90TH CONGRESS
1ST SESSION

S. 1013

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 1967

Mr. JACKSON (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To authorize the construction, operation, and maintenance of the central Arizona project, Arizona-New Mexico, and for other purposes.

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

SECTION 1. That this Act may be cited as the "Central Arizona Project Act."

SEC. 2. (a) For the purposes of furnishing irrigation water and municipal water supplies to the water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, generation of electric power and energy, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation op-

portunities, and for other purposes, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall construct, operate, and maintain the central Arizona project, consisting of the following principal works: (1) a system of main conduits and canals, including a main canal and pumping plants (Granite Reef aqueduct and pumping plants), for diverting and carrying water from Lake Havasu to Orme Dam or suitable alternative, which system shall have a capacity of two thousand five hundred cubic feet per second; (2) Orme Dam and Reservoir and power-pumping plant or suitable alternative; (3) Buttes Dam and Reservoir, which shall be so operated as to not prejudice the rights of any user in and to the waters of the Gila River as those rights are set forth in the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59); (4) Hooker Dam and Reservoir; (5) Charleston Dam and Reservoir; (6) Tucson aqueduct and pumping plants; (7) Salt-Gila aqueduct; (8) canals, regulating facilities, hydroelectric powerplants, and electrical transmission facilities; (9) related water distribution and drainage works; and (10) appurtenant works.

(b) The Secretary may enter into an agreement with non-Federal interests proposing to construct a thermal gen-

erating powerplant whereby the United States shall acquire the right to such portion of the capacity of such plant, including delivery of power and energy over appurtenant transmission facilities to mutually agreed upon delivery points, as he determines is required in connection with the central Arizona project. Power and energy acquired thereunder may be disposed of intermittently by the Secretary when not required in connection with the central Arizona project. The agreement shall provide, among other things, that—

(1) The United States shall pay not more than that portion of the total construction cost, exclusive of interest during construction, of the powerplant, and of any switchyards and transmission facilities serving the United States, as is represented by the ratios of the respective capacities to be provided for the United States therein to the total capacities of such facilities. The Secretary shall make the Federal portion of such costs available to the non-Federal interests during the construction period, including the period of preparation of designs and specifications, in such installments as will facilitate a timely construction schedule;

(2) Annual operation and maintenance costs, including provision for depreciation (except as to depreciation on the pro rata share of construction cost borne

by the United States in accordance with the foregoing subdivision (1)) shall be apportioned between the United States and the non-Federal interests on an equitable basis taking into account the ratios determined in accordance with the foregoing subdivision (1);

(3) Costs to be borne by the United States under subdivisions (1) and (2) shall not include (a) interest and interest during construction, (b) financing charges, (c) taxes (except for social security and other payroll taxes) including but not limited to real or personal property taxes, gross or net income taxes, and sales, use, and transaction privilege taxes, (d) franchise fees, and (e) such other costs as shall be specified in the agreement;

(4) The United States shall be given appropriate credit for any interests in Federal lands administered by the Department of the Interior that are made available for the powerplant and appurtenances.

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

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

(2) Any obligation assumed pursuant to section 9 (d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (d)) with respect to any project contract unit or irrigation block shall be repaid over a basic period of not more than fifty years; any water service provided pursuant to section 9 (e) of the Reclamation Project Act of 1939 (43 U.S.C. 485h (e)) may be on the basis of delivery of water for

a period of fifty years and for the delivery of such water at an identical price per acre-foot for water of the same class at the several points of delivery from the main canals and conduits and from such other points of delivery as the Secretary may designate; and long-term contracts relating to irrigation water supply shall provide that water made available thereunder may be made available by the Secretary for municipal or industrial purposes if and to the extent that such water is not required by the contractor for irrigation purposes. Notwithstanding any other provisions of law no contract relating to an irrigation water supply under the central Arizona project from the main stream of the Colorado River shall commit the United States to deliver such supply for a basic period of more than fifty years for each project contract unit or irrigation block, nor shall such a contract carry renewal or conversion rights or entitle the contractor to water beyond expiration of the delivery periods specified therein. In negotiating new contracts for delivery of such main stream water, the Secretary shall consult with representatives of the State of Arizona and the Secretary shall take into consideration the overall water supply and needs of the central Arizona project.

(3) Contracts relating to municipal and industrial water supply under the central Arizona project may be made without regard to the limitations of the last sentence of section

9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); may provide for the delivery of such water at an identical price per acre-foot for water of the same class at the several points of delivery from the main canals and conduits; and may provide for repayment over a period of fifty years if made pursuant to clause (1) of said section and for the delivery of water over a period of fifty years if made pursuant to clause (2) thereof.

