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Law of the River Apportionment Scheme: Compilation of Laws

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Law of the River Apportionment Scheme: Compilation of Laws

Prepared by CRGI Visiting Fellow, Jason Robison (January, 2012)

Summary: This compilation contains excerpted text and/or paraphrased descriptions of provisions from a select group of 20 laws that play significant roles in shaping the apportionment scheme of the Law of the River. A clear sense of the content of these provisions (both procedural and substantive) seems essential to formulating potential contemporary reforms like those that will be addressed in the Phase II Report. A list of the laws covered in this compilation appears below. Two caveats are in order. First, these laws contain relevant provisions beyond those identified in this compilation. Second, these laws are only a portion of the federal and state laws that make-up the Law of the River's apportionment scheme – *i.e.*, this compilation does not address in detail federal laws of general applicability (*e.g.*, Reclamation Act, federal reserved rights doctrine, Endangered Species Act) or state laws of general applicability (*e.g.*, prior appropriation doctrine, irrigation district laws), focusing instead on federal laws specific to the Colorado River Basin.

- Colorado River Compact (1922)
- Boulder Canyon Project Act (1928)
- Limitation Act (1929)
- Seven Party Agreement (1931)
- Treaty with Mexico (1944)
- Upper Colorado River Basin Compact (1948)
- Colorado River Storage Project Act (1956)
- *Arizona v. California*, 373 U.S. 546 (1963); *Arizona v. California*, 547 U.S. 150 (2006) (consolidated decree)
- Colorado River Basin Project Act (1968)
- Long Range Operating Criteria (1970)
- Minute 242 (1973)
- Colorado River Basin Salinity Control Act (1974)
- Grand Canyon Protection Act (1992)
- Operating Criteria for Glen Canyon Dam (1996)
- Lower Basin Water Banking Regulations (1999)
- Minute 306 (2000)
- Interim Surplus Guidelines (2001)
- Quantification Settlement Agreement (2003)
- Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007)

Law	Relevant Provisions
<p>Colorado River Compact</p> <p>Signed November 24, 1922 Effective June 25, 1929</p>	<p><u>Art. I</u></p> <ul style="list-style-type: none"> • <i>Purposes of Compact</i> <ul style="list-style-type: none"> ○ “The major purposes of this compact are to provide for the <i>equitable division and apportionment of the use of the waters of the Colorado River System</i>; 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.” • <i>Apportionment Scheme – Division of Basin into Two Sub-Basins</i> <ul style="list-style-type: none"> ○ “To these ends the Colorado River Basin is divided into <i>two Basins</i>, and an <i>apportionment</i> of the use of part of the water of the Colorado River System is made to each of them with the provision that <i>further equitable apportionments</i> may be made.” <p><u>Art. II – Definitions for Compact</u></p> <ul style="list-style-type: none"> • “Colorado River System”: “that portion of the Colorado River and its <i>tributaries</i> within the United States of America” • “Colorado River Basin”: “all of the drainage area of the Colorado River System <i>and</i> all other territory within the United States of America to which the waters of the Colorado River System shall be <i>beneficially applied</i>” • “States of the Upper Division”: Colorado, New Mexico, Utah, Wyoming. • “States of the Lower Division”: Arizona, California, Nevada. • “Upper Basin”: “[T]hose parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System, <i>and</i> also all parts of said States located <i>without</i> the drainage area of the Colorado River System which are now or shall hereafter be <i>beneficially served</i> by waters diverted from the System above Lee Ferry” • “Lower Basin”: “[T]hose 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, <i>and</i> also parts of said States located <i>without</i> the drainage area of the Colorado River System which are now or shall hereafter be <i>beneficially served</i> by waters diverted from the System below Lee Ferry”

Art. III

- III(a) – *Sub-Basin Entitlements*. “[A]pportioned from the *Colorado River System in perpetuity* to the Upper Basin and 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.”
- III(b) – *Additional Lower Basin Entitlement*. “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”
- III(c) – *Mexican Entitlement and Order of Priority vis-à-vis Sub-Basin Entitlements*.
 - “Surplus”: “If . . . 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).”
 - “Deficiency”: “[I]f 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).”
- III(d) – *Upper Basin Delivery Obligation*. “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.”
- III(e) – *Upper Basin Withholding/Lower Basin Demand Prohibition*. “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.”
- III(f) – *Equitable Apportionment of Unapportioned Water*. “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)”
- III(g) – *Equitable Apportionment of Unapportioned Water*. “In the event of a desire for a further apportionment as provided in paragraph (f) . . . [the state and federal representatives] duty it shall be to divide and apportion *equitably* between the Upper Basin and the Lower Basin the beneficial use of the *unapportioned* water of the Colorado River System as mentioned in paragraph (f)”

Art. IV

- IV(a) – *Water Use Hierarchy*. “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 the 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. . . .”
- IV(b) – *Water Use Hierarchy*. “[W]ater 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.”
- IV(c) – *State Water Rights Systems*. “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.”

Art. V – Implementation

- This article calls for state water rights officials, the Director of Reclamation, and the Director of the USGS to cooperate in (*inter alia*) determining annual flow rates and consumption rates.

Art. VI – Dispute Resolution

- “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 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 . . . ; 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.”

Art. VII – Indian Reserved Rights

- “Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian Tribes.”

	<p><u>Art. VIII – Present Perfected Rights</u></p> <ul style="list-style-type: none"> • “Present perfected rights to the beneficial use of waters of the Colorado River System are <i>unimpaired</i> by this compact. . . .”
<p>Boulder Canyon Project Act</p> <p>Approved December 21, 1928 Effective June 25, 1929</p>	<p><u>Section 1</u></p> <ul style="list-style-type: none"> • <i>Authorization of Boulder Dam and All American Canal.</i> “[T]he Secretary of the Interior, <i>subject to the terms of the Colorado River compact . . .</i>, is hereby <i>authorized</i> to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon . . . and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, . . . with the Imperial and Coachella Valleys in California. . . .” • <i>Purposes of Dam and Canal:</i> “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” <p><u>Section 4(a)</u></p> <ul style="list-style-type: none"> • <i>Conditional Effectiveness of Act – Compact Ratification; Limitation Act.</i> “This Act shall not take effect . . . 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 <i>California</i>, by act of its legislature, shall agree . . . 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, <i>shall not exceed four million four hundred thousand acre-feet of</i>

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 of surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.*”

- *Authorization of (Unformed) Lower Basin 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 stem 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.
 - See also section 8(b) (providing for formation of alternative Lower Basin compact)

Section 5

- *Secretary of Interior’s Exclusive Contract Authority.* “[T]he Secretary of the Interior is hereby *authorized . . . 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 use, 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 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.”

Section 6

- *Water Use Hierarchy.* “[T]he dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigations, 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.”

Section 8(a)

- *Control of Compact.* “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.*”

Section 13(a)

- *Congressional Approval of Compact; Waiver of Unanimity Provision.* “The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922 . . . is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article [XI] 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.”
 - See also Sections 13(b)-(c) (providing for conformity with compact)

Section 13

- *Subsection (b) – Control of Compact.* “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.*”
- *Subsection (c) – Control of Compact.* “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.*”

Section 18

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

Section 19

- *Authorization of Supplemental Compacts.* “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.”
<p>Limitation Act (California)</p> <p>Effective August 14, 1929</p>	<p><u>Section 1</u></p> <ul style="list-style-type: none"> • “[T]he State of California . . . 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, <i>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.</i>”
<p>Seven Party Agreement (Pale 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, County of San Diego)</p> <p>Signed August 18, 1931</p> <p>(See also General Regulations, 9/28/31)</p>	<p><u>Preamble</u></p> <ul style="list-style-type: none"> • <i>Purpose – CA Entitlement & Contracts w/ Major Water Users.</i> “[T]he Secretary of Interior did . . . request of the Division of Water Resources of California, a recommendation of the proper apportionment of the water of and from the Colorado River to which California may be entitled under the provisions of the Colorado River Compact, the Boulder Canyon Project Act and other applicable legislation and regulations, to the end that the same could be carried into each and all of the contracts between the United States and applicants for water contracts in California [T]he 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 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” <p><u>Art. I</u></p> <ul style="list-style-type: none"> • <i>Apportionment Scheme.</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 the amounts and with priorities therein named and set forth, as follows” <u>Note:</u> Total apportionment = 5.362 maf/yr.

	<ul style="list-style-type: none"> • <i>Section 1.</i> “A first priority to Pale Verde Irrigation District for beneficial use . . . such waters as may be required by said lands.” • <i>Section 2.</i> “A second priority to Yuma Project of United States Bureau of Reclamation for beneficial use . . . such waters as may be required by said lands.” • <i>Section 3.</i> “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 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 the 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 of water per annum.” • <i>Section 4.</i> “A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use . . . 550,000 acre feet of water per annum.” • <i>Section 5.</i> “A fifth priority (a) to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use . . . 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.” • <i>Section 6.</i> “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 beneficial consumptive use, 300,000 acre feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.” • <i>Section 7.</i> “A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin of California” • <i>Section 12.</i> “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.”
<p>1944 Treaty with Mexico (“Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande – Treaty Between the United States of American and</p>	<p><u><i>Article 2</i></u></p> <ul style="list-style-type: none"> • <i>IBWC.</i> Establishes International Boundary and Water Commission (supplants International Boundary Commission established in 1889) and articulates its authority, composition, jurisdiction, etc.

<p>Mexico”)</p> <p>Effective November 8, 1945</p>	<p><u>Article 3</u></p> <ul style="list-style-type: none"> • <i>Water Use Hierarchy.</i> “In matters in which the Commission may be called upon to make provision for the joint use of international waters, the following order of preference shall serve as a guide: (1) Domestic and municipal uses; (2) Agriculture and stockraising; (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. . . .” (8). <p><u>Article 10</u></p> <ul style="list-style-type: none"> • <i>Mexico’s Entitlement.</i> “Of the waters of the Colorado River, from any and all sources, there are allotted to Mexico: (a) A guaranteed annual quantity of 1,500,000 acre-feet . . . to be delivered in accordance with the provisions of Article 15 of this Treaty. . . . (b) Any other quantities arriving at the Mexican points of diversion, with the understanding that in any year in which, as determined by the United States Section, there exists a surplus of waters of the Colorado River . . . additional waters of the Colorado River system to provide a total quantity not to exceed 1,700,000 acre-feet . . . 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 . . . annually.” • <i>Proportionate Reduction in Water Deliveries.</i> “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 . . . 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.” <p><u>Article 11</u></p> <ul style="list-style-type: none"> • <i>Delivery Sources (Points of Delivery).</i> The sections of this Article identify the sources from which Mexico’s entitlement will be delivered by the United States. Section (b) provides (after January 1, 1980) the United States will deliver 1,125,000 acre feet annually from Davis Dam and reservoir. Section (c) provides (after January 1, 1980) the United States will deliver 375,000 acre feet annually via the All American Canal (or another canal).
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Article 12

- *Davis Dam.* Section (b) calls for construction of Davis Dam for delivery of Mexico’s entitlement.
- *Measurements.* Section (d) provides the Commission and each section shall construct, operate, and maintain “all necessary gaging stations and other measuring devices for the purpose of keeping a complete record of the waters delivered to Mexico and of the flows of the river.”
 - See also Article 24, section (f), for a similar provision.

Article 15

- *Delivery Schedules.* Section (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 applies to the annual delivery of the 1,125,000 acre feet from Davis Dam and reservoir. It prescribes the rate of delivery at different points of the year. Schedule II does the same things for the annual delivery of 375,000 acre feet from the All American Canal (or other canal). Section (d) provides for the delivery of water in excess of the annual 1,500,000 acre feet entitlement via the All American Canal. Section (e) provides the Mexican Section will establish delivery schedules for water delivered in excess of the annual 1,500,000 acre feet entitlement up to the 1,700,000 acre feet limit. Section (f) provides Mexico has the right to increase or decrease by up to 20% the monthly quantity of water to be delivered under the schedules. Section (g) provides water deliveries set forth in Schedule I may be increased by corresponding decreases in the water deliveries set forth in Schedule II.

Article 24

- *Dispute Resolution.* Section (d) empowers the Commission 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.” Diplomatic channels are appropriate if an issue cannot be resolved via the Commission.
 - See also Article 25 for dispute resolution mechanisms.

<p>Upper Colorado River Basin Compact</p> <p>Signed October 11, 1948</p>	<p><u>Article I</u></p> <ul style="list-style-type: none"> • <i>Subsection (a) – Purposes.</i> “The major purposes of this Compact are to provide for the <i>equitable division and apportionment</i> 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.” • <i>Subsection (b) – Control of Compact.</i> “It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.” <p><u>Article II – Definitions</u></p> <ul style="list-style-type: none"> • Same definitions as Colorado River Compact for “Colorado River System,” “Colorado River Basin,” “Upper Division,” “Lower Division,” “Upper Basin,” and “Lower Basin.” • “<i>Upper Colorado River System</i>”: “[T]hat portion of the Colorado River System above Lee Ferry.” <p><u>Article III – Apportionment Scheme</u></p> <ul style="list-style-type: none"> • <i>Subsection (a) – Upper Basin States’ Entitlements.</i> “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 <i>in perpetuity</i> to the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the <i>consumptive use of water</i> 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 <i>percentages</i> to the total quantity of consumptive use per annum apportioned <i>in perpetuity</i> 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.” • <i>Subsection (b):</i> “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
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them.”

- *(b)(2) – Beneficial Use.* “Beneficial use is the basis, the measure and the limit of the right to use”
- *(b)(3) – Limitation & Unapportioned Water.* “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: . . . (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.”
 - See also subsection (c) (same effect).
- *(b)(4) – Existing Entitlements.* “The apportionment to each State includes all water necessary for the supply of any rights which now exist.”

Article IV – Curtailment

- *Commission Findings.* “In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:
- *Subsection (b) – Overdraft.* “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 . . . 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.”
- *Subsection (c) – General Scheme; PPRs:* “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 – Water Losses

- This Article addresses how water losses in reservoirs are charged against the entitlements of the Upper Basin states. Subsection (a) applies to such losses from reservoirs constructed prior to the Upper Basin Compact, and subsection (b) applies to such losses from post-compact reservoirs.

Article VI – Inflow-Outflow Method

- “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 – Use of Water by Federal Government & State Entitlements

- “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 – Upper Colorado River Commission

- *Subsection (a) – Establishment & Composition.* “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. . . .”
- *Subsection (d) – Powers.* “The Commission, so far as consistent with this Compact, shall have the power to: . . . (2) Locate, establish, construct, abandon, operate and maintain *water gaging*

stations; (3) Make estimates to *forecast water run-off* on the Colorado River and any of its tributaries; (4) Engage in cooperative *studies of water supplies* of the Colorado River and its tributaries; (5) Collect, analyze, correlate, preserve and *report on data* as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries; (6) Make *findings as to the quantity of water of the Upper Colorado River System used* each year in the Upper Colorado River Basin and in each State thereof; (7) Make *findings as to the quantity of water deliveries at Lee Ferry* during each water year; (8) Make *findings as to the necessity for and the extent of the curtailment* of use, required, if any, pursuant to Article IV hereof; (9) Make *findings to the quantity of reservoir losses* and as to the share thereof chargeable under Article V hereof to each of the States; (10) Make *findings of fact* in the event of the occurrence of *extraordinary drought or serious accident to the irrigation system* in the Upper Basin . . . 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; . . . (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.”

Article XV

- *Subsection (a) – Water Use Hierarchy.* “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.”
- *Subsection (b) – State Water Rights Systems.* “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 – Relinquishment, Abandonment, Forfeiture

- “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.”

	<p><u>Article XIX – Indian Reserved Rights, Mexico’s Entitlement, Federal Reserved Rights</u></p> <ul style="list-style-type: none"> • “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 . . . ; (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”
<p>Colorado River Storage Project Act</p> <p>Enacted April 11, 1956</p>	<p><u>Section 1</u></p> <ul style="list-style-type: none"> • <i>Authorization & Purpose.</i> “In order to initiate the comprehensive development of the water resources of the <i>Upper Colorado River Basin</i>, for the <i>purposes</i>, 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 <i>authorized</i> (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 . . . 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” • <i>Rainbow Bridge.</i> “[A]s 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.” <p><u>Section 3</u></p> <ul style="list-style-type: none"> • <i>National Parks & Monuments.</i> “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.” <p><u>Section 4</u></p> <ul style="list-style-type: none"> • <i>Apportionment Schemes.</i> “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”

Section 7

- *Water Use Hierarchy.* “Subject to the provisions of the Colorado River Compact, neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River storage project shall preclude or impair the appropriation of water for domestic or agricultural purposes pursuant to applicable State law.”

Section 8

- *Recreation & Wildlife.* “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”

Section 14

- *Reservoir Operations.* “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.”

	<p><u>Section 16</u></p> <ul style="list-style-type: none"> • <i>Definitions.</i> This section incorporates the definitions set forth in the Upper Colorado River Basin Compact for (<i>inter alia</i>) “Colorado River Basin,” “Colorado River System,” and “domestic use.”
<p><i>Arizona v. California</i>, 373 U.S. 546 (1963)</p> <p>Decided June 3, 1963</p>	<p><u>Majority</u></p> <ul style="list-style-type: none"> • <i>Holding – Lower Basin Apportionment Scheme & Secretary’s K Authority</i> <ul style="list-style-type: none"> ○ “In passing the <i>Boulder Canyon Project Act</i>, Congress intended to, and did, create its own comprehensive scheme for the apportionment among California, Arizona and Nevada of the <i>Lower Basin’s share of the mainstream waters</i> of the Colorado River, leaving each State her own tributaries. It decided that a fair division of the first 7,500,000 acre-feet of such mainstream waters would give 4,400,000 acre-feet to California, 2,800,000 to Arizona, and 300,000 to Nevada, and that Arizona and California should each get one-half of any surplus. Congress gave the <i>Secretary of the Interior</i> adequate authority to accomplish this division by giving him <i>power to make contracts</i> for the delivery of water and by providing that <i>no person could have water without a contract.</i>” (546; see also 565). ○ “No matter what waters the Compact apportioned, the Project Act itself dealt only with water of the mainstream and reserved to each State the exclusive use of the waters of her own tributaries.” (546). ○ “The Act also declares that the <i>Secretary of the Interior</i> and the United States in the construction, operation, and maintenance of the dam and other works and in the making of contracts shall be subject to and controlled by the <i>Colorado River Compact</i>. These latter references to the Compact are quite different from the Act’s adoption of Compact terms. Such references, unlike the explicit adoption of terms, were used only to show that the Act and its provisions were <i>in no way to upset, alter, or affect the Compact’s congressionally approved division of water between the basins</i>. They were not intended to make the Compact and its provisions control or affect the Act’s allocation among and distribution of water within the States of the Lower Basin. Therefore, we look to the <i>Compact</i> for terms specifically incorporated in the Act, and <i>we would also look to it to resolve disputes between the Upper and Lower Basins</i>, were any involved in this case. But no such questions are here. <i>We must determine what apportionment and delivery scheme in the Lower Basin has been effected through the Secretary’s contracts</i>. For that determination, we look to the <i>Project Act alone.</i>” (567).

- “Arizona argues that the Compact apportions between basins only the waters of the mainstream, not the mainstream and the tributaries. *We need not reach that question, however, for we have concluded that whatever waters the Compact apportioned the Project Act itself dealt only with water of the mainstream.*” (568).
- “[The Secretary] and his permittees, licensees, and contractees are *subject to the Colorado River Compact, § 8(a), and therefore can do nothing to upset or encroach upon the Compact’s allocation of Colorado River water between the Upper and Lower Basins.*” (584).
- “*Congress intended to provide its own method for a complete apportionment of the Lower Basin’s share of the mainstream water among Arizona, California and Nevada; and Congress intended the Secretary of the Interior, through his contracts under § 5, both to carry out the allocation of the waters of the main Colorado River among the Lower Basin States and to decide which users within each State would get water. . . . It is the Act and the contracts made by the Secretary of the Interior under § 5, not the law of prior appropriation, that control the apportionment of water among the States; and the Secretary, in choosing between the users within each State and in settling the terms of his contracts, is not required by §§ 14 and 18 of the Act to follow state law. . . . Section 8 of the Reclamation Act does not require the United States, in the delivery of water, to follow priorities laid down by state law; and the Secretary is not bound by state law in disposing of water under the Project Act.*” (547).
- “As one alternative of the congressional scheme, § 4 (a) of the Act invited Arizona, California, and Nevada to adopt a compact dividing the waters along the identical lines that had formed the basis for the congressional discussions of the Act: 4,400,000 acre-feet to California, 300,000 to Nevada, and 2,800,000 to Arizona. Section 8 (b) gave the States power to agree upon some other division, which would have to be approved by Congress. Congress made sure, however, that *if the States did not agree on any compact the objects of the Act would be carried out, for the Secretary would then proceed, by making contracts, to apportion water among the States and to allocate the water among users within each State.*” (579).
- “These several provisions, even without legislative history, are persuasive that Congress intended the *Secretary of the Interior, through his § 5 contracts, both to carry out the allocation of the waters of the main Colorado River among the Lower Basin States and to decide which users within each State would get water.*” (580).

- “[I]t is the Act and the Secretary's contracts, not the law of prior appropriation, that control the apportionment of water among the States. Moreover, contrary to the Master's conclusion, *we hold that the Secretary in choosing between users within each State and in settling the terms of his contracts is not bound by these sections to follow state law.* . . . Where the Government, as here, has exercise this power and undertaken a comprehensive project for the improvement of a great river and for the orderly and beneficial distribution of water, there is *no room for inconsistent state laws.* . . . [H]ere we hold that the general saving language of § 18 cannot bind the Secretary by state law and thereby nullify the contract power expressly conferred upon him by § 5. Section 18 plainly allows the States to do things not inconsistent with the Project Act or with federal control of the river, for example, regulation of the use of tributary water and protection of present perfected rights. What other things the States are free to do can be decided when the occasion arises. *But where the Secretary's contracts, as here, carry out a congressional plan for the complete distribution of waters to users, state law has no place.*” (586-87).
- “It was only natural that the United States, which was to make the benefits available and which had accepted the responsibility for the project's operation, would want to make certain that the waters were effectively used. All this vast, interlocking machinery—a dozen major works delivering water according to congressionally fixed priorities for home, agricultural, and industrial uses to people spread over thousands of square miles—could function efficiently only under *unitary management*, able to formulate and supervise a *coordinated plan that could take account of the diverse, often conflicting interests of the people and communities of the Lower Basin States.* Recognizing this, *Congress put the Secretary of the Interior in charge of these works* and entrusted him with sufficient power, principally the § 5 contract power, to direct, manage, and coordinate their operation. Subjecting the Secretary to the *varying, possibly inconsistent, commands of the different state legislatures* could frustrate efficient operation of the project and thwart full realization of the benefits Congress intended this national project to bestow. We are satisfied that the Secretary's power must be construed to permit him, within the boundaries set down in the Act, to allocate and distribute the waters of the mainstream of the Colorado River.” (587-88).
- “In case of water *shortage*, the *Secretary is not bound to require a pro rata sharing of shortages.* He must follow the *standards set out in the Act*; but he is *free to choose among the recognized methods of apportionment or to devise reasonable methods of his own,*

	<p>since Congress has given him full power to control, manage and operate the Government's Colorado River works and to make contracts for the sale and delivery of water on such terms as are not prohibited by the Act.” (548; see also 593-94).</p> <ul style="list-style-type: none"> • <i> Holding – Indian & Federal Reserved Rights</i> <ul style="list-style-type: none"> ○ “This Court sustains the Master's finding that, when the United States created the Chemehuevi, Cocopah, Yuma, Colorado River and Fort Mohave <i>Indian Reservations</i> in Arizona, California and Nevada, or added to them, it <i>reserved</i> not only the land but also the use of <i>enough water from the Colorado River to irrigate the irrigable portions of the reserved lands</i>. . . . The United States reserved the water rights for the Indians, <i>effective as of the time the Indian reservations were created</i>, and these water rights, having vested before the Act became effective in 1929, are ‘<i>present perfected rights</i>’ and as such are entitled to priority under the Act. . . . This Court sustains the Master's conclusions that enough water was intended to be reserved to satisfy the future, as well as the present, needs of the Indian reservations and that enough water was reserved to irrigate all the <i>practicably irrigable acreage</i> on the reservations” (548-49; see 600). ○ “This Court agrees with the Master's conclusions that the United States intended to <i>reserve</i> water sufficient for the future requirements of the Lake Mead <i>National Recreational Area</i>, the Havasu Lake <i>National Wildlife Refuge</i>, the Imperial <i>National Wildlife Refuge</i> and the Gila <i>National Forest</i>.” (549). ○ “This Court agrees with the Master that all uses of <i>mainstream</i> water within a State are to be <i>charged against that State's apportionment</i>, which, of course, includes <i>uses by the United States</i>.” (549; see 601). <p><u>Dissents</u> – Harlan and Douglas (omitted).</p>
<p><i>Arizona v. California</i>, 547 U.S. 150 (2006) (consolidated decree)</p> <p>Entered March 27, 2006</p>	<p><u>Background</u></p> <ul style="list-style-type: none"> • <i>Consolidated Decree</i>. “This decree consolidates the substantive provisions of the decrees previously entered in this action at 376 U. S. 340 (1964), 383 U. S. 268 (1966), 439 U. S. 419 (1979), 466 U. S. 144 (1984), and 531 U. S. 1 (2000) This decree is entered in order to provide a single convenient reference to ascertain the rights and obligations of the parties adjudicated in this original proceeding, and reflects only the incremental changes in the original 1964 decree by subsequent decrees and the settlements of the federal reserved water rights claim for the Fort Yuma Indian Reservation.” (3).

Article I – Definitions

- “*Mainstream*”: “[M]ainstream of the Colorado River downstream from Lee Ferry.”
- “Consumptive use from the mainstream within a State shall include all consumptive uses of water of the mainstream, including water drawn from the mainstream by *underground pumping*, and including, but not limited to, consumptive uses made by persons, by agencies of that State, and by the United States for the benefit of *Indian reservations* and *other federal establishments* within the State.”
- “*Perfected Right*”: “[A] water right acquired in accordance with *state law*, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in *addition* shall include water rights created by the reservation of mainstream water for the use of *federal establishments* under *federal law* whether or not the water has been applied to beneficial use.”
- “*Present Perfected Rights*”: “[P]erfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act.”
- “*Water Controlled by the United States*”: “[W]ater in Lake Mead, Lake Mohave, Lake Havasu and all other water in the mainstream below Lee Ferry and within the United States.”

Article II

- *Section (A) – Water Use Hierarchy*. “[The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined:] (A) From operating regulatory structures controlled by the United States and from releasing water controlled by the United States other than in accordance with the following order of priority: (1) For river regulation, improvement of navigation, and flood control; (2) For irrigation and domestic uses, including the satisfaction of present perfected rights; and (3) For power; Provided, however, that the United States may release water in satisfaction of its obligations to the United States of Mexico under the Treaty dated February 3, 1944, without regard to the priorities specified in this subdivision (A)”
- *Subsections (B)(1)-(3) – Lower Basin States’ Entitlements & Order of Priority*. “[The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined:] (B) From releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California and Nevada, except as follows: (1) [**Normal Conditions**] If sufficient *mainstream water* is available for release, as determined by the Secretary of the Interior, to satisfy 7,500,000 acre-feet of annual consumptive use in the aforesaid three States, then of such 7,500,000 acre-feet of consumptive use, there shall be apportioned 2,800,000 acre-feet for

use in Arizona, 4,400,000 acre-feet for use in California, and 300,000 acre-feet for use in Nevada; (2) **[Surplus Conditions]** If sufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use in the aforesaid States in excess of 7,500,000 acre-feet, such excess consumptive use is surplus, and 50% thereof shall be apportioned for use in Arizona and 50% for use in California; provided, however, that if the United States so contracts with Nevada, then 46% of such surplus shall be apportioned for use in Arizona and 4% for use in Nevada; (3) **[Shortage Conditions]** If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States, then the Secretary of the Interior, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective States may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes, but in no event shall more than 4,400,000 acre-feet be apportioned for use in California including all present perfected rights.”

- *Subsection (B)(4) – Accounting Method.* “Any mainstream water consumptively used within a State shall be charged to its apportionment, regardless of the purpose for which it was released.”
- *Subsection (B)(5) – Secretary’s Contract Authority.* “[M]ainstream water shall be released or delivered to water users (including but not limited to public and municipal corporations and other public agencies) in Arizona, California, and Nevada only pursuant to valid contracts therefor made with such users by the Secretary of the Interior, pursuant to *Section 5 of the Boulder Canyon Project Act* or any other applicable federal statute.”
- *Subsection (B)(6) – Unused Water.* “[N]othing in this decree shall be construed as prohibiting the Secretary of the Interior from releasing such apportioned but unused water during such year for consumptive use in the other States. No rights to the recurrent use of such water shall accrue by reason of the use thereof.”
- *Section D – Indian & Federal Reserved Rights*
 - *Federal Reservations.* This section sets forth the federal reserved rights – entitlements and priority dates – for nine federal reservations. These reservations include five Indian reservations (Chemehuevi, Cocopah, Fort Yuma, Colorado River, and Fort Mojave); Lake Mead National Recreation Area; Havasu Lake National Wildlife Refuge and Imperial National Wildlife Refuge; and Boulder City, Nevada.

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

Article IV

- *Section F – Transfer Restrictions.* This section prohibits the transfer of a diversion from certain tributary streams in New Mexico (e.g., Gila River) to other tributary streams and also the transfer of water for irrigation purposes on one of these streams to irrigation purposes elsewhere on the same stream.

Article V

- *Records.* The sections within this Article require the United States to keep and to make available records for the Lower Basin identifying water releases; diversions, return flows, and consumptive uses; and water deliveries to Mexico.

Article VI

- *PPRs.* This Article incorporates by reference the list of PPRs in the Lower Basin states set forth in Appendix A to the decree.

Article VIII

- *Section (A) – State Water Rights Systems.* This section provides the decree shall not affect the “relative rights *inter sese* of water users within any of the States, except as otherwise specifically provided herein.”
- *Section (B) – Tributaries.* This section provides the decree shall not affect the “rights or priorities to water in any of the Lower Basin tributaries of the Colorado River in the States of Arizona, California, Nevada, New Mexico and Utah except the Gila River system.” (Note – Use of Gila River and its tributaries in New Mexico is addressed in Article IV (see above).)
- *Section (D) – Compact Interpretation.* The section provides the decree shall not affect “[a]ny issue of interpretation of the Colorado River Compact.”

	<p><u>Appendix</u></p> <ul style="list-style-type: none"> • The Appendix sets forth the PPRs in the Lower Basin states. The PPRs for Arizona and California are organized into three categories: (1) federal establishments’ PPRs (e.g., Indian reservations); (2) water districts’ and/or projects’ PPRs (e.g., Imperial Irrigation District, Yuma reclamation project); and (3) Miscellaneous PPRs. Nevada only has the first category of PPRs. The amounts and priority dates of each PPR are listed in these categories. • <i>Section 4 – Beneficial Use.</i> “Any water right listed herein may be exercised only for beneficial uses.” • <i>Section 5 – Order of Priority for PPRs.</i> “In the event of a determination of <i>insufficient main-stream water to satisfy present perfected rights</i> pursuant to Art. II(B)(3) of this decree, the Secretary of the Interior shall, before providing for the satisfaction of any of the other present perfected rights <i>except</i> for those listed herein as “MISCELLANEOUS PRESENT PERFECTED RIGHTS” (rights numbered 7–21 and 29–80 below) in the <i>order of their priority dates without regard to State lines, first</i> provide for the satisfaction in full of all rights of the Chemehuevi Indian Reservation, Cocopah Indian Reservation, Fort Yuma Indian Reservation, Colorado River Indian Reservation, and the Fort Mojave Indian Reservation as set forth in Art. II(D)(1)–(5)[.]” <ul style="list-style-type: none"> ○ <u>Note:</u> Order of priority: (1) miscellaneous PPRs; (2) Indian reserved rights set forth in Article II(D); and (3) other PPRs. • <i>Section 5 – Non-Agricultural Use of Indian Reserved Rights.</i> “The foregoing reference to a quantity of water necessary to supply consumptive use required for irrigation, and as that provision is included within paragraphs (1) through (5) of Art. II(D) of this decree, shall constitute the means of determining quantity of adjudicated water rights but shall <i>not constitute a restriction of the usage</i> of them to irrigation or other agricultural application.”
<p>Colorado River Basin Project Act</p> <p>Enacted September 30, 1968</p>	<p><u>Section 102(a)</u></p> <ul style="list-style-type: none"> • <i>Purposes.</i> “It is the object of this Act to provide a program for the further comprehensive development of the water resources of the Colorado River Basin and for the provision of additional and adequate water supplies for use in the upper as well as in the lower Colorado River Basin. This program is declared to be for the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and

wildlife, and for the generation and sale of electrical power as an incident of the foregoing purposes.”

Section 202

- *Priority of Mexican Entitlement.* “The Congress declares that the satisfaction of the requirements of the Mexican Water Treaty from the Colorado River constitutes a *national obligation* which shall be the first obligation of any water augmentation project planned pursuant to section 201 of this Act, and authorized by the Congress. . . .”

Section 301 – Central Arizona Project

- *Subsection (a) – Authorization.* “For the purposes of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central Arizona Project”
- *Subsection (b) – Subordination of Priority.* “Article II(B)(3) of the decree of the Supreme Court of the United States in Arizona against California (376 U.S. 340) shall be so administered that in any year in which, as determined by the Secretary, there is insufficient main stream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada, diversions from the main stream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works heretofore constructed, and by other existing Federal reservations in that State, of four million four hundred thousand acre-feet of mainstream water, and by users of the same character in Arizona and Nevada. . . . This subsection shall not affect the relative priorities, among themselves, of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project, or amend any provisions of said decree.”

Section 303(a)

- *Grand Canyon Dams.* “The Secretary is authorized and directed to continue to a conclusion appropriate engineering and economic studies and to recommend the most feasible plan for the construction and operation of hydroelectric generating and transmission facilities, the purchase of

electrical energy, the purchase of entitlement to electrical plant capacity, or any combination thereof . . . for the purpose of supplying the power requirements of the Central Arizona Project . . . : Provided, That nothing in this section or in this Act contained shall be construed to authorize the study or construction of any dams on the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam.”

Section 304

- *Subsection (b) – Ks for CAP Water.* This subsection authorizes the formation of contracts between the Secretary and water organizations for irrigation, municipal, and industrial water provided from the CAP. Contracts for irrigation water must allow for deliveries of municipal and industrial water if the irrigation water is not needed by contractors. Contracts for municipal and industrial water under the CAP are not subject to the irrigation preference clause set forth in § 9(c) of the Reclamation Project Act of 1939. Repayment periods of up to 50 years.
- *Subsection (c) – Groundwater Pumping, Canal Lining, Subordination of Priority of CAP Water Ks.* “Each contract under which water is provided under the Central Arizona Project shall require that (1) there be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the United States to the contractors shall be provided and maintained with linings adequate in his judgment to prevent excessive conveyance losses; and (3) neither the contractor nor the Secretary shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a contractor receiving water from the Central Arizona Project for any use outside said contractor’s service area unless the Secretary and such contractor shall agree, or shall have previously agreed that a surplus of ground water exists and that drainage is or was required. Such contracts shall be subordinate at all times to the satisfaction of all existing contracts between the Secretary and users in Arizona heretofore made pursuant to the Boulder Canyon Project Act.”
- *Subsection (d) – Water Exchanges.* “The Secretary may require in any contract under which water is provided from the Central Arizona Project that the contractor agree to accept main stream water in exchange for or in replacement of existing supplies from sources other than the main stream. The Secretary shall so require in the case of users in Arizona who also use water from the Gila River system to the extent necessary to make available to users of water from the Gila River system in New Mexico additional quantities of water as provided in and under the conditions specified in subsection (f) of this section”

	<ul style="list-style-type: none"> • <i>Subsection (e) – Priority of Exchanged Water within CAP Apportionment.</i> “In times of shortage or reduction of main stream Colorado River water for the Central Arizona Project, as determined by the Secretary, <i>users which have yielded water from other sources in exchange for main stream water</i> supplied by that project shall have a <i>first priority</i> to receive main stream water, as against other users supplied by that project which have not so yielded water from other sources, but only in quantities adequate to replace the water so yielded.” • <i>Subsection (f) – NM CAP Water Ks.</i> This subsection authorizes the formation of contracts for Gila River system water between the Secretary and users in New Mexico up to prescribed limits and subject to delivery of main stem Colorado River water to Gila River users downstream in Arizona. <p><u>Section 306</u></p> <ul style="list-style-type: none"> • <i>Fish & Wildlife – Water Salvage & Groundwater Recovery Programs.</i> “The Secretary shall undertake programs for water salvage and ground water recovery along and adjacent to the main stream of the Colorado River. Such programs shall be consistent with maintenance of a reasonable degree of undisturbed habitat for fish and wildlife in the area, as determined by the Secretary.” <p><u>Section 601</u></p> <ul style="list-style-type: none"> • <i>Subsection (a) – Conformity with Law of River.</i> “Nothing in this Act shall be construed to alter, amend, repeal, modify, or be in conflict with the provisions of the [Colorado River Compact, Upper Colorado River Basin Compact, Treaty with Mexico, AZ v. CA Decree, or, except as otherwise provided herein, the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, or the Colorado River Storage Project Act].” • <i>Subsection (b)(1) – Annual Reports.</i> “[The Secretary is directed to – make reports as to the annual consumptive uses and losses of water from the Colorado River system after each successive five year period Such reports shall include a detailed breakdown of the beneficial consumptive use of water on a State-by-State basis. Specific figures on quantities consumptively used from the major tributary streams flowing into the Colorado River shall also be included on a State-by-State basis. Such reports shall be prepared in consultation with the States of the lower basin individually and with the Upper Colorado River Commission” • <i>Subsection (b)(2) – Conditioning Ks on Compact.</i> “[T]he Secretary is directed to – condition all contracts for the delivery of water originating in the drainage basin of the Colorado River system
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upon the availability of water under the Colorado River Compact.”

Section 602

- *Subsection (a) – LROC & Order of Priority.* “In order to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty, the Secretary shall propose criteria for the coordinated long-range operation of the reservoir constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. To effect in part the purposes expressed in this paragraph, the criteria shall make provision for the storage of water in storage units of the Colorado River storage project and releases of water from Lake Powell in the following listed *order of priority*:
 - (1) releases to supply *one-half the deficiency described in article III(c) of the Colorado River Compact*, if any such deficiency exists and is chargeable to the States of the Upper Division . . . ;
 - (2) *releases to comply with article III(d) of the Colorado River Compact*, less such quantities of water delivered into the Colorado River below Lee Ferry to the credit of the States of the Upper Division from other sources; and
 - (3) *storage of water* not required for the releases specified in clauses (1) and (2) of this subsection to the extent that the Secretary . . . shall find this to be *reasonably necessary to assure deliveries under clauses (1) and (2)* without impairment of annual consumptive uses in the upper basin pursuant to the Colorado River Compact: *Provided, That water not so required to be stored shall be released from Lake Powell:* (i) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in *Article III(e)* of the Colorado River Compact, but *no such releases* shall be made when *the active storage in Lake Powell is less than the active storage in Lake Mead*, (ii) *to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell*, and (iii) *to avoid anticipated spills from Lake Powell.*”
- *Subsection (b) – Annual Reports & Consultation re LROC.* “[T]he 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

	<p>seven Colorado River Basin States and appropriate consultation with such State representatives as each Governor may designate.”</p> <p><i>Section 603(a) – Protection of Upper Basin Entitlement</i></p> <ul style="list-style-type: none"> • “Rights of the upper basin to the consumptive use of water available to that basin from the Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin.” <p><i>Section 606 – Definitions</i></p> <ul style="list-style-type: none"> • “As used in this Act, (a) all terms which are defined in the Colorado River Compact shall have the meanings therein defined.”
<p>Long Range Operating Criteria</p> <p>Adopted June 8, 1970 Amended March 21, 2005</p>	<p><i>Preamble – Conformity with Law of the River</i></p> <ul style="list-style-type: none"> • “These Operating Criteria are promulgated in compliance with [CRBPA § 602]. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Project Act (hereinafter "Upper Basin Storage Reservoirs") and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.” <p><i>Article I – Annual Report</i></p> <ul style="list-style-type: none"> • <i>Subsection (1)</i>. “[T]he Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.” • <i>Subsection (2)</i>. “The plan of operation shall include such detailed rules and quantities as may be necessary and . . . shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions[.]”

Article II – Operation of Upper Basin Reservoirs

- *Subsection (1) – Required Storage.* “The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of that year to be in storage as required by Section 602(a)”
- *Subsection (2) – Minimum Release.* “If in the plan of operation, either: (a) the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II (1) hereof, for that date; or (b) the Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date: the objective shall be to maintain a *minimum release of water from Lake Powell of 8.23 million acre-feet* for that year. . . .”
- *Subsection (3) – Beyond Minimum Release.* “If, in the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, *water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:* (a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in *Article III(e)* of the Colorado River Compact, but *no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,* (b) to maintain, as nearly as practicable, *active storage in Lake Mead equal to the active storage in Lake Powell,* and (c) to *avoid anticipated spills* from Lake Powell.”
- *Subsection (5) – Conformity with Compact.* “Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.”

Article III – Operation of Lake Mead

- *Subsection (1) – Order of Priority.* “Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows: (a) *Mexican Treaty* obligations; