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Calendar No. 839

81ST CONGRESS
1ST SESSION

S. 75

[Report No. 832]

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1949

Mr. MCFARLAND (for himself and Mr. HAYDEN) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

AUGUST 3 (legislative day, JUNE 2), 1949

Reported by Mr. MCFARLAND, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

Authorizing the construction, operation, and maintenance of a dam and incidental works in the main stream of the Colorado River at Bridge Canyon, together with certain appurtenant dams and canals, 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 floods, improving navigation, and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters to provide essential supplementary supply of water to irrigated lands, for municipal and domestic uses, and for the irrigation of public and other lands within the United States,

and for the generation, use, and sale of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, and other beneficial purposes, the Secretary of the Interior, hereinafter referred to as the Secretary, subject to the terms of the Colorado River compact and the water delivery contract between the United States and the State of Arizona, executed February 9, 1944, is hereby authorized to construct, operate, and maintain (1) a dam and incidental works in the main stream of the Colorado River at Bridge Canyon, which dam shall be constructed to an elevation of not less than one thousand eight hundred and seventy-seven feet above sea level; (2) a related system of main conduits and canals, including a tunnel and main canal from the reservoir above the dam at Bridge Canyon to the Salt River above Granite Reef Dam, a canal from the Salt River to the Gila River above the town of Florence, Arizona, and thence a canal to Picacho Reservoir, and thence a canal to the Santa Cruz River flood plain; (3) such other canals, canal improvements, laterals, pumping plants, and drainage works as may be required to effectuate the purposes of this Act; (4) complete plants, transmission lines, and incidental structures suitable for the fullest economic development of electrical energy generated from water at the works constructed hereunder for use in the operation thereof and

for sale in accordance with Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof or supplementary thereto); and (5) such appurtenant dams and incidental works, including interconnecting lines to effectuate coordination with other Federal projects, flood-protection works, desilting dams, or works above Bridge Canyon and a dam on the Gila River in New Mexico and such dams on the Gila River and its tributaries in Arizona as may be necessary in the opinion of the Secretary for the successful operation of the undertaking herein authorized and to effect exchanges of water to insure an adequate supplemental supply to lands presently or heretofore irrigated from the Gila River including and below Cliff Valley in New Mexico and from the tributaries of the Gila River by supplying water from the main stream of the Colorado River to lower lands now receiving water from the Gila River or its tributaries, thus releasing Gila River and tributary water for use and exchange on other lands served by the Gila River and tributaries and other exchanges of water which may be agreed upon by the users affected: ~~*Provided, however,*~~ *Provided, That this authorization shall not include (a) any works, dam, or reservoir at the Glen Canyon site or any other site in the Upper Colorado River Basin, or (b) any dam, reservoir, or works in the Lower Colorado River Basin which would flood the Glen Canyon site: Provided*

further, That construction of the tunnel and that portion of the canal hereinabove described from the reservoir above the dam at Bridge Canyon to a junction with the aqueduct hereinafter authorized shall be deferred until Congress by making appropriation expressly therefor has determined that economic conditions justify its construction, and in order to provide a means of diversion of water from the Colorado River to the main canal pending the construction of said tunnel and said portion of the canal and for use thereafter as supplemental and stand-by works the Secretary is authorized to construct, maintain, and operate from appropriations authorized by this Act an aqueduct from Lake Havasu to and connecting with the main canal in the vicinity of Cunningham Wash, and pumping plants to raise water from Lake Havasu to such elevation as may be required to provide gravity flow of such water to the main canal.

SEC. 2. The Secretary shall have the authority to acquire, by purchase, exchange, condemnation, or otherwise, all lands, rights-of-way, and other property necessary for said purposes: *Provided,* That, anything herein contained to the contrary notwithstanding, the Secretary shall not have the authority to condemn established water rights or the water to the use of which such rights are established, or works used or necessary for the storage and delivery of such water to the use of which rights are established, or

the right to substitute or exchange water without the consent of the holders of rights or those entitled to the beneficial use of such waters as may be involved in the proposed exchange.

SEC. 3. The estimated cost of the construction of the said works shall be determined by the Secretary. The Secretary shall also determine (a) the parts of said estimated cost that can be properly allocated to flood control, silt control, navigation, river regulation, recreation, fish and wildlife conservation, general salinity control, respectively, and any other purposes served by the project which may hereafter be made nonreimbursable by law, the sums so allocated, together with the expenses of operation and maintenance attributed by him to such purposes, to be nonreimbursable, and (b) (1) the part of the estimated cost which can properly be allocated to irrigation and probably be returned to the United States in net revenues from the delivery of water for irrigation purposes; (2) the part of the estimated cost which can properly be allocated to irrigation and probably be returned to the United States by revenues derived from sources other than the delivery of water for irrigation purposes; (3) the part of the estimated cost which can properly be allocated to power and probably be returned to the United States in net power revenues; and (4) the part of the estimated cost which can properly be allocated

to municipal water supply or other miscellaneous purposes and probably be returned to the United States.

Before any construction work is done or contracted for, the Secretary shall first determine that costs allocated to power, municipal water supply, irrigation, or other miscellaneous purposes as herein provided will probably be returned to the United States: *Provided,* That the repayment period for costs so allocated shall be such reasonable period of years, not to exceed the useful life of the project, as may be determined by the Secretary.

SEC. 4. Electric energy developed at any of the generating plants herein authorized shall be used first for the operation of pumping plants and other facilities herein authorized, and for replacement purposes, and the remainder thereof sold or exchanged to effectuate the purposes of this Act. In the production, sale, exchange, and distribution of electric energy generated by any of the works herein authorized in excess of that required for the operation of said pumping plants and other facilities, the Secretary shall be governed by the Federal reclamation laws. The Secretary is authorized to supply water for municipal and domestic purposes in accordance with the provisions of said laws.

SEC. 5. Contracts for the delivery of water for irrigation purposes shall provide for the delivery of such water at an identical price per acre-foot at the several points of delivery

of water from the main canals and conduits herein authorized, and from such other points of delivery as the Secretary may designate. Such contracts shall be made with the State of Arizona or the State of New Mexico, or with persons, firms, public or private corporations, irrigation or other districts, municipal or other political subdivisions thereof, in accordance with the reclamation law. No person shall have or be entitled to have the use for any purpose of any water delivered hereunder except by contract made as herein stated.

SEC. 6. The works provided for by the first section of this Act shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected water rights; and third, for power. The title to all works herein authorized shall forever remain in the United States and the United States shall until otherwise provided by law control, manage, and operate the same: *Provided*, That the Secretary may in his discretion enter into arrangements for the operation or use of a unit or units of said works with the States of Arizona or New Mexico or any irrigation district, reclamation project, or other subdivision or agency thereof.

SEC. 7. The rights of the United States in and to the waters of the Colorado River and its tributaries for the use of which the works herein authorized are incidental, convenient, or necessary as well as the rights of those claiming

under the United States shall be subject to and controlled by the Colorado River compact.

SEC. 8. The United States in constructing, managing, and operating the 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 water stored by said reservoirs or carried by said canals, including all permittees, licensees, and contractees 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 the Colorado River compact and the water delivery contract between the United States and the State of Arizona dated February 9, 1944, and by the laws of the State of Arizona or the State of New Mexico governing water rights wherever the same may be applicable.

SEC. 9. Nothing herein shall be construed as modifying or affecting any of the provisions of the 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 understanding recited in the Senate resolution of April 18, 1945, advising and consenting to ratification thereof.

SEC. 10. 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. 11. Nothing herein shall be construed as interfering with such rights as the State of Arizona or any other State now has either to the waters within its borders or to adopt such policies and enact such laws as it may deem necessary with respect to the appropriation, control, and use of waters within its borders, except as modified by the Colorado River compact or any other interstate agreement.

~~SEC. 12. There are hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.~~

SEC. 12. If any State or States within six months after the effective date of this Act shall begin a suit or suits in the Supreme Court of the United States to determine the right to the use of water for diversion from the main stream of the Colorado River through aqueducts or tunnels to be constructed pursuant to this Act for beneficial consumptive use in Arizona, and to adjudicate claims of right asserted by such State or States or by any other State or States, under the Colorado River Compact, the Boulder Canyon Project

Act (45 Stat. 1057), the California Self-Limitation Act (Cal. Stat. 1929, ch. 16), and the Boulder Canyon Project Adjustment Act (54 Stat. 774), consent is hereby given to the joinder of the United States of America as a party in such action or actions. Any State of the Colorado River Basin may intervene or be impleaded in such suit or suits. Any such claims of right affected by the project herein authorized and asserted by any defendant State, impleaded State, or intervening State under said compact and statutes, or by the United States may be adjudicated in such action. In any such suit or suits process directed against the United States shall be served upon the Attorney General of the United States.

SEC. 13. There are hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act: Provided, That no moneys appropriated under the authority of this Act shall be expended for the construction of works authorized by this Act which are required solely for the purpose of diverting, transporting, and delivering water from the main stream of the Colorado River for beneficial consumptive use in Arizona, during the period of six months after the enactment of this Act and during the pendency of any suit or suits in which the United States shall be joined as a party under and by

virtue of the consent granted in section 12 of this Act. The pendency of a motion for leave to file a bill of complaint shall be considered pendency of a suit or suits for the purposes of this Act: Provided further, That power sales contracts shall be made with a view to the reservation of generating capacity sufficient for the operation of all features of the project and that rates for power shall be fixed in accordance with the Federal reclamation laws; and that revenues derived from the sale of power shall be credited in accordance with the provisions of the Act of May 9, 1938 (52 Stat. 291, 318).

SEC. 14. (a) In aid of the construction, operation, and maintenance of the works authorized by this Act, there is hereby granted to the United States, subject to the provisions of this section, (1) all the right, title, and interest of the Indians in and to such tribal and allotted lands, including sites of agency and school buildings and related structures, as may be designated from time to time by the Secretary in order to provide for the construction, operation, or maintenance of said works and any facilities incidental thereto, or for the relocation or reconstruction of highways, railroads, and other properties affected by said works; and (2) such easements, rights-of-way, or other interests in and to tribal and allotted Indian lands as may be designated from time to time by the Secretary in order to provide for

the construction, operation, maintenance, relocation, or reconstruction of said works, facilities, and properties.

(b) As lands or interests in lands are designated from time to time under this section, the Secretary shall determine the just and equitable compensation to be made therefor. Such compensation may be in money, property, or other assets, including rights to electric energy developed at any of the generating plants herein authorized. In fixing such rights to electric energy, including the rates and other incidents thereof, the Secretary shall not be bound by section 4 of this Act. The amounts of money determined as compensation hereunder for tribal lands shall be transferred in the Treasury of the United States from funds made available for the purposes of this Act to the credit of the appropriate tribe pursuant to the provisions of the Act of May 17, 1926 (44 Stat. 560). The amounts due individual allottees or their heirs or devisees shall be paid from funds made available for the purposes of this Act to the superintendent of the appropriate Indian agency, or such other officer as shall be designated by the Secretary, for credit on the books of such agency to the accounts of the individuals concerned.

(c) Funds deposited to the credit of allottees, their heirs or devisees, may be used, in the discretion of the Secretary, for the acquisition of other lands and improvements, or the

relocation of existing improvements or the construction of new improvements on the lands so acquired for the individuals whose lands and improvements are acquired under the provisions of this section. Lands so acquired shall be held in the same status as those from which the funds were derived, and shall be nontaxable until otherwise provided by Congress.

(d) Whenever any Indian cemetery lands are required for the purposes of this Act, the Secretary is authorized, in his discretion, in lieu of requiring payment therefor, to establish cemeteries on other lands that he may select and acquire for the purpose, and to remove bodies, markers, and appurtenances to the new sites. All costs incurred in connection with any such relocation shall be paid from moneys appropriated for the purposes of this Act. All right, title, and interest of the Indians in the lands within any cemetery so relocated shall terminate and the grant of title under this section take effect as of the date the Secretary authorizes the relocation. Sites of the relocated cemeteries shall be held in trust by the United States for the appropriate tribe, or family, as the case may be, and shall be nontaxable.

(e) The Secretary is hereby authorized to perform any and all acts and to prescribe such regulations as he may deem appropriate to carry out the provisions of this section.

(f) Nothing in this Act shall be construed as, or have the effect of, subjecting Indian water rights to the laws of any State.

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By Mr. MCFARLAND and Mr. HAYDEN

JANUARY 6, 1949

Read twice and referred to the Committee on Interior and Insular Affairs

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