(e) Each contract under which water is provided under the central Arizona project shall require that (1) there be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the United States to the contractors shall be provided and maintained with linings, adequate in his judgment to prevent excessive conveyance losses; (3) neither the contractor nor the Secretary shall pump or permit others to pump ground water from lands located within the exterior boundaries of any Federal reclamation project or irrigation district receiving water from the central Arizona project for any use outside such Federal reclamation project or irrigation district, unless the Secretary and the agency or organization operating and maintaining such Federal reclamation project or irrigation district shall agree

or shall have previously agreed that a surplus of ground water exists and that drainage is or was required; and (4) all agricultural, municipal, and industrial waste water, return flow, seepage, sewage, effluent, and ground water located in or flowing from contractor's service area originating or resulting from (i) waters contracted for from the central Arizona project or (ii) waters stored or developed by any Federal reclamation project are reserved for the use and benefit of the United States as a source of supply for the service area of the central Arizona project or for the service area of the Federal reclamation project, as the case may be: *Provided,* That notwithstanding the provisions of clause (3) of this subsection, the agricultural, municipal, and industrial waste water, return flow, seepage, sewage effluent, and ground water in or from any such Federal reclamation project, may also be pumped or diverted for use and delivery by the United States elsewhere in the service area of the central Arizona project, if not needed for use or reuse in such Federal reclamation project.

(f) The Secretary may require in any contract under which water is provided from the central Arizona project that the contractor agree to accept main stream water in exchange for or in replacement of existing supplies from sources other than the main stream. The Secretary shall so require in the case of users in Arizona who also use water

from the Gila River system, to the extent necessary to make available to users of water from the Gila River system in New Mexico additional quantities of water as provided in and under the conditions in subsection (h) of this section: *Provided,* That such exchanges and replacements shall be accomplished without economic injury or cost to such Arizona contractors.

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

(h) In the operation of the central Arizona project, the Secretary shall offer to contract with water users in New Mexico for water from the Gila River, its tributaries and underground water sources, in amounts that will permit consumptive use of water in New Mexico not to exceed an annual average in any period of ten consecutive years of eighteen thousand acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States

in Arizona against California (376 U.S. 340). Such increased consumptive uses shall not begin until and shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversions from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose full consideration shall be given to any differences in the quality of the waters involved. All additional consumptive uses provided for in this subsection shall be subject to all rights in New Mexico and Arizona as established by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in United States against Gila Valley Irrigation District and others (Globe Equity Numbered 59) and to all other rights existing on the effective date of this Act in New Mexico and Arizona to water from the Gila River, its tributaries and underground water sources, and shall be junior thereto and shall be made only to the extent possible without economic injury or cost to the holders of such rights.

SEC. 3. The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the central Arizona project works authorized pursuant to this Act shall be in accord-

ance with the provisions of the Federal Water Project Recreation Act (79 Stat. 213).

SEC. 4. The Secretary shall determine the repayment capability of Indian lands within, under, or served by the central Arizona project. Construction costs allocated to irrigation of Indian lands (including provision of water for incidental domestic and stock water uses) and within the repayment capability of such lands shall be subject to the Act of July 1, 1932 (47 Stat. 464), and such costs as are beyond repayment capability of such lands shall be nonreimbursable.

SEC. 5. The interest rate applicable to those portions of the reimbursable costs of the central Arizona project which are properly allocated to commercial power development and municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the first advance is made for initiating construction of such project, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issue.

SEC. 6. The Secretary may undertake programs for water salvage along and adjacent to the main stream of the Colorado River and for ground water recovery in the Yuma

area. Such programs shall be consistent with maintenance of a reasonable degree of undisturbed habitat for fish and wildlife in the area, as determined by the Secretary. No ground water recovery program hereby authorized shall be undertaken until the Secretary of State has reported to the President on consultation which he may have had with the Government of Mexico pursuant to the Water Treaty of 1944 (Treaty Series 994) and the President has approved a definite plan report thereon.

SEC. 7. Part I of the Federal Power Act (16 U.S.C. 791a–823) shall not be applicable to the reach of the Colorado River between Lake Mead and Glen Canyon Dam until and unless otherwise provided by Congress.

SEC. 8. The Upper Colorado River Basin fund established under section 5 of the Act of April 11, 1956 (70 Stat. 107), shall be reimbursed from the Colorado River development fund established by section 2 of the Boulder Canyon Project Adjustment Act (54 Stat. 755), for all expenditures heretofore or hereafter made from the Upper Colorado River Basin fund to meet deficiencies in generation at Hoover Dam during the filling period of reservoirs of storage units of the Colorado River storage project pursuant to the criteria for the filling of Glen Canyon Reservoir (27 Fed. Reg. 6851, July 19, 1962). For this purpose $500,000 for each year of operation of Hoover Dam and

powerplant, commencing with the enactment of this Act, shall be transferred from the Colorado River development fund to the Upper Colorado River Basin fund, in lieu of application of said amounts to the purposes stated in section 2(d) of the Boulder Canyon Project Adjustment Act, until such reimbursement is accomplished. To the extent that any deficiency in such reimbursement remains as of June 1, 1987, the amount of the remaining deficiency shall then be transferred to the Upper Colorado River Basin fund from net revenues derived from the sale of electric energy generated at Hoover Dam.

SEC. 9. (a) Nothing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the Colorado River compact (45 Stat. 1057), the Upper Colorado River Basin compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994), the decree entered by the Supreme Court of the United States in Arizona against California, and others (376 U.S. 340), or, except as otherwise provided herein, the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774) or the Colorado River Storage Project Act (70 Stat. 105).

(b) The Secretary is directed to—

(1) make reports as to the annual consumptive uses and losses of water from the Colorado River system after each successive five-year period, beginning with the five-year period starting on October 1, 1965. Such reports shall be prepared in consultation with the States of the lower basin individually and with the Upper Colorado River Commission, and shall be transmitted to the President, the Congress, and to the Governors of each State signatory to the Colorado River compact;

(2) condition all contracts for the delivery of water originating in the drainage basin of the Colorado River system upon the availability of water under the Colorado River compact.

SEC. 10. (a) The Secretary shall propose criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act and the Boulder Canyon Project Act, consistent with the provisions of those statutes, the Boulder Canyon Project Adjustment Act, the Colorado River compact, the Upper Colorado River compact and the Mexican water treaty. To effect in part the purposes expressed in this paragraph, the criteria shall make provision for the storage of water in storage units of the

Colorado River storage project and releases of water from Lake Powell in the following listed order of priority:

(1) Releases to supply one-half the deficiency described in article III (c) of the Colorado River compact, if any such deficiency exists and is chargeable to the States of the upper division.

(2) Releases to comply with article III (d) of the Colorado River compact.

(3) Storage of water not required for the releases specified in clauses (1) and (2) of this subsection to the extent that the Secretary, after consultation with the Upper Colorado River Commission and representatives of the three lower division States and taking into consideration all relevant factors (including, but not limited to, historic streamflows, the most critical period of record, and probabilities of water supply), shall find to be reasonably necessary to assure deliveries under clauses (1) and (2) without impairment of annual consumptive uses in the upper basin pursuant to the Colorado River compact: *Provided,* That water not so required to be stored shall be released from Lake Powell: (i) to the extent it can be reasonably applied in the States of the lower division to the uses specified in article III (e) of the Colorado River compact, but no such releases shall be made when the active storage in Lake Powell is less than

the active storage in Lake Mead, (ii) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and (iii) to avoid anticipated spills from Lake Powell.

(b) Not later than July 1, 1968, the criteria proposed in accordance with the foregoing subsection (a) of this section shall be submitted to the Governors of the seven Colorado River Basin States and to such other parties and agencies as the Secretary may deem appropriate for their review and comment. After receipt of comments on the proposed criteria, but not later than January 1, 1969, the Secretary shall adopt appropriate criteria in accordance with this section and publish the same in the Federal Register. Beginning January 1, 1970, and yearly thereafter, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected operation for the current year. As a result of actual operating experience or unforeseen circumstances, the Secretary may thereafter modify the criteria to better achieve the purposes specified in subsection (a) of this section, but only after correspondence with the Governors of the seven Colorado River Basin States and appropriate consultation with such State representatives as each Governor may designate.

(c) Section 7 of the Colorado River Storage Project Act shall be administered in accordance with the foregoing criteria.

SEC. 11. (a) Rights of the upper basin to the consumptive use of water apportioned to that basin from the Colorado River system by the Colorado River compact shall not be reduced or prejudiced by any use of such water in the lower basin.

(b) Nothing in this Act shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission.

SEC. 12. Except as otherwise provided in this Act, in constructing, operating, and maintaining the central Arizona project, the Secretary shall be governed by the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388 and Acts amendatory thereof or supplementary thereto) to which laws this Act shall be deemed a supplement.

SEC. 13. (a) All terms used in this Act which are defined in the Colorado River compact shall have the meanings there defined.

(b) "Main stream" means the main stream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon.

(c) "User" or "water user" in relation to main stream water in the lower basin means the United States, or any

person or legal entity, entitled under the decree of the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), to use main stream water when available thereunder.

(d) "Active storage" means that amount of water in reservoir storage, exclusive of bank storage, which can be released through the existing reservoir outlet works.

(e) "Colorado River Basin States" means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

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