

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

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

b) La mitad del escurrimiento del cauce principal del río Bravo (Grande) abajo de la presa inferior principal internacional de almacenamiento, siempre que dicho escurrimiento no esté asignado expresamente en este Tratado a alguno de los dos países.

c) Una tercera parte del agua que llegue a la corriente principal del río Bravo (Grande) procedente de los ríos Conchos, San Diego, San Rodrigo, Escondido, Salado y Arroyo de Las Vacas; tercera parte que no será menor en conjunto, en promedio y en ciclos de cinco años consecutivos, de 431 721 000 metros cúbicos (350 000 acres pies) anuales. Los Estados Unidos no adquirirán ningún derecho por el uso de las aguas de los afluentes mencionados en este inciso en exceso de los citados 431 721 - 000 metros cúbicos (350 000 acres pies), salvo el derecho a usar de la tercera parte del escurrimiento que llegue al río Bravo (Grande) de dichos afluentes, aunque ella exceda del volumen aludido.

d) La mitad de cualquier otro escurrimiento en el cauce principal del río Bravo (Grande), no asignado específicamente en este Artículo, y la mitad de las aportaciones de todos los afluentes no aforados—que son aquéllos no denominados en este Artículo—entre Fort Quitman y la presa inferior principal internacional.

In the event of extraordinary drought or serious accident to the hydraulic systems on the measured Mexican tributaries, making it difficult for Mexico to make available the run-off of 350,000 acre-feet (431,721,000 cubic meters) annually, allotted in subparagraph (c) of paragraph B of this Article to the United States as the minimum contribution from the aforesaid Mexican tributaries, any deficiencies existing at the end of the aforesaid five-year cycle shall be made up in the following five-year cycle with water from the said measured tributaries.

Whenever the conservation capacities assigned to the United States in at least two of the major international reservoirs, including the highest major reservoir, are filled with waters belonging to the United States, a cycle of five years shall be considered as terminated and all debits fully paid, whereupon a new five-year cycle shall commence.

ARTICLE 5

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

I. The dams required for the conservation, storage and regulation of the greatest quantity of the annual flow of the river in a way to ensure the continuance of existing uses and the development of the greatest number of feasible

En casos de extraordinaria sequía o de serio accidente en los sistemas hidráulicos de los afluentes mexicanos aforados que hagan difícil para México dejar escurrir los 431 721 000 metros cúbicos (350 000 acres pies) anuales que se asignan a los Estados Unidos como aportación mínima de los citados afluentes mexicanos, en el inciso c) del párrafo B de este Artículo, los faltantes que existieren al final del ciclo aludido de cinco años, se repondrán en el ciclo siguiente con agua procedente de los mismos tributarios.

Siempre que la capacidad útil asignada a los Estados Unidos de por lo menos dos de las presas internacionales principales, incluyendo la localizada más aguas arriba, se llene con aguas pertenecientes a los Estados Unidos, se considerará terminado un ciclo de cinco años y todos los débitos totalmente pagados, iniciándose, a partir de ese momento, un nuevo ciclo.

ARTICULO 5

Los dos Gobiernos se comprometen a construir conjuntamente, por conducto de sus respectivas Secciones de la Comisión, las siguientes obras en el cauce principal del río Bravo (Grande):

I. -- Las presas que se requieran para el almacenamiento y regulación de la mayor parte que sea posible del escurrimiento anual del río en forma de asegurar los aprovechamientos existentes y llevar a cabo el mayor número de

[T.S. 994]

12

projects, within the limits imposed by the water allotments specified.

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

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

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

- (a) The most feasible sites;
- (b) The maximum feasible reservoir capacity at each site;
- (c) The conservation capacity required by each country at each site, taking into consideration the amount and regimen of its allotment of water and its contemplated uses;
- (d) The capacity required for retention of silt;
- (e) The capacity required for flood control.

The conservation and silt capacities of each reservoir shall be assigned to each country in the same

proyectos factibles, dentro de los limites impuestos por las asignaciones estipuladas de agua.

II. - Las presas y las otras obras comunes que se requieran para la derivación de las aguas del río Bravo (Grande).

Una de las presas de almacenamiento se construirá en el tramo entre el Cañón de Santa Elena y la desembocadura del río Pecos; otra, en el tramo comprendido entre Piedras Negras, Coahuila y Nuevo Laredo, Tamaulipas (Eagle Pass y Laredo en los Estados Unidos) y una tercera, en el tramo entre Nuevo Laredo, Tamaulipas y San Pedro de Roma, Tamaulipas (Laredo y Roma en los Estados Unidos). A juicio de la Comisión, sujeto a la aprobación de los dos Gobiernos, podrán omitirse una o más de las presas estipuladas y, en cambio, podrán construirse otras que no sean de las enumeradas.

Al planear la construcción de dichas presas, la Comisión determinará:

- a) Los sitios más adecuados;
- b) La máxima capacidad factible en cada sitio;
- c) La capacidad útil requerida por cada país en cada sitio tomando en consideración el monto y régimen de su asignación de agua y sus usos previstos;
- d) La capacidad requerida para la retención de azolves;
- e) La capacidad requerida para el control de avenidas.

La capacidad útil y la requerida para la retención de azolves, serán asignadas a cada uno de los dos

proportion as the capacities required by each country in such reservoir for conservation purposes. Each country shall have an undivided interest in the flood control capacity of each reservoir.

países en cada presa, en la misma proporción que las capacidades requeridas para almacenamiento útil, por cada país, en la misma presa. Ambos países tendrán un interés común indivisible en la capacidad de cada presa para el control de avenidas.

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

La construcción de las presas internacionales de almacenamiento principiará dentro de los dos años siguientes a la aprobación por los dos Gobiernos de los planos correspondientes. Los trabajos empezarán por la construcción de la presa inferior principal internacional de almacenamiento, pero se podrán llevar a cabo, simultáneamente, obras en los tramos superiores del río. La presa inferior principal internacional deberá quedar terminada en un plazo máximo de ocho años a partir de la fecha en que entre en vigor este Tratado.

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

La construcción de las presas y otras obras comunes requeridas para la derivación del caudal del río, se iniciará en las fechas determinadas por la Comisión y aprobadas por los dos Gobiernos.

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

El costo de construcción de cada una de las presas internacionales de almacenamiento y los costos de su operación y mantenimiento se dividirán entre los dos países en proporción a las respectivas capacidades útiles que en la presa de que se trate se asignen a cada uno de ellos.

The cost of construction, operation and maintenance of each of the dams and other joint works required for the diversion of the flows of the river shall be prorated

El costo de construcción de cada una de las presas y de las otras obras comunes necesarias para la derivación de las aguas del río y los costos de su operación y

[T.S. 994]

14

between the two Governments in proportion to the benefits which the respective countries receive therefrom, as determined by the Commission and approved by the two Governments.

mantenimiento, serán prorrateados entre los dos países en proporción de los beneficios que reciban, respectivamente, de cada una de dichas obras, de acuerdo con lo que determine la Comisión y aprueben los dos Gobiernos.

ARTICLE 6

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

ARTICULO 6

Siempre que sea necesario, la Comisión estudiará, investigará y preparará los proyectos para las obras—distintas de aquéllas a que se refiere el Artículo 5 de este Tratado—de control de las avenidas del río Bravo (Grande) desde Fort Quitman, Texas, hasta el Golfo de México. Estas obras podrán incluir bordos a lo largo del río, cauces de alivio, estructuras de control de pendiente y la canalización, rectificación o encauzamiento de algunos tramos del río. La Comisión informará a los dos Gobiernos acerca de las obras que deberán construirse, de la estimación de sus costos, de la parte de aquéllas que deberá quedar a cargo de cada uno de ellos y de la parte de las obras que deberá ser operada y mantenida por cada Sección de la Comisión. Cada Gobierno conviene en construir, por medio de su Sección de la Comisión, las obras que recomiende la Comisión y que aprueben los dos Gobiernos. Cada Gobierno pagará los costos de las obras que construya y los costos de operación y mantenimiento de la parte de las obras que se le asigne con tal objeto.

ARTICLE 7

The Commission shall study, investigate and prepare plans for

ARTICULO 7

La Comisión estudiará, investigará y preparará los proyectos

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

para las plantas de generación de energía hidroeléctrica que fuere factible construir en las presas internacionales de almacenamiento en el río Bravo (Grande). La Comisión informará a los dos Gobiernos, mediante un acta, acerca de las obras que deberán construirse, de la estimación de sus costos y de la parte de aquéllas que deberá quedar a cargo de cada uno de ellos. Cada Gobierno conviene en construir, por medio de su Sección de la Comisión, las obras que le recomiende la Comisión y que aprueben los dos Gobiernos. Las plantas hidroeléctricas serán operadas y mantenidas conjuntamente por ambos Gobiernos por conducto de sus respectivas Secciones de la Comisión. Cada Gobierno pagará la mitad del costo de construcción, operación y mantenimiento de estas plantas y en la misma proporción será asignada a cada uno de los dos países la energía hidroeléctrica generada.

ARTICLE 8

The two Governments recognize that both countries have a common interest in the conservation and storage of waters in the international reservoirs and in the maximum use of these structures for the purpose of obtaining the most beneficial, regular and constant use of the waters belonging to them. Accordingly, within the year following the placing in operation of the first of the major international storage dams which is constructed, the Commission

ARTICULO 8

Los dos Gobiernos reconocen que ambos países tienen un interés común en la conservación y en el almacenamiento de las aguas en las presas internacionales y en el mejor uso de dichas presas, con objeto de obtener el más benéfico, regular y constante aprovechamiento de las aguas que les corresponden. Con tal fin, la Comisión, dentro del año siguiente de haber sido puesta en operación la primera de las presas principales internacionales que se construya,

[T.S. 994]

16

shall submit to each Government for its approval, regulations for the storage, conveyance and delivery of the waters of the Rio Grande (Rio Bravo) from Fort Quitman, Texas to the Gulf of Mexico. Such regulations may be modified, amended or supplemented when necessary by the Commission, subject to the approval of the two Governments. The following general rules shall severally govern until modified or amended by agreement of the Commission, with the approval of the two Governments:

(a) Storage in all major international reservoirs above the lowest shall be maintained at the maximum possible water level, consistent with flood control, irrigation use and power requirements.

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

(c) In any reservoir the ownership of water belonging to the country whose conservation capacity therein is filled, and in excess of that needed to keep it filled, shall pass to the other country to the extent that such country may have unfilled conservation capacity, except that one country may at its option temporarily use the conservation capacity of the other country not currently being used in any of the upper reservoirs; provided that in the event of flood discharge or spill occurring while one country is using the conserva-

someterá a la aprobación de los dos Gobiernos un reglamento para el almacenamiento, conducción y entrega de las aguas del río Bravo (Grande) desde Fort Quitman, Texas, hasta el Golfo de México. Dicha reglamentación podrá ser modificada, adicionada o complementada, cuando sea necesario, por la Comisión, con la aprobación de los dos Gobiernos. Cada una de las siguientes reglas generales regirá hasta que sean modificadas por acuerdo de la Comisión con la aprobación de los dos Gobiernos:

a) El almacenamiento de aguas en todas las presas superiores principales internacionales se mantendrá al más alto nivel que sea compatible con el control de avenidas, las extracciones normales para irrigación y los requerimientos de generación de energía eléctrica.

b) Las entradas de agua a cada presa se acreditarán al país a quien pertenezca dicha agua.

c) En cualquier vaso de almacenamiento la propiedad del agua perteneciente al país que tenga agua en exceso de la necesaria para mantener llena la capacidad útil que le corresponda, pasará al otro país, hasta que se llene la capacidad útil asignada a éste. Sin embargo, en todos los vasos de almacenamiento superiores, un país, al llenarse la capacidad útil que le pertenezca, podrá usar transitoriamente la capacidad útil del segundo país y que éste no use, siempre que, si en ese momento ocurrieren derrames y desfogues,

tion capacity of the other, all of such flood discharge or spill shall be charged to the country using the other's capacity, and all inflow shall be credited to the other country until the flood discharge or spill ceases or until the capacity of the other country becomes filled with its own water.

(d) Reservoir losses shall be charged in proportion to the ownership of water in storage. Releases from any reservoir shall be charged to the country requesting them, except that releases for the generation of electrical energy, or other common purpose, shall be charged in proportion to the ownership of water in storage.

(e) Flood discharges and spills from the upper reservoirs shall be divided in the same proportion as the ownership of the inflows occurring at the time of such flood discharges and spills, except as provided in subparagraph (c) of this Article. Flood discharges and spills from the lowest reservoir shall be divided equally, except that one country, with the consent of the Commission, may use such part of the share of the other country as is not used by the latter country.

(f) Either of the two countries may avail itself, whenever it so desires, of any water belonging to

la totalidad de éstos se cargue al primero y todas las entradas a la presa se consideren propiedad del segundo, hasta que cesen los derrames o desfogues o hasta que la capacidad útil del segundo se llene con aguas que le pertenezcan.

d) Las pérdidas que ocurran en los vasos de almacenamiento se cargarán a los dos países en proporción de los respectivos volúmenes almacenados que les pertenezcan. Las extracciones de cualquiera de los vasos se cargarán al país que las solicite, excepto las efectuadas para la generación de energía eléctrica u otro propósito común que se cargarán a cada uno de los dos países en proporción de los respectivos volúmenes almacenados que les pertenezcan.

e) Los derrames y desfogues de los vasos superiores de almacenamiento se dividirán entre los dos países en la misma proporción que guarden los volúmenes pertenecientes a cada uno de ellos de las aguas que entren a los almacenamientos durante el tiempo en que ocurran los citados derrames y desfogues, con excepción del caso previsto en el inciso c) de este Artículo. Los derrames y desfogues de la presa inferior de almacenamiento se dividirán en partes iguales entre los dos países, pero uno de ellos, con el permiso de la Comisión, podrá usar las aguas correspondientes al otro país que éste no usare.

f) Cualquiera de los dos países podrá disponer, en el momento en que lo desee, del agua almacenada

[T.S. 994]

18

it and stored in the international reservoirs, provided that the water so taken is for direct beneficial use or for storage in other reservoirs. For this purpose the Commissioner of the respective country shall give appropriate notice to the Commission, which shall prescribe the proper measures for the opportune furnishing of the water.

que le pertenezca en las presas internacionales, siempre que su extracción se efectúe para algún uso benéfico directo, o para ser almacenada en otra presa. Al efecto, el Comisionado respectivo dará el aviso correspondiente a la Comisión, la que dictará las medidas necesarias para el suministro oportuno del agua.

ARTICLE 9

ARTICULO 9

(a) The channel of the Rio Grande (Rio Bravo) may be used by either of the two countries to convey water belonging to it.

a) El cauce del río Bravo (Grande) podrá ser empleado por los dos países para conducir el agua que les pertenezca.

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

b) Cualquiera de los dos países podrá derivar y usar, en cualquier lugar del cauce principal del río Bravo (Grande) desde Fort Quitman, Texas, hasta el Golfo de México, el agua que le pertenezca y podrá construir, para ello, las obras necesarias. Sin embargo, no podrá hacerse ninguna derivación o uso en cualquiera de los dos países, fuera de los existentes en la fecha en que entre en vigor este Tratado, ni construirse ningunas obras con aquel fin, hasta que la Sección de la Comisión del país en que se intente hacer la derivación o uso verifique que hay el agua necesaria para ese efecto, dentro de la asignación de ese mismo país, a menos que la Comisión haya convenido, de acuerdo con lo estipulado en el inciso d) de este Artículo, en una derivación o uso en mayor cantidad. El uso proyectado, y los planos para las correspondientes obras de derivación que deban construirse, al efecto, se darán a conocer previamente a la Comisión para su información.

(c) Consumptive uses from the main stream and from the unmeasured tributaries below Fort Quitman shall be charged against the share of the country making them.

(d) The Commission shall have the power to authorize either country to divert and use water not belonging entirely to such country, when the water belonging to the other country can be diverted and used without injury to the latter and can be replaced at some other point on the river.

(e) The Commission shall have the power to authorize temporary diversion and use by one country of water belonging to the other, when the latter does not need it or is unable to use it, provided that such authorization or the use of such water shall not establish any right to continue to divert it.

(f) In case of the occurrence of an extraordinary drought in one country with an abundant supply of water in the other country, water stored in the international storage reservoirs and belonging to the country enjoying such abundant water supply may be withdrawn, with the consent of the Commission, for the use of the country undergoing the drought.

(g) Each country shall have the right to divert from the main channel of the river any amount of water, including the water belonging to the other country, for the purpose of generating hydro-electric power, provided that such diversion causes no injury to the other country and

c) Los consumos hechos, abajo de Fort Quitman, en la corriente principal y en los afluentes no aforados, se cargarán a cuenta de la asignación del país que los efectúe.

d) La Comisión podrá autorizar que se deriven y usen aguas que no correspondan completamente al país que pretenda hacerlo, cuando el agua que pertenezca al otro país pueda ser derivada y usada sin causarle perjuicio y le sea repuesta en algún otro lugar del río.

e) La Comisión podrá autorizar la derivación y uso transitorios a favor de un país de aguas que pertenezcan al otro, cuando éste no las necesite o no las pueda utilizar y sin que dicha autorización o el uso de las citadas aguas establezca, con relación a las mismas, ningún derecho para continuar derivándolas.

f) En los casos en que concurra una extraordinaria sequía en un país con un abundante abastecimiento de agua en el otro país, el agua de éste almacenada en los vasos de almacenamiento internacionales podrá ser extraída, con el consentimiento de la Comisión, para uso del país que experimente la sequía.

g) Cada uno de los países tendrá el derecho de derivar del cauce principal del río cualquiera cantidad de agua, incluyendo el agua perteneciente al otro país, con el objeto de generar energía hidroeléctrica, siempre que tal derivación no cause perjuicio al otro país, no interfiera con la

[T.S. 994]

20

does not interfere with the international generation of power and that the quantities not returning directly to the river are charged against the share of the country making the diversion. The feasibility of such diversions not existing on the date this Treaty enters into force shall be determined by the Commission, which shall also determine the amount of water consumed, such water to be charged against the country making the diversion.

(h) In case either of the two countries shall construct works for diverting into the main channel of the Rio Grande (Rio Bravo) or its tributaries waters that do not at the time this Treaty enters into force contribute to the flow of the Rio Grande (Rio Bravo) such water shall belong to the country making such diversion.

(i) Main stream channel losses shall be charged in proportion to the ownership of water being conveyed in the channel at the times and places of the losses.

(j) The Commission shall keep a record of the waters belonging to each country and of those that may be available at a given moment, taking into account the measurement of the allotments, the regulation of the waters in storage, the consumptive uses, the withdrawals, the diversions, and the losses. For this purpose the Commission shall construct, operate and maintain on the main channel of the Rio Grande (Rio Bravo), and each Section shall

generación internacional de energía eléctrica y que los volúmenes que no retornen directamente al río sean cargados a la participación del país que hizo la derivación. La factibilidad de dichas derivaciones, que no existan al entrar en vigor este Tratado, será determinada por la Comisión, la que también fijará la cantidad de agua consumida que se cargará en cuenta de la participación del país que efectúe la derivación.

h) En el caso de que cualquiera de los dos países construya obras para derivar, hacia el cauce principal del río Bravo (Grande) o de sus tributarios, aguas que no contribuyan, en la fecha en que este Tratado entre en vigor, al escurrimiento del citado río, dicha agua pertenecerá al país que haya hecho esa derivación.

i) Las pérdidas de agua ocurridas en la corriente principal serán cargadas a cada país en proporción a los volúmenes conducidos o escurridos que le pertenezcan, en ese lugar del cauce y en el momento en que ocurran las pérdidas.

j) La Comisión llevará un registro de las aguas que pertenezcan a cada país y de aquellas de que pueda disponer en un momento dado, teniendo en cuenta al aforo de las aportaciones, la regularización de los almacenamientos, los consumos, las extracciones, las derivaciones y las pérdidas. Al efecto, la Comisión construirá, operará y mantendrá en la corriente principal del río Bravo (Grande) y cada Sección en los correspondientes afluentes afora-

construct, operate and maintain on the measured tributaries in its own country, all the gaging stations and mechanical apparatus necessary for the purpose of making computations and of obtaining the necessary data for such record. The information with respect to the diversions and consumptive uses on the unmeasured tributaries shall be furnished to the Commission by the appropriate Section. The cost of construction of any new gaging stations located on the main channel of the Rio Grande (Rio Bravo) shall be borne equally by the two Governments. The operation and maintenance of all gaging stations or the cost of such operation and maintenance shall be apportioned between the two Sections in accordance with determinations to be made by the Commission.

dos, todas las estaciones hidrométricas y aparatos mecánicos que sean necesarios para hacer los cálculos y obtener los datos requeridos para el aludido registro. La información respecto a las derivaciones y consumos hechos en los afluentes no aforados será proporcionada por la Sección que corresponda. El costo de construcción de las estaciones hidrométricas nuevas que se localicen en el cauce principal del río Bravo (Grande) se dividirá igualmente entre los dos Gobiernos. La operación y mantenimiento, o el costo de los mismos, de todas las estaciones hidrométricas serán distribuidos entre las dos Secciones, de acuerdo con lo que determine la Comisión.

III - COLORADO RIVER

III - RIO COLORADO

ARTICLE 10

ARTICULO 10

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

De las aguas del río Colorado, cualquiera que sea su fuente, se asignan a México:

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

a) Un volumen garantizado de 1 850 234 000 metros cúbicos (1 500 000 acres pies) cada año, que se entregará de acuerdo con lo dispuesto en el Artículo 15 de este Tratado.

(b) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the Colorado River in excess of the amount necessary to

b) Cualesquier otros volúmenes que lleguen a los puntos mexicanos de derivación; en la inteligencia de que, cuando a juicio de la Sección de los Estados Unidos, en cualquier año exista en el río Colorado agua en exceso de la necesaria para abastecer los con-

[T.S. 994]

22

supply uses in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually to Mexico, the United States undertakes to deliver to Mexico, in the manner set out in Article 15 of this Treaty, additional waters of the Colorado River system to provide a total quantity not to exceed 1,700,000 acre-feet (2,096,931,000 cubic meters) a year. Mexico shall acquire no right beyond that provided by this subparagraph by the use of the waters of the Colorado River system, for any purpose whatsoever, in excess of 1,500,000 acre-feet (1,850,234,000 cubic meters) annually.

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

ARTICLE 11

(a) The United States shall deliver all waters allotted to Mexico wherever these waters may arrive in the bed of the limitrophe section of the Colorado River, with the exceptions hereinafter provided. Such waters shall be made up of the waters of the said river, whatever their origin, sub-

sumos en los Estados Unidos y el volumen garantizado anualmente a México de 1 850 234 000 metros cúbicos (1 500 000 acres pies), los Estados Unidos se obligan a entregar a México, según lo establecido en el Artículo 15 de este Tratado, cantidades adicionales de agua del sistema del río Colorado hasta por un volumen total que no exceda de 2 096 931 000 metros cúbicos (1 700 000 acres pies) anuales. México no adquirirá ningún derecho, fuera del que le confiere este inciso, por el uso de las aguas del sistema del río Colorado para cualquier fin, en exceso de 1 850 234 000 metros cúbicos (1 500 000 acres pies) anuales.

En los casos de extraordinaria sequía o de serio accidente al sistema de irrigación de los Estados Unidos, que haga difícil a éstos entregar la cantidad garantizada de 1 850 234 000 metros cúbicos (1 500 000 acres pies), por año, el agua asignada a México, según el inciso a) de este Artículo, se reducirá en la misma proporción en que se reduzcan los consumos en los Estados Unidos.

ARTICULO 11

a) Los Estados Unidos entregarán las aguas asignadas a México en cualquier lugar a que lleguen en el lecho del tramo limítrofe del río Colorado, con las excepciones que se citan más adelante. El volumen asignado se formará con las aguas del citado río, cualquiera que sea su fuente, con sujeción a

23.

[T.S. 994]

ject to the provisions of the following paragraphs of this Article. las estipulaciones contenidas en los párrafos siguientes de este Artículo.

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

(c) During the period from the time the Davis dam and reservoir

(b) Del volumen de aguas del río Colorado asignado a México en el inciso a) del Artículo 10 de este Tratado, los Estados Unidos entregarán en cualquier lugar a que lleguen del tramo limítrofe del río, 1 233 489 000 metros cúbicos (1 000 000 de acres pies) de agua anualmente, desde la fecha en que se ponga en operación la presa Davis hasta el primero de enero de 1980 y, después de esta fecha, 1 387 675 000 metros cúbicos (1 125 000 acres pies) de agua cada año. Sin embargo, si la estructura principal de derivación a que se refiere el inciso a) del Artículo 12 de este Tratado quedare localizada totalmente en México, los Estados Unidos entregarán, a solicitud de México, en un lugar mutuamente determinado de la línea terrestre limítrofe cerca de San Luis, Sonora, un volumen de agua que no exceda de 30 837 000 metros cúbicos (25 000 acres pies) anualmente, a menos que se convenga en un volumen mayor. En este último caso, a los mencionados volúmenes de 1 233 489 000 metros cúbicos (1 000 000 de acres pies) y de 1 387 675 000 metros cúbicos (1 125 000 acres pies) que deberán entregarse, como se especifica arriba, en el tramo limítrofe del río, se les deducirán los volúmenes que se entreguen, cada año, cerca de San Luis, Sonora.

(c) En el período comprendido entre la fecha en que la Presa

[T.S. 994]

24

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

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

ARTICLE 12

The two Governments agree to construct the following works:

(a) Mexico shall construct at its expense, within a period of five years from the date of the entry into force of this Treaty, a main diversion structure below the point where the northernmost part of the international land boundary line intersects the Colorado River. If such diversion structure is located in the limitrophe section of the river, its location, design and construction shall be subject to

Davis se ponga en operación y el primero de enero de 1980, los Estados Unidos entregarán anualmente a México, además, del volumen asignado a México, 616 745 000 metros cúbicos (500 000 acres pies) y, a partir de la última fecha citada, 462 558 000 metros cúbicos (375 000 acres pies) anuales, en la línea límite internacional, por conducto del Canal Todo Americano y de un canal que una al extremo inferior de la descarga de Pilot Knob con el Canal del Alamo o con cualquier otro canal mexicano que lo sustituya. En ambos casos las entregas se harán a una elevación de la superficie del agua no mayor que aquella con la que se operaba el Canal del Alamo, en el punto en que cruzaba la línea divisoria en el año de 1943.

d) Todas las entregas de agua especificadas anteriormente se sujetarán a las estipulaciones del Artículo 15 de este Tratado.

ARTICULO 12

Los dos Gobiernos se comprometen a construir las siguientes obras:

a) México construirá a sus expensas, en un plazo de cinco años contados a partir de la fecha en que entre en vigor este Tratado, una estructura principal de derivación ubicada aguas abajo del punto en que la parte más al norte de la línea divisoria internacional terrestre encuentra al río Colorado. Si dicha estructura se localizare en el tramo limitrophe del río, su ubicación, proyecto y

the approval of the Commission. The Commission shall thereafter maintain and operate the structure at the expense of Mexico. Regardless of where such diversion structure is located, there shall simultaneously be constructed such levees, interior drainage facilities and other works, or improvements to existing works, as in the opinion of the Commission shall be necessary to protect lands within the United States against damage from such floods and seepage as might result from the construction, operation and maintenance of this diversion structure. These protective works shall be constructed, operated and maintained at the expense of Mexico by the respective Sections of the Commission, or under their supervision, each within the territory of its own country.

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

(c) The United States shall construct or acquire in its own territory the works that may be necessary to convey a part of the

construcción se sujetarán a la aprobación de la Comisión. Una vez construida la estructura, la Comisión la operará y mantendrá a expensas de México. Independientemente del lugar en que se localice la estructura aludida, simultáneamente se construirán los bordos, drenajes interiores y otras obras de protección y se harán las mejoras a las existentes, según la Comisión estime necesario, para proteger los terrenos ubicados dentro de los Estados Unidos de los daños que pudieran producirse a causa de avenidas y filtraciones como resultado de la construcción, operación y mantenimiento de la citada estructura de derivación. Estas obras de protección serán construidas, operadas y mantenidas, a expensas de México, por las correspondientes Secciones de la Comisión, o bajo su vigilancia, cada una dentro de su propio territorio.

b) Los Estados Unidos construirán, a sus expensas, en su propio territorio, en un plazo de cinco años contados a partir de la fecha en que entre en vigor este Tratado, la presa de almacenamiento Davis, una parte de cuya capacidad se usará para obtener la regularización de las aguas que deben ser entregadas a México de la manera establecida en el Artículo 15 de este Tratado. La operación y mantenimiento de la misma presa serán por cuenta de los Estados Unidos.

c) Los Estados Unidos construirán o adquirirán en su propio territorio las obras que fueren necesarias para hacer llegar una

[T.S. 994]

26

waters of the Colorado River parte de las aguas del río Cololotted to Mexico to the Mexican rado, asignadas a México, a los diversion points on the inter- puntos mexicanos de derivaciónnational land boundary line re- en la línea divisoria internacionalferred to in this Treaty. Among terrestre que se especifican en este these works shall be included: Tratado. Entre estas obras se the canal and other works neces- incluirán: el canal y las otras sary to convey water from the obras necesarias para conducir el lower end of the Pilot Knob agua desde el extremo inferior de Wasteway to the international la descarga de Pilot Knob hasta boundary, and, should Mexico el límite internacional y, a solicitud request it, a canal to connect de México, un canal que conecte the main diversion structure refer- la estructura principal de deriva- to in subparagraph (a) of this ción a que se refiere el inciso a) Article, if this diversion structure de este Artículo, si ésta se con- should be built in the limitrophe struyere en el tramo límite del section of the river, with the río, con el sistema mexicano de Mexican system of canals at a canales en el punto de la línea point to be agreed upon by the divisoria internacional, cerca de Commission on the international San Luis, Sonora, en que convenga land boundary near San Luis, la Comisión. Las obras men- Sonora. Such works shall be con- cionadas serán construidas o ad- structed or acquired and operated quiridas y operadas y mantenidas and maintained by the United por la Sección de los Estados States Section at the expense of Unidos a expensas de México. Mexico. Mexico shall also pay México cubrirá también los costos the costs of any sites or rights of de los sitios y derechos de vía way required for such works. requeridos para dichas obras.

(d) The Commission shall con- d) La Comisión construirá, struct, operate and maintain in the mantendrá y operará en el tramo limitrophe section of the Colorado límite del río Colorado, y cada River, and each Section shall con- Sección construirá, mantendrá y struct, operate and maintain in operará en su territorio respectivo, the territory of its own country. en el río Colorado, aguas abajo de on the Colorado River below Im- la presa Imperial, y en todas las perial Dam and on all other carry- otras obras usadas para entregar ing facilities used for the delivery agua a México, las estaciones of water to Mexico, all necessary hidrométricas y dispositivos ne- cesarios para llevar un registro gaging stations and other measur- completo del caudal que se en- keeping devices for the purpose of tregue a México y del escurri- waters delivered to Mexico and of miento del río. Todos los datos the flows of the river. All data ob- obtenidos al respecto serán com-

tained as to such deliveries and pilados e intercambiados periódica-
flows shall be periodically com- mente por las dos Secciones.
piled and exchanged between the
two Sections.

ARTICLE 13

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

ARTICLE 14

In consideration of the use of the All-American Canal for the delivery to Mexico, in the manner provided in Articles 11 and 15 of this

ARTICULO 13

La Comisión estudiará, investigará y preparará los proyectos para el control de las avenidas en el Bajo Río Colorado, tanto en los Estados Unidos como en México, desde la Presa Imperial hasta el Golfo de California, e informará a los dos Gobiernos, mediante un acta, acerca de las obras que deberán construirse, de la estimación de sus costos y de la parte de las obras que deberá construir cada Gobierno. Los dos Gobiernos convienen en construir, por medio de sus respectivas Secciones de la Comisión, las obras que aprueben, recomendadas por la Comisión, y en pagar los costos de las que respectivamente construyan. De la misma manera, la Comisión recomendará qué porciones de las obras deberán ser operadas y mantenidas conjuntamente por la Comisión y cuáles operadas y mantenidas por cada Sección. Los dos Gobiernos convienen en pagar por partes iguales el costo de la operación y mantenimiento conjuntos, y cada Gobierno conviene en pagar el costo de operación y mantenimiento de las obras asignadas a él con dicho objeto.

ARTICULO 14

En consideración del uso del Canal Todo Americano para la entrega a México, en la forma establecida en los Artículos 11 y

[T.S. 894]

28

Treaty, of a part of its allotment 15 de este Tratado, de una parte of the waters of the Colorado de su asignación a las aguas del River, Mexico shall pay to the río Colorado, México pagará a los United States: Estados Unidos:

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

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

In the event that revenues from the sale of hydro-electric power which may be generated at Pilot Knob become available for the amortization of part or all of the costs of the facilities named in subparagraph (a) of this Article, the part that Mexico should pay of the costs of said facilities shall be reduced or repaid in the same proportion as the balance of the total costs are reduced or repaid. It is understood that any such revenue shall not become available until the cost of any works which may be constructed for the genera-

a) Una parte de los costos reales de la construcción de la Presa Imperial y del tramo Imperial-Pilot Knob del Canal Todo Americano; dicha parte y la forma y términos de su pago serán determinados por los dos Gobiernos, tomando en consideración la proporción en que ambos países usarán las citadas obras. Esta determinación deberá ser hecha tan pronto como sea puesta en operación la Presa Davis.

b) Anualmente, la parte que le corresponda de los costos totales de mantenimiento y operación de aquellas obras. Dichos costos serán prorrateados entre los dos países en proporción a la cantidad de agua entregada anualmente a cada uno de ellos, para su uso, por medio de esas obras.

En el caso de que pueda disponerse de los productos de la venta de la energía hidroeléctrica que se genere en Pilot Knob para la amortización de una parte o de la totalidad de los costos de las obras enumeradas en el inciso a) de este Artículo, la parte que México deberá pagar del costo de dichas obras será reducida o reembolsada en la misma proporción en que se reduzca o reembolse el saldo insoluto de los costos totales. Queda entendido que no podrá disponerse con ese fin de esos productos de la venta de energía

tion of hydro-electric power at said location has been fully amortized from the revenues derived therefrom.

eléctrica sino hasta que el costo de todas las obras construídas en ese lugar para generación de energía eléctrica, haya sido totalmente amortizado con los mencionados productos de la venta de la energía eléctrica.

ARTICLE 15

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

SCHEDULE I

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

With reference to the 1,000,000 acre-foot (1,233,489,000 cubic meter) quantity:

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 600 cubic feet

ARTICULO 15

A. - El agua asignada en el inciso a) del Artículo 10 de este Tratado será entregada a México en los lugares especificados en el Artículo 11, de acuerdo con dos tablas anuales de entregas mensuales, que se indican a continuación, y que la Sección Mexicana formulará y presentará a la Comisión antes del principio de cada año civil:

TABLA I

La tabla I detallará la entrega en el tramo limitrofe del río Colorado de 1 233 489 000 metros cúbicos (1 000 000 de acres pies) anuales de agua, a partir de la fecha en que la Presa Davis se ponga en operación, hasta el primero de enero de 1980, y la entrega de 1 387 675 000 metros cúbicos (1 125 000 acres pies) anuales de agua después de esa fecha. Esta tabla se formulará con sujeción a las siguientes limitaciones:

Para el volumen de 1 233 489 000 metros cúbicos (1 000 000 de acres pies):

a) Durante los meses de enero, febrero, octubre, noviembre y diciembre, el gasto de entrega no será menor de 17.0 metros cúbicos (600 pies cúbicos) ni

[T.S. 994]

30

(17.0 cubic meters) nor more than 3,500 cubic feet (99.1 cubic meters) per second.

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

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

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

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

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

mayor de 99.1 metros cúbicos (3 500 pies cúbicos) por segundo.

b) Durante los meses restantes del año, el gasto de entrega no será menor de 28.3 metros cúbicos (1 000 pies cúbicos) ni mayor de 99.1 metros cúbicos (3 500 pies cúbicos) por segundo.

Para el volumen de 1 387 675 000 metros cúbicos (1 125 000 acres pies):

a) Durante los meses de enero, febrero, octubre, noviembre y diciembre, el gasto de entrega no será menor de 19.1 metros cúbicos (675 pies cúbicos) ni mayor de 113.3 metros cúbicos (4 000 pies cúbicos) por segundo.

b) Durante los meses restantes del año, el gasto de entrega no será menor de 31.9 metros cúbicos (1 125 pies cúbicos) ni mayor de 113.3 metros cúbicos (4 000 pies cúbicos) por segundo.

En el caso en que se hagan entregas de agua en un lugar de la línea divisoria terrestre cercano a San Luis, Sonora, de acuerdo con lo establecido en el Artículo 11, dichas entregas se sujetarán a una subtabla que formulará y proporcionará la Sección Mexicana. Los volúmenes y gastos mensuales de entrega especificados en dicha subtabla estarán en proporción a los especificados para la Tabla I, salvo que la Comisión acuerde otra cosa.

SCHEDULE II

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

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

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

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

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

(a) During the months of January, February, October, November and December the prescribed rate of delivery shall be not less than 225 cubic feet

TABLA II

La tabla II detallará la entrega en la línea divisoria de las aguas procedentes del Canal Todo Americano, de un volumen de 616 745 000 metros cúbicos (500 000 acres pies) anuales de agua a partir de la fecha en que la Presa Davis sea puesta en operación, hasta el primero de enero de 1980, y de 462 558 000 metros cúbicos (375 000 acres pies) de agua anuales después de esa fecha. Esta tabla se formulará con sujeción a las siguientes limitaciones:

Par el volumen de 616 745 000 metros cúbicos (500 000 acres pies):

a) Durante los meses de enero, febrero, octubre, noviembre y diciembre, el gasto de entrega no será menor de 8.5 metros cúbicos (300 pies cúbicos), ni mayor de 56.6 metros cúbicos (2 000 pies cúbicos) por segundo.

b) Durante los meses restantes del año, el gasto de entrega no será menor de 14.2 metros cúbicos (500 pies cúbicos), ni mayor de 56.6 metros cúbicos (2 000 pies cúbicos) por segundo.

Para el volumen de 462 558 000 metros cúbicos (375 000 acres pies):

a) Durante los meses de enero, febrero, octubre, noviembre y diciembre, el gasto de entrega no será menor de 6.4 metros cúbicos (225 pies cúbicos)

[T.S. 994]

32

(6.4 cubic meters) nor more than 1,500 cubic feet (42.5 cubic meters) per second.

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

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

C. The United States shall have the option of delivering, at the point on the land boundary mentioned in subparagraph (c) of Article 11, any part or all of the water to be delivered at that point under Schedule II of this Article during the months of January, February, October, November and December of each year, from any source whatsoever, with the

cos) ni mayor de 42.5 metros cúbicos (1 500 pies cúbicos) por segundo.

b) Durante los meses restantes del año, el gasto de entrega no será menor de 10.6 metros cúbicos (375 pies cúbicos), ni mayor de 42.5 metros cúbicos (1 500 pies cúbicos) por segundo.

B. - Los Estados Unidos no estarán obligados a entregar por el Canal Todo Americano más de 616 745 000 metros cúbicos (500 000 acres pies) anuales desde la fecha en que se ponga en operación la Presa Davis hasta el primero de enero de 1980, ni más de 462 558 000 metros cúbicos (375 000 acres pies) anuales después de esa última fecha. Si por acuerdo mutuo se entregare a México cualquiera parte de los volúmenes de agua especificados en este párrafo, en puntos de la línea terrestre internacional distintos del lugar en que se haga la entrega por el Canal Todo Americano, los gastos de entrega y los volúmenes de agua arriba mencionados y determinados en la Tabla II de este Artículo, serán disminuídos en las cantidades correspondientes.

C. - Durante los meses de enero, febrero, octubre, noviembre y diciembre de cada año, los Estados Unidos tendrá la opción de entregar, en el lugar de la línea divisoria internacional determinado en el inciso c) del Artículo 11, de cualquier fuente que sea, una parte o la totalidad del volumen de agua que deberá ser entregado en ese lugar de acuerdo

understanding that the total specified annual quantities to be delivered through the All-American Canal shall not be reduced because of the exercise of this option, unless such reduction be requested by the Mexican Section, provided that the exercise of this option shall not have the effect of increasing the total amount of scheduled water to be delivered to Mexico.

D. In any year in which there shall exist in the river water in excess of that necessary to satisfy the requirements in the United States and the guaranteed quantity of 1,500,000 acre-feet (1,850,234,000 cubic meters) allotted to Mexico, the United States hereby declares its intention to cooperate with México in attempting to supply additional quantities of water through the All-American Canal as such additional quantities are desired by Mexico, if such use of the Canal and facilities will not be detrimental to the United States, provided that the delivery of any additional quantities through the All-American Canal shall not have the effect of increasing the total scheduled deliveries to Mexico. Mexico hereby declares its intention to cooperate with the United States by attempting to curtail deliveries of water through the All-American Canal in years of limited supply, if such curtailment can be accomplished without detriment to Mexico and is necessary to allow full use of all available water supplies, provided that such curtailment shall not have the effect of reducing the total amount of water delivered to Mexico.

con la Tabla II de este Artículo. El ejercicio de la anterior opción, no producirá la reducción de los volúmenes totales anuales especificados para ser entregados por el Canal Todo Americano, a menos que dicha reducción sea solicitada por la Sección Mexicana, ni implicará el aumento del volumen total de agua tabulada que deberá entregarse a México.

D. - En cualquier año en que haya agua en el río en exceso de la necesaria para satisfacer las demandas en los Estados Unidos y el volumen garantizado de 1 850 234 000 metros cúbicos (1 500 000 acres pies) asignado a México, los Estados Unidos declaran su intención de cooperar con México procurando abastecer, por el Canal Todo Americano, los volúmenes adicionales de agua que México desee, si ese uso del Canal y de las obras respectivas no resultare perjudicial a los Estados Unidos; en la inteligencia de que la entrega de los volúmenes adicionales de agua por el Canal Todo Americano no significará el aumento del volumen total de entregas de agua tabulado para México. Por su parte, México declara su intención de cooperar con los Estados Unidos durante los años de abastecimiento limitado tratando de reducir las entregas de agua por el Canal Todo Americano si dicha reducción pudiere llevarse a efecto sin perjuicio para México y si fuere necesaria para hacer posible el aprovechamiento total del agua disponible; en la inteligencia de que dicha reducción no tendrá el

[T.S. 994]

34

ing the total scheduled deliveries of water to Mexico.

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

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

G. The total quantity of water to be delivered under Schedule I of paragraph A of this Article may be increased in any year if the amount to be delivered under Schedule II

efecto de disminuir el total de entregas de agua tabulado para México.

E. - En cualquier año en que haya agua en el río en exceso de la cantidad necesaria para satisfacer las demandas en los Estados Unidos y el volumen garantizado de 1 850 234 000 metros cúbicos (1 500 000 acres pies) asignado a México, la Sección de los Estados Unidos lo informará así a la Sección Mexicana con objeto de que esta última pueda tabular las aguas excedentes hasta completar un volumen máximo de 2 096 931 000 metros cúbicos (1 700 000 acres pies). En este caso los volúmenes totales que se entregarán de acuerdo con las Tablas números I y II serán aumentados en proporción a sus respectivos volúmenes totales y las dos tablas así incrementadas quedarán sujetas a las mismas limitaciones establecidas, para cada una de ellas, en el párrafo A de este Artículo.

F. - Con sujeción a las limitaciones fijadas en las Tablas I y II por lo que toca a los gastos de entrega y a los volúmenes totales, México tendrá el derecho de aumentar o disminuir, mediante avisos dados a la Sección de los Estados Unidos con 30 días de anticipación, cada uno de los volúmenes mensuales establecidos en esas tablas, en una cantidad que no exceda del 20% de su respectivo monto.

G. - En cualquier año, el volumen total de agua que deberá entregarse de acuerdo con la Tabla I a que se refiere el párrafo A de este Artículo, podrá ser

is correspondingly reduced and if the limitations as to rates of delivery under each schedule are correspondingly increased and reduced.

aumentado, si el volumen de agua que se entregue de acuerdo con la Tabla II se redujere en el mismo volumen y si las limitaciones en cuanto a gastos de entrega estipulados para cada tabla se aumentan y se reducen correspondientemente.

IV - TIJUANA RIVER

ARTICLE 16

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

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

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

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

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

The two Governments through their respective Sections of the Commission shall construct such of the proposed works as are

IV - RIO TIJUANA

ARTICULO 16

Con el objeto de mejorar los usos existentes y de asegurar cualquier desarrollo futuro factible, la Comisión estudiará, investigará y someterá a los dos Gobiernos para su aprobación:

(1) Recomendaciones para la distribución equitativa entre los dos países de las aguas del sistema del río Tijuana;

(2) Proyectos de almacenamiento y control de avenidas a fin de fomentar y desarrollar los usos domésticos, de irrigación y demás usos factibles de las aguas de este sistema;

(3) Estimaciones de los costos de las obras propuestas y de la forma en que la construcción de dichas obras o los costos de las mismas deberán ser divididos entre los dos Gobiernos;

(4) Recomendaciones respecto de las partes de las obras que deberán ser operadas y mantenidas por la Comisión y las partes de las mismas que deberán ser operadas y mantenidas por cada Sección.

Los dos Gobiernos, cada uno por conducto de sus respectivas Secciones de la Comisión, construirán las obras que propongan

[T.S. 994]

36

approved by both Governments, y aprueben ambos Gobiernos, se shall divide the work to be done or dividirán la cantidad de obra o su the cost thereof, and shall distrib- costo y se distribuirán las aguas ute between the two countries del sistema del río Tijuana en las the waters of the Tijuana River proporciones que ellos decidan. system in the proportions ap- Los dos Gobiernos convienen en proved by the two Governments. pagar por partes iguales el costo The two Governments agree to de la operación y mantenimiento pay in equal shares the costs of conjuntos de las obras, y cada joint operation and maintenancé Gobierno conviene en pagar el of the works involved, and each costo de operación y manteni- Government agrees to pay the miento de las obras asignadas a cost of operation and maintenance él con dicho objeto. of the works assigned to it for such purpose.

V - GENERAL PROVISIONS

V - DISPOSICIONES GENERALES

ARTICLE 17

ARTICULO 17

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

El uso del cauce de los ríos internacionales para la descarga de aguas de avenida o de otras excedentes será libre y sin limitación para los dos países y ninguno de ellos podrá presentar reclamaciones al otro por daños causados por dicho uso. Cada uno de los Gobiernos conviene en proporcionar al otro, con la mayor anticipación posible, la información que tenga sobre las salidas de agua extraordinarias de las presas y las crecientes de los ríos que existan en su propio territorio y que pudieran producir inundaciones en el territorio del otro.

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

Cada Gobierno declara su intención de operar sus presas de almacenamiento en tal forma, compatible con la operación normal de sus sistemas hidráulicos, que evite, en cuanto sea factible, que se produzcan daños materiales en el territorio del otro.

ARTICLE 18

Public use of the water surface of lakes formed by international dams shall, when not harmful to the services rendered by such dams, be free and common to both countries, subject to the police regulations of each country in its territory, to such general regulations as may appropriately be prescribed and enforced by the Commission with the approval of the two Governments for the purpose of the application of the provisions of this Treaty, and to such regulations as may appropriately be prescribed and enforced for the same purpose by each Section of the Commission with respect to the areas and borders of such parts of those lakes as lie within its territory. Neither Government shall use for military purposes such water surface situated within the territory of the other country except by express agreement between the two Governments.

ARTICULO 18

El uso civil de las superficies de las aguas de los lagos de las presas internacionales, cuando no sea en detrimento de los servicios a que están destinadas dichas presas, será libre y común para ambos países, sujeto a los reglamentos de policía de cada país en su territorio, a los reglamentos generales pertinentes que establezca y ponga en vigor la Comisión con la aprobación de los dos Gobiernos con el fin de aplicar las disposiciones de este Tratado, y a los reglamentos pertinentes que establezca y ponga en vigor cada Sección de la Comisión, con el mismo fin, respecto a las áreas y orillas de aquellas partes de los lagos comprendidas dentro de su territorio. Ninguno de los dos Gobiernos podrá usar para fines militares las superficies de las aguas situadas dentro del territorio del otro país sin un convenio expreso entre los dos Gobiernos.

ARTICLE 19

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

ARTICULO 19

Los dos Gobiernos celebrarán los convenios especiales que sean necesarios para reglamentar la generación, el desarrollo y utilización de la energía eléctrica en las plantas internacionales y los requisitos para exportar la corriente eléctrica.

ARTICLE 20

The two Governments shall, through their respective Sections of the Commission, carry out the construction of works allotted to

ARTICULO 20

Los dos Gobiernos, por conducto de sus respectivas Secciones de la Comisión, llevarán a cabo los trabajos de construcción que les

[T.S. 994]

38

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

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

Each Government shall assume responsibility for and shall adjust exclusively in accordance with its own laws all claims arising within its territory in connection with the construction, operation or

sean asignados, empleando, para ese fin, los organismos públicos o privados competentes de acuerdo con sus propias leyes. Respecto a las obras que cualquiera de las Secciones de la Comisión deba ejecutar en el territorio de la otra, observará en la ejecución del trabajo las leyes del lugar donde se efectúe, con las excepciones que en seguida se consignan.

Todos los materiales, implementos, equipos y refacciones destinados a la construcción de las obras, su operación y mantenimiento, quedarán exceptuados de tributos fiscales de importación y exportación. Todo el personal empleado directa o indirectamente en la construcción, operación y mantenimiento de las obras, podrá pasar libremente de un país al otro con objeto de ir al lugar de su trabajo, o regresar de él, sin restricciones de inmigración, pasaporte, o requisitos de trabajo. Cada Gobierno proporcionará, por medio de su respectiva Sección de la Comisión, una identificación conveniente al personal empleado por la misma en las mencionadas labores y un certificado de verificación para los materiales, implementos, equipos y refacciones destinados a las obras.

En caso de que se presenten reclamaciones en conexión con la construcción, operación o mantenimiento de la totalidad o de cualquiera parte de las obras aquí convenidas o que, en cumplimen-

maintenance of the whole or of any part of the works herein agreed upon, or of any works which may, in the execution of this Treaty, be agreed upon in the future.

to de este Tratado, se convenga en lo futuro, el Gobierno del país en cuyo territorio se hayan originado tales reclamaciones asumirá la responsabilidad de todas ellas y las ajustará de acuerdo con sus propias leyes exclusivamente.

ARTICLE 21

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

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

ARTICULO 21

La construcción de las presas internacionales y la formación de sus lagos artificiales no producirá variación alguna de la línea divisoria internacional fluvial, la que continuará siendo la establecida en los tratados y convenciones vigentes entre los dos países.

La Comisión, con la aprobación de los dos Gobiernos, fijará en los lagos artificiales, por medio de boyas o por cualquier otro procedimiento que juzgue adecuado, una línea más sencilla y conveniente para los efectos prácticos del ejercicio de la jurisdicción y del control que a dicha Comisión y a cada una de sus Secciones les confiere y les impone este Tratado. La línea aludida marcará, igualmente, el límite para la aplicación de los respectivos reglamentos fiscales y de policía de los dos países.

ARTICLE 22

The provisions of the Convention between the United States and Mexico for the rectification of the Rio Grande (Rio Bravo) in the El Paso-Juárez Valley signed on February 1, 1933, [1] shall govern, so far as delimitation of the boundary, distribution of jurisdiction and sovereignty, and relations

ARTICULO 22

Las estipulaciones de la Convención entre los Estados Unidos y México, del 1º de febrero de 1933, para la Rectificación del Río Bravo del Norte (Grande) en el Valle de Juárez-El Paso, en lo que se refiere a delimitación de fronteras, atribución de jurisdicción y soberanía y relaciones con pro-

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

UPDATING THE HOOVER DAM DOCUMENTS

[T.S. 994]

40

with private owners are concerned, pietarios particulares, regirán en in any places where works for the los lugares donde se hagan las artificial channeling, canalization obras de encauzamiento, canali- or rectification of the Rio Grande zación o rectificación del río Bravo (Rio Bravo) and the Colorado (Grande) y del río Colorado. River are carried out.

ARTICLE 23

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

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

The Commission shall determine the cases in which it shall become necessary to locate works for the conveyance of water or electrical energy and for the servicing of any such works, for the benefit of either of the two countries, in the territory of the other country, in order that such works can be built pursuant to agreement between the two Govern-

ARTICULO 23

Los dos Gobiernos reconocen la utilidad pública de las obras necesarias para la aplicación y cumplimiento de este Tratado y, por consiguiente, se comprometen a adquirir, de acuerdo con sus respectivas leyes internas, las propiedades privadas que se necesiten para la ejecución de las obras de referencia, comprendiendo, además de las obras principales, sus anexos y el aprovechamiento de materiales de construcción, y para la operación y mantenimiento de ellas, a expensas del país en donde se encuentren dichas propiedades, con las excepciones que expresamente establece este Tratado.

Cada una de las Secciones de la Comisión fijará en su correspondiente país la extensión y ubicación de las propiedades privadas que deban ser adquiridas y hará a su respectivo Gobierno la solicitud pertinente para que las adquiera.

La Comisión determinará los casos en que sea necesario ubicar obras para la conducción de agua o energía eléctrica y para los servicios anexos a las mismas obras, en beneficio de cualquiera de los dos países, en territorio del otro, para que dichas obras puedan construirse por acuerdo de los dos Gobiernos. Dichas obras quedarán bajo la jurisdicción y vigi-

ments. Such works shall be subject to the jurisdiction and supervision of the Section of the Commission within whose country they are located.

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

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

lancia de la Sección de la Comisión del país en que se encuentren.

La construcción de las obras, en cumplimiento de las disposiciones de este Tratado, no conferirá a ninguno de los dos países derechos ni de propiedad ni de jurisdicción sobre ninguna parte del territorio del otro. Las obras constituirán parte del territorio y pertenecerán al país dentro del cual se hallen. Sin embargo, para sucesos ocurridos sobre las obras construídas en los tramos limítrofes de los ríos y que se apoyen en ambas márgenes, la jurisdicción de cada país quedará limitada por el eje medio de dichas obras—el cual será marcado por la Comisión—sin que por eso varíe la línea divisoria internacional.

Cada Gobierno por medio de su respectiva Sección de la Comisión, conservará dentro de los límites y en la extensión necesaria para cumplir con las disposiciones de este Tratado, el dominio directo, control y jurisdicción dentro de su propio territorio y de acuerdo con sus leyes, sobre los inmuebles—incluyendo los que estén dentro del cauce del río—los derechos de vía y los derechos reales que sea necesario ocupar para la construcción, operación y mantenimiento de todas las obras que se construyan, adquieran o usen de acuerdo con este Tratado. Asimismo, cada Gobierno adquirirá y conservará en su poder, en

[T.S. 994]

42

in its own possession the titles, la misma forma, los títulos, control control and jurisdiction over such y jurisdicción sobre tales obras. works.

ARTICLE 24

ARTICULO 24

The International Boundary and Water Commission shall have, La Comisión Internacional de Límites y Aguas tendrá las siguientes facultades y obligaciones, in addition to the powers and duties otherwise specifically provided in this Treaty, the following en adición a las establecidas específicamente en este Tratado: powers and duties:

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

(a) Iniciar, llevar a cabo las investigaciones y desarrollar los proyectos de las obras que deberán ser construídas o establecidas de acuerdo con las estipulaciones de éste y de los demás tratados y convenios vigentes entre los dos Gobiernos, relativos a límites y aguas internacionales; determinar la localización, magnitud, calidad y especificaciones características de dichas obras; estimar su costo; y recomendar la forma en que éste deberá repartirse entre los dos Gobiernos y los arreglos para proveer los fondos necesarios, y las fechas en que deberán principiarse las obras, en todo lo que las cuestiones mencionadas en este inciso no estén reglamentadas en forma distinta por disposiciones específicas de éste o de algún otro tratado.

(b) To construct the works agreed upon or to supervise their construction and to operate and maintain such works or to supervise their operation and maintenance, in accordance with the respective domestic laws of each country. Each Section shall have, to the extent necessary to give effect to the provisions of this

(b) Construir o vigilar la construcción y después operar y mantener o vigilar la operación y mantenimiento de las obras convenidas, con sujeción a las respectivas leyes de cada país. Cada Sección tendrá jurisdicción sobre las obras construídas exclusivamente en el territorio de su país, hasta el límite necesario para cum-

Treaty, jurisdiction over the works constructed exclusively in the territory of its country whenever such works shall be connected with or shall directly affect the execution of the provisions of this Treaty.

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

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

plir con las disposiciones de este Tratado y siempre que dichas obras tengan conexión con las estipulaciones aludidas o alguna influencia en la ejecución de las mismas.

c) En general, ejercer las facultades y cumplir con las obligaciones específicas impuestas a la Comisión por éste y otros Tratados y Convenios vigentes entre los dos países, ejecutar sus disposiciones y evitar la violación de las mismas. Las autoridades de cada país ayudarán y apoyarán a la Comisión en el ejercicio de estas facultades, pudiendo cada Comisionado requerir, siempre que sea necesario, el imperio de los tribunales o de otras dependencias gubernamentales competentes de su país, con objeto de obtener ayuda en la ejecución y cumplimiento de estas facultades y obligaciones.

d) Resolver, con la aprobación de los dos Gobiernos, todas las diferencias que se susciten entre ellos sobre la interpretación o la aplicación del presente Tratado. Si los Comisionados no llegaren a un acuerdo, darán aviso a su Gobierno, expresando sus opiniones respectivas, los fundamentos de su decisión y los puntos en que difieran, para la discusión y ajuste de la discrepancia por la vía diplomática, o con objeto de que se apliquen, en su caso, los convenios generales o especiales celebrados entre los mismos Gobiernos para resolución de controversias.

[T.S. 994]

44

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

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

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

e) Proporcionar las informaciones que los dos Gobiernos soliciten conjuntamente de los Comisionados sobre asuntos de su jurisdicción. En caso de que la solicitud sea hecha por un solo Gobierno, el Comisionado del otro, necesitará la autorización expresa de su Gobierno para atenderla.

f) La Comisión construirá, operará y mantendrá en los tramos limítrofes de las corrientes internacionales, y cada Sección construirá, operará y mantendrá separadamente en las porciones de las corrientes internacionales y de sus afluentes que queden dentro de los límites de su propio país, las estaciones de aforo que sean necesarias para obtener los datos hidrográficos necesarios o convenientes para el funcionamiento adecuado de este Tratado. Los datos así obtenidos serán recopilados e intercambiados periódicamente entre las dos Secciones.

g) La Comisión someterá anualmente a los dos Gobiernos un informe conjunto sobre los asuntos que estén a su cargo. Asimismo, la Comisión someterá a los dos Gobiernos los informes conjuntos, generales o sobre cualquier asunto especial, cuando lo considere necesario o lo soliciten los dos Gobiernos.

ARTICLE 25

Except as otherwise specifically provided in this Treaty, Articles III and VII of the Convention of March 1, 1889 shall govern the

ARTICULO 25

Con las excepciones específicamente establecidas en este Tratado, los procedimientos de la Comisión, para la ejecución de las

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

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

If either Government disapproves a decision of the Commission the two Governments shall take cognizance of the matter, and if an agreement regarding such matter is reached between the two Governments, the agree-

estipulaciones del mismo, se regirán por los Artículos III y VII de la Convención de primero de marzo de 1889. En adición y en concordancia con las disposiciones citadas y con las estipulaciones de este Tratado, la Comisión establecerá las normas y reglamentos que regirán, una vez aprobados por ambos Gobiernos, los procedimientos de la propia Comisión.

Los acuerdos de la Comisión se harán constar en forma de actas, levantadas por duplicado, en inglés y en español, firmadas por ambos Comisionados y bajo la fe de los Secretarios, una copia de cada una de las cuales será enviada a cada Gobierno dentro de los tres días siguientes a su firma. Excepto en los casos en que, de acuerdo con las disposiciones de este Tratado, se requiera específicamente la aprobación de los dos Gobiernos, si un Gobierno deja de comunicar a la Comisión su acuerdo aprobatorio o reprobatorio, dentro del término de 30 días contados a partir de la fecha que tenga el acta, se darán por aprobadas ésta y las resoluciones en ella contenidas. Los Comisionados ejecutarán las resoluciones de la Comisión, aprobadas por ambos Gobiernos, dentro de los límites de sus respectivas jurisdicciones.

En los casos en que cualquiera de los dos Gobiernos desapruuebe un acuerdo de la Comisión, ambos Gobiernos tomarán conocimiento del asunto y, si llegaren a un acuerdo, éste se comunicará a los Comisionados con objeto de que

[T.S. 994]

46

ment shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ellos sigan los procedimientos necesarios para llevar a cabo lo que sea conveniente.

VI - TRANSITORY PROVISIONS

VI - DISPOSICIONES TRANSITORIAS

ARTICLE 26

ARTICULO 26

During a period of eight years from the date of the entry into force of this Treaty, or until the beginning of operation of the lowest major international reservoir on the Rio Grande (Rio Bravo), should it be placed in operation prior to the expiration of said period, Mexico will cooperate with the United States to relieve, in times of drought, any lack of water needed to irrigate the lands now under irrigation in the Lower Rio Grande Valley in the United States, and for this purpose Mexico will release water from El Azúcar reservoir on the San Juan River and allow that water to run through its system of canals back into the San Juan River in order that the United States may divert such water from the Rio Grande (Rio Bravo). Such releases shall be made on condition that they do not affect the Mexican irrigation system, provided that Mexico shall, in any event, except in cases of extraordinary drought or serious accident to its hydraulic works, release and make available to the United States for its use the quantities requested, under the following conditions: that during the said eight years there shall be made available a total of 160,000 acre-feet (197,358,000 cubic me-

Durante un lapso de ocho años contados a partir de la fecha en que principie la vigencia de este Tratado, o hasta que sea puesta en operación la presa inferior principal internacional de almacenamiento en el río Bravo (Grande), si se pone en operación antes de aquel plazo, México cooperará con los Estados Unidos para aliviar, en periodos de escasez, la falta del agua necesaria para regar las tierras que actualmente se riegan en el valle del Bájío Río Bravo (Grande), en los Estados Unidos, y, al efecto, México extraerá agua de la presa de El Azúcar en el Río San Juan y la dejará correr por medio de su sistema de canales al río San Juan, con objeto de que los Estados Unidos puedan derivarla del río Bravo (Grande). Dichas extracciones se harán siempre que no afecten la operación del sistema de riego mexicano; sin embargo, México se obliga, salvo casos de escasez extraordinaria o de serio accidente a sus obras hidráulicas, a dejar salir y a abastecer los volúmenes pedidos por los Estados Unidos, para su uso, bajo las siguientes condiciones: que en los ocho años citados se abastecerá un total de 197 358 000 metros cúbicos (160 000 acres pies) y, en un año

ters) and up to 40,000 acre-feet (49,340,000 cubic meters) in any one year; that the water shall be made available as requested at rates not exceeding 750 cubic feet (21.2 cubic meters) per second; that when the rates of flow requested and made available have been more than 500 cubic feet (14.2 cubic meters) per second the period of release shall not extend beyond fifteen consecutive days; and that at least thirty days must elapse between any two periods of release during which rates of flow in excess of 500 cubic feet (14.2 cubic meters) per second have been requested and made available. In addition to the guaranteed flow, Mexico shall release from El Azúcar reservoir and conduct through its canal system and the San Juan River, for use in the United States during periods of drought and after satisfying the needs of Mexican users, any excess water that does not in the opinion of the Mexican Section have to be stored and that may be needed for the irrigation of lands which were under irrigation during the year 1943 in the Lower Rio Grande Valley in the United States.

determinado, un volumen hasta de 49 340 000 metros cúbicos (40 000 acres pies); que el agua se abastecerá a medida que sea solicitada y en gastos que no excedan de 21.2 metros cúbicos (750 pies cúbicos) por segundo; que cuando los gastos solicitados y abastecidos excedan de 14.2 metros cúbicos (500 pies cúbicos) por segundo, el período de extracción no se prolongará por más de 15 días consecutivos; y que deberán transcurrir cuando menos treinta días entre dos extracciones en el caso de que se hayan abastecido solicitudes para gastos mayores de 14.2 metros cúbicos (500 pies cúbicos) por segundo. Además de los volúmenes garantizados, México dejará salir de la presa de El Azúcar y conducirá por su sistema de canales y el río San Juan, para su uso en los Estados Unidos, durante los períodos de sequía y después de haber satisfecho todos los requerimientos de los usuarios mexicanos, aquellas aguas excedentes que, a juicio de la Sección Mexicana no necesiten almacenarse, para ayudar al riego de las tierras que, en el año de 1943, se regaban, en el citado valle del Bajo Río Bravo (Grande) en los Estados Unidos.

ARTICLE 27

The provisions of Article 10, 11, and 15 of this Treaty shall not be applied during a period of five years from the date of the entry into force of this Treaty, or until the Davis dam and the major Mexican diversion structure on the Colorado River are placed in

ARTICULO 27

Durante un lapso de cinco años, contados a partir de la fecha en que principie la vigencia de este Tratado, o hasta que puestas en operación la Presa Davis y la estructura mexicana principal de derivación en el río Colorado, si se ponen en operación estas obras

[T.S. 994]

48

operation, should these works be placed in operation prior to the expiration of said period. In the meantime Mexico may construct and operate at its expense a temporary diversion structure in the bed of the Colorado River in territory of the United States for the purpose of diverting water into the Alamo Canal, provided that the plans for such structure and the construction and operation thereof shall be subject to the approval of the United States Section. During this period of time the United States will make available in the river at such diversion structure river flow not currently required in the United States, and the United States will cooperate with Mexico to the end that the latter may satisfy its irrigation requirements within the limits of those requirements for lands irrigated in Mexico from the Colorado River during the year 1943.

antes de aquel plazo, no se aplicarán los Artículos 10, 11 y 15 de este Tratado y, mientras tanto, México podrá construir y operar a sus expensas, en territorio de los Estados Unidos, una estructura de derivación provisional en el lecho del río Colorado, destinada a derivar agua hacia el canal del Alamo; en la inteligencia de que los planos para dicha estructura, su construcción y operación quedarán sujetos a la aprobación de la Sección de los Estados Unidos. Durante el mismo período los Estados Unidos pondrán a disposición de México en el lugar del río en que se construya dicha estructura, los caudales que a la sazón no se requieran en los Estados Unidos y ofrecen cooperar con México a fin de que éste pueda satisfacer sus necesidades de riego, dentro de los límites que tuvieron esas necesidades en las tierras regadas en México con aguas del río Colorado en el año de 1943.

VII - FINAL PROVISIONS

VII - DISPOSICIONES FINALES

ARTICLE 28

ARTICULO 28

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

Este Tratado será ratificado y las ratificaciones canjeadas en la ciudad de Wáshington. Entrará en vigor el día del canje de ratificaciones y regirá indefinidamente hasta que sea terminado por otro Tratado concluído al efecto entre los dos Gobiernos.

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

En testimonio de lo cual los respectivos Plenipotenciarios han firmado este Tratado y agregado sus sellos.

Done in duplicate in the English and Spanish languages, in Wash-

Hecho en duplicado, en los idiomas inglés y español, en la Ciudad

ington on this third day of Febru- de Wáshington, el día tres de
ary, 1944. febrero de 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

CORDELL HULL [SEAL]

GEORGE S. MESSERSMITH [SEAL]

LAWRENCE M. LAWSON. [SEAL]

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NÁJERA [SEAL]

RAFAEL FERNÁNDEZ MACGREGOR [SEAL]

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UPDATING THE HOOVER DAM DOCUMENTS

PROTOCOL

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

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

PROTOCOLO

El Gobierno de los Estados Unidos de América y el Gobierno de los Estados Unidos Mexicanos convienen y tienen entendido que:

Siempre que en virtud de lo dispuesto en el Tratado entre los Estados Unidos de América y los Estados Unidos Mexicanos, firmado en Washington el 3 de febrero de 1944, relativo al aprovechamiento de las aguas de los ríos Colorado y Tijuana; y del río Bravo (Grande) desde Fort Quitman, Texas, hasta el Golfo de México, se impongan funciones específicas o se confiera jurisdicción exclusiva a cualquiera de las Secciones de la Comisión Internacional de Límites y Aguas, que entrañen la construcción o uso de obras de almacenamiento o de conducción de agua, de control de avenidas, de aforos o para cualquier otro objeto, que estén situadas totalmente dentro del territorio del país al que corresponda esa Sección y que se usen solamente en parte para cumplir con las disposiciones del Tratado, dicha jurisdicción la ejercerán y las referidas funciones, incluso la construcción, operación y conservación de las obras de que se trata, las desempeñarán y realizarán las dependencias federales de ese mismo país, que estén facultadas, en virtud de sus leyes internas actualmente en vigor o que en lo futuro se dicten, para construir, operar y conservar dichas obras. Las citadas funciones y jurisdic-

with the respective Section of the Commission, to the end that all international obligations and functions may be coordinated and fulfilled.

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

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

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

Done in duplicate, in the English and Spanish languages, in

ciones se ejercerán observando las disposiciones del Tratado y en cooperación con la respectiva Sección de la Comisión, con el objeto de que todas las obligaciones y funciones internacionales puedan coordinarse y cumplirse.

Las obras que se construyan o usen en la línea divisoria o a lo largo de ella, así como las que se construyan o usen exclusivamente para cumplir con las estipulaciones del Tratado, quedarán bajo la jurisdicción de la Comisión o de la Sección correspondiente de acuerdo con lo dispuesto por el mismo. Para llevar a cabo la construcción de dichas obras, las Secciones de la Comisión podrán utilizar los servicios de organismos públicos o privados, de acuerdo con las leyes de sus respectivos países.

Este Protocolo, que se considerará parte integral del susodicho Tratado firmado en Washington el 3 de febrero de 1944, será ratificado y las ratificaciones canjeadas en Washington. Este Protocolo entrará en vigor a partir del día en que empiece a regir el Tratado y continuará en vigor por todo el tiempo que esté vigente éste.

En testimonio de lo cual los respectivos Plenipotenciarios han firmado este Protocolo y le han agregado sus sellos.

Hecho en duplicado, en los idiomas inglés y español, en Wásh-

UPDATING THE HOOVER DAM DOCUMENTS

[T.S. 994]

52

Washington, this fourteenth day ingtón, el día catorce de noviembre
of November, 1944. de 1944.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

E R STETTINIUS Jr [SEAL]
Acting Secretary of State
of the United States of America

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES:

F. CASTILLO NÁJERA [SEAL]
Ambassador Extraordinary and Plenipotentiary
of the United Mexican States in Washington

AND WHEREAS the Senate of the United States of America by their Resolution of April 18, 1945, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said treaty and protocol, subject to certain understandings, the text of which Resolution is word for word as follows:

“Resolved (two-thirds of the Senators present concurring therein),
That the Senate advise and consent to the ratification of Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol, signed at Washington on November 14, 1944, supplementary to the treaty, subject to the following understandings, and that these understandings will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will in effect form a part of the treaty:

“(a) That no commitment for works to be built by the United States in whole or in part at its expense, or for expenditures by the United States, other than those specifically provided for in the treaty, shall be made by the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, or any other officer or employee of the United States, without prior approval of the Congress of the United States. It is understood that the works to be built by the United States, in whole or in part at its expense, and the expenditures by the United States, which are specifically provided for in the treaty, are as follows:

“1. The joint construction of the three storage and flood-control dams on the Rio Grande below Fort Quitman, Texas, mentioned in article 5 of the treaty.

“2. The dams and other joint works required for the diversion of the flow of the Rio Grande mentioned in subparagraph II of article 5 of the treaty, it being understood that the commitment of the United States to make expenditures under this subparagraph is limited to its share of the cost of one dam and works appurtenant thereto.

“3. Stream-gaging stations which may be required under the provisions of section (j) of article 9 of the treaty and of subparagraph (d) of article 12 of the treaty.

“4. The Davis Dam and Reservoir mentioned in subparagraph (b) of article 12 of the treaty.

[T.S. 994]

54

"5. The joint flood-control investigations, preparation of plans, and reports on the Rio Grande below Fort Quitman required by the provisions of article 6 of the treaty.

"6. The joint flood-control investigations, preparations of plans, and reports on the lower Colorado River between the Imperial Dam and the Gulf of California required by article 13 of the treaty.

"7. The joint investigations, preparation of plans, and reports on the establishment of hydroelectric plants at the international dams on the Rio Grande below Fort Quitman provided for by article 7 of the treaty.

"8. The studies, investigations, preparation of plans, recommendations, reports, and other matters dealing with the Tijuana River system provided for by the first paragraph (including the numbered subparagraphs) of article 16 of the treaty.

"(b) Insofar as they affect persons and property in the territorial limits of the United States, the powers and functions of the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, the United States Section of said Commission, and any other officer or employee of the United States, shall be subject to the statutory and constitutional controls and processes. Nothing contained in the treaty or protocol shall be construed as impairing the power of the Congress of the United States to define the terms of office of members of the United States Section of the International Boundary and Water Commission or to provide for their appointment by the President by and with the advice and consent of the Senate or otherwise.

"(c) That nothing contained in the treaty or protocol shall be construed as authorizing the Secretary of State of the United States, the Commissioner of the United States Section of the International Boundary and Water Commission, or the United States Section of said Commission, directly or indirectly to alter or control the distribution of water to users within the territorial limits of any of the individual States.

"(d) That 'international dam or reservoir' means a dam or reservoir built across the common boundary between the two countries.

"(e) That the words 'international plants', appearing in article 19, mean only hydroelectric generating plants in connection with dams built across the common boundary between the two countries.

"(f) That the words 'electric current', appearing in article 19, mean hydroelectric power generated at an international plant.

"(g) That by the use of the words 'The jurisdiction of the Commission shall extend to the limitrophe parts of the Rio Grande

(Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary * * * in the first sentence of the fifth paragraph of article 2, is meant: "The jurisdiction of the Commission shall extend and be limited to the limitrophe parts of the Rio Grande (Rio Bravo) and the Colorado River, to the land boundary between the two countries, and to works located upon their common boundary * * *."

"(h) The word 'agreements' whenever used in subparagraphs (a), (c), and (d) of article 24 of the treaty shall refer only to agreements entered into pursuant to and subject to the provisions and limitations of treaties in force between the United States of America and the United Mexican States.

"(i) The word 'disputes' in the second paragraph of article 2 shall have reference only to disputes between the Governments of the United States of America and the United Mexican States.

"(j) First, that the one million seven hundred thousand acre-feet specified in subparagraph (b) of article 10 includes and is not in addition to the one million five hundred thousand acre-feet, the delivery of which to Mexico is guaranteed in subparagraph (a) of article 10; second, that the one million five hundred thousand acre-feet specified in three places in said subparagraph (b) is identical with the one million five hundred thousand acre-feet specified in said subparagraph (a); third, that any use by Mexico under said subparagraph (b) of quantities of water arriving at the Mexican points of diversion in excess of said one million five hundred thousand acre-feet shall not give rise to any future claim of right by Mexico in excess of said guaranteed quantity of one million five hundred thousand acre-feet of water.

"(k) The United States recognizes a duty to require that the protective structures to be constructed under article 12, paragraph (a), of this treaty, are so constructed, operated, and maintained as to adequately prevent damage to property and lands within the United States from the construction and operation of the diversion structure referred to in said paragraph."

AND WHEREAS the said treaty and protocol were duly ratified by the President of the United States of America on November 1, 1945, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid understandings on the part of the United States of America;

AND WHEREAS the said treaty and protocol were duly ratified by the President of the United Mexican States on October 16, 1945, in pursuance and according to the terms of a Decree of September 27, 1945 of the Senate of the United Mexican States approving the said treaty

[T.S. 994]

56

and protocol and approving the said understandings on the part of the United States of America in all that refers to the rights and obligations between the parties;

AND WHEREAS it is provided in Article 28 of the said treaty that the treaty shall enter into force on the day of the exchange of ratifications;

AND WHEREAS it is provided in the said protocol that the protocol shall be regarded as an integral part of the said treaty and shall be effective beginning with the day of the entry into force of the said treaty;

AND WHEREAS the respective instruments of ratification of the said treaty and protocol were duly exchanged, and a protocol of exchange of instruments of ratification was signed in the English and Spanish languages, by the respective Plenipotentiaries of the United States of America and the United Mexican States on November 8, 1945, the English text of which protocol of exchange of instruments of ratification reads in part as follows:

"The ratification by the Government of the United States of America of the treaty and protocol aforesaid recites in their entirety the understandings contained in the resolution of April 18, 1945 of the Senate of the United States of America advising and consenting to ratification, the text of which resolution was communicated by the Government of the United States of America to the Government of the United Mexican States. The ratification by the Government of the United Mexican States of the treaty and protocol aforesaid is effected, in the terms of its instrument of ratification, in conformity to the Decree of September 27, 1945 of the Senate of the United Mexican States approving the treaty and protocol aforesaid and approving also the aforesaid understandings on the part of the United States of America in all that refers to the rights and obligations between both parties, and in which the Mexican Senate refrains from considering, because it is not competent to pass judgment upon them, the provisions which relate exclusively to the internal application of the treaty within the United States of America and by its own authorities, and which are included in the understandings set forth under the letter (a) in its first part to the period preceding the words 'It is understood' and under the letters (b) and (c)."

Now, THEREFORE, be it known that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the said treaty and the said protocol supplementary thereto, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith, on and from the eighth day of November, one thousand nine hundred forty-five, by the United

States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-seventh day of November in the year of our Lord one thousand nine hundred [SEAL] forty-five and of the Independence of the United States of America the one hundred seventieth.

HARRY S TRUMAN

By the President:

JAMES F BYRNES

Secretary of State

UPDATING THE HOOVER DAM DOCUMENTS

1 G.1

Upper Colorado River Basin Compact, 1948

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

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

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

ARTICLE I

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

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

ARTICLE II

As used in this Compact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

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

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

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

State of Colorado, 51.75 per cent; State of New Mexico, 11.25 per cent; State of Utah, 23.00 per cent; State of Wyoming, 14.00 per cent.

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

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

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

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

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

(ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or

(iii) Countenancing average uses by any signatory State in excess of its apportionment.

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

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

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

ARTICLE IV

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to

UPDATING THE HOOVER DAM DOCUMENTS

it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

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

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

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

ARTICLE V

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

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

(1) If the Commission finds that the reservoir is used, in whole or in part, to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that portion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b) (1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b) (2) shall be earmarked for and charged to the State in which the water will be used.

(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State, provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact.

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

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

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

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

(d) The Commission, so far as consistent with this Compact, shall have the power to:

- (1) Adopt rules and regulations;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
- (3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;
- (4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;
- (5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;
- (6) Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each State thereof;
- (7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

UPDATING THE HOOVER DAM DOCUMENTS

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) Make findings to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;

(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such treaty may be reduced in accordance with the terms of such Treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or federal agency;

(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.

(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

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

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

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

ARTICLE IX

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

(b) Any signatory State, any person or any entity of any signatory State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting State, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such

property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

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

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

ARTICLE X

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

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

ARTICLE XI

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

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

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

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

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

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

UPDATING THE HOOVER DAM DOCUMENTS

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

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

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

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

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

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

ARTICLE XII

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

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

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

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

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

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

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

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

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

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

ARTICLE XIII

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

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

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

ARTICLE XIV

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

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

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either State at the time of the signing of this Compact; and

(2) All uses of water contemplated by projects authorized, at the time of the signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

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

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

UPDATING THE HOOVER DAM DOCUMENTS

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

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

ARTICLE XV

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

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

ARTICLE XVI

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

ARTICLE XVII

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

ARTICLE XVIII

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

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

ARTICLE XIX

Nothing in this Compact shall be construed as:

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

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

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

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

(e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any State to any extent other than the extent to which such laws would apply without regard to this Compact.

ARTICLE XX

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

ARTICLE XXI

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

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

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

CHARLES A. CARSON
Commissioner for the State of Arizona
CLIFFORD H. STONE
Commissioner for the State of Colorado
FRED E. WILSON
Commissioner for the State of New Mexico
EDWARD H. WATSON
Commissioner for the State of Utah
L. C. BISHOP
Commissioner for the State of Wyoming
GROVER A. GILES

Secretary

Approved:

HARRY W. BASHORE
Representative of the United States of America

NOTES

Congressional consent to negotiations.—Section 19 of the Boulder Canyon Project Act (45 Stat. 1057, 1065), gave the Congress' consent "to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this Act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river." The consent was given "upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into." It was also provided that no such compact should be effective until "approved" by the legislatures of the States and by the Congress. See also Article VI of the Colorado River compact, p. 55 ante.

UPDATING THE HOOVER DAM DOCUMENTS

State ratifications.—*Arizona*, Act of January 21, 1949 (Sess. L. 1949, p. 5; Ariz. Rev. Stat. Ann. 1956, sec. 45-581).

Colorado, Act of February 2, 1949 (Sess. L. 1949, p. 498; Colo. Rev. Stat. 1963, sec. 149-8-1).

New Mexico, Act of February 2, 1949 (Laws 1949, p. 9; N.M. Stat. 1953, sec. 75-34-3 note).

Utah, Act of January 31, 1949 (Laws 1949, p. 25; 1953 Utah Code Ann. secs. 73-13-9ff).

Wyoming, Act of January 25, 1949 (Sess. L. 1949, p. 7; 1945 Wyo. Stat. 1957, sec. 41-507).

Congressional consent to compact.—Act of April 6, 1949 (63 Stat. 31, from which the text of the Compact above set out is taken. For legislative history, see S. 790 and H.R. 2325, 81st Congress; Senate Report 39 (Committee on Interior and Insular Affairs) and House Report 270 (Committee on Public Lands), 81st Congress; 95 *Cong. Rec.* 2758-2762, 3036-3041 (1949); Public Law 37, 81st Congress. Printed hearings on H.R. 2325.

Related documents.—The report of the Federal representative is printed in Senate Document 8, 81st Congress. The Upper Colorado River Basin Compact Commission published, in mimeographed form, an undated three-volume *Official Record* of its proceedings, including the final report of its Engineering Advisory Committee and that Committee's "Inflow-Outflow Manual."

Related legislation.—Act of April 11, 1956 (70 Stat. 105), authorizing construction by the Secretary of the Interior of the Colorado River Storage Project and participating projects; Act of June 13, 1962 (76 Stat. 96), authorizing construction of the Navajo and San Juan-Chama projects; Act of August 16, 1962 (76 Stat. 389), authorizing construction of the Fryingpan-Arkansas project; and the Act of September 30, 1968 (82 Stat. 885), authorizing construction of the Colorado River Basin project including, among others, the Central Arizona project.

Animas-La Plata Project Compact.—Section 501, subsection (b), of the Act of September 30, 1968 (82 Stat. 885), which provides for construction of the Animas-La Plata Federal reclamation project, also provides that construction work shall not be begun until the States of Colorado and New Mexico have ratified a compact reading as follows:

"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), 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."

Neither State has yet (September 1968) taken the action required by this provision.

Apr. 11 COLORADO RIVER STORAGE PROJECT

Ch. 203
Pub. 485

1-H.1

**COLORADO RIVER STORAGE PROJECT—AUTHORITY
TO CONSTRUCT, OPERATE AND MAINTAIN***See Legislative History, p. 1526***CHAPTER 203—PUBLIC LAW 485
[S. 500]**

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

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

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

Sec. 2. In carrying out further investigations of projects under the Federal reclamation laws in the Upper Colorado River Basin, the Secretary shall give priority to completion of planning reports on the Gooseberry, San Juan-Chama, Navajo, Parshall, Troublesome, Rabbit Ear, Eagle Divide, San Miguel, West Divide, Bluestone, Battlement Mesa, Tomichi Creek, East River, Ohio Creek, Fruitland Mesa, Bostwick Park, Grand Mesa, Dallas Creek, Savery-Pot Hook, Dolores, Fruit Growers Extension, Animas-La Plata, Yellow Jacket, and Sublette participating projects. Said reports shall be completed as expeditiously as funds are made available therefor and shall be submitted promptly to the affected States, which in the case of the San Juan-Chama project shall include the State of Texas, and thereafter to the President and the Congress: *Provided*,

That with reference to the plans and specifications for the San Juan-Chama project, the storage for control and regulation of water imported from the San Juan River shall (1) be limited to a single offstream dam and reservoir on a tributary of the Chama River, (2) be used solely for control and regulation and no power facilities shall be established, installed or operated thereat, and (3) be operated at all times by the Bureau of Reclamation of the Department of the Interior in strict compliance with the Rio Grande Compact as administered by the Rio Grande Compact Commission. The preparation of detailed designs and specifications for the works proposed to be constructed in connection with projects shall be carried as far forward as the investigations thereof indicate is reasonable in the circumstances.

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

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

Sec. 4. Except as otherwise provided in this Act, in constructing, operating, and maintaining the units of the Colorado River storage project and the participating projects listed in section 1 of this Act, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388,⁵² and Acts amendatory thereof or supplementary thereto): *Provided*, That (a) irrigation repayment contracts shall be entered into which, except as otherwise provided for the Paonia and Eden projects, provide for repayment of the obligation assumed thereunder with respect to any project contract unit over a period of not more than fifty years exclusive of any development period authorized by law; (b) prior to construction of irrigation distribution facilities, repayment contracts shall be made with an "organization" as defined in paragraph 2(g) of the Reclamation Project Act of 1939 (53 Stat. 1187)⁵³ which has the capacity to levy assessments upon all taxable real property located within its boundaries to assist in making repayments, except where a substantial proportion of the lands to be served are owned by the United States; (c) contracts relating to municipal water supply may be made without regard to the limitations of the last sentence of section 9(c) of the Reclamation Project Act of 1939;⁵⁴ and (d), as to Indian lands within, under or served by any participating project, payment of construction costs within the capability of the land to repay shall be subject to the Act of July 1, 1932 (47 Stat. 564);⁵⁵ *Provided further*, That for a period of ten years from the date of enactment of this Act, no water from any participating project authorized by this Act shall be delivered to any water user for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity for the marketing year in which the bulk of the crop would normally be marketed is in excess of the normal supply as defined in section 301(b) (10) of the Agricultural Adjustment Act of 1938, as amended,⁵⁶ unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security. All units and participating projects shall be subject to the apportionments of the use of water between the Upper and Lower Basins of the Colorado River and among the States of the Upper Basin fixed in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, and to the terms of the treaty with the United Mexican States (Treaty Series 994).

⁵² 49 U.S.C.A. §§ 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 476, 491, 498.

⁵³ 43 U.S.C.A. § 485a (g).

⁵⁴ 43 U.S.C.A. § 485h (c).

⁵⁵ 25 U.S.C.A. § 386a.

⁵⁶ 7 U.S.C.A. § 1301(b) (10).

Sec. 5. (a) There is hereby authorized a separate fund in the Treasury of the United States to be known as the Upper Colorado River Basin Fund (hereinafter referred to as the Basin Fund) which shall remain available until expended, as hereafter provided, for carrying out provisions of this Act other than section 8.

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

(c) All revenues collected in connection with the operation of the Colorado River storage project and participating projects shall be credited to the Basin Fund, and shall be available, without further appropriation, for (1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the Colorado River storage project and participating projects, within such separate limitations as may be included in annual appropriation acts: *Provided*, That with respect to each participating project, such costs shall be paid from revenues received from each such project; (2) payment as required by subsection (d) of this section; and (3) payment as required by subsection (e) of this section. Revenues credited to the Basin Fund shall not be available for appropriation for construction of the units and participating projects authorized by or pursuant to this Act.

(d) Revenues in the Basin Fund in excess of operating needs shall be paid annually to the general fund of the Treasury to return—

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

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

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

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

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

Revenues so apportioned to each State shall be used only for the repayment of construction costs of participating projects or parts of such projects in the State to which such revenues are apportioned and shall not be used for such purpose in any other State without the consent, as expressed through its legally constituted authority, of the State to which such revenues are apportioned. Subject to such requirement, there shall be paid annually into the general fund of the Treasury from the revenues apportioned to each State (1) the costs of each participating project herein authorized (except Paonia) or any separable feature thereof, which are allocated to irrigation pursuant to section 6 of this Act, within a period not exceeding fifty years, in addition to any development period authorized by law, from the date of completion of such participating project or separable feature thereof, or, in the case of Indian lands, payment in accordance with section 4 of this Act; (2) costs of the Paonia project, which are beyond the ability of the water users to repay, within a period prescribed in the Act of June 25, 1947 (61 Stat. 181); and (3) costs in connection with the irrigation features of the Eden project as specified in the Act of June 28, 1949 (63 Stat. 277).

(f) The interest rate applicable to each unit of the storage project and each participating project shall be determined by the Secretary of the Treasury as of the time the first advance is made for initiating construction of said unit or project. Such interest rate shall be determined by calculating the average yield to maturity on

the basis of daily closing market bid quotations during the month of June next preceding the fiscal year in which said advance is made, on all interest-bearing marketable public debt obligations of the United States having a maturity date of fifteen or more years from the first day of said month, and by adjusting such average annual yield to the nearest one-eighth of 1 per centum.

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

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

Sec. 7. The hydroelectric power plants and transmission lines authorized by this Act to be constructed, operated, and maintained by the Secretary shall be operated in conjunction with other Federal powerplants, present and potential, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates, but in the exercise of the authority hereby granted he shall not affect or interfere with the operation of the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act and any contract lawfully entered into under said Compacts and Acts. Subject to the provisions of the Colorado River Compact, neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River storage project shall preclude or impair the appropriation of water for domestic or agricultural purposes pursuant to applicable State law.

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

Sec. 9. Nothing contained in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057),⁵⁷ the Boulder

⁵⁷ 43 U.S.C.A. § 617 et seq.

Canyon Project Adjustment Act (54 Stat. 774),⁵⁸ the Colorado River Compact, the Upper Colorado River Basin Compact, the Rio Grande Compact of 1938, or the Treaty with the United Mexican States (Treaty Series 994).

Sec. 10. Expenditures for the Flaming Gorge, Glen Canyon, Curecanti, and Navajo initial units of the Colorado River storage project may be made without regard to the soil survey and land classification requirements of the Interior Department Appropriation Act, 1954.⁵⁹

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

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

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

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

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

Sec. 16. As used in this Act—

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

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

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

The term "Upper Colorado River Basin Compact" shall mean that certain compact executed on October 11, 1948 by commissioners representing the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, and consented to by the Congress of the United States of America by Act of April 6, 1949 (63 Stat. 31);⁶⁰

⁵⁸ 43 U.S.C.A. § 618 et seq.

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

⁶⁰ 43 U.S.C.A. § 617i note.

UPDATING THE HOOVER DAM DOCUMENTS

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

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

Approved April 11, 1956.

APPENDIX II - COLORADO RIVER WATER DELIVERY CONTRACTS

The texts of the major water delivery contracts between the United States and the States of Arizona and Nevada and between the United States and the major water using entities in California entered into pre-1948 appear in "The Hoover Dam Documents - Wilbur and Ely, 1948."

Appendix 201 -Calendar Year 1977.

Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in *Arizona v. California* dated March 9, 1964.

202 -Gila Reauthorization Act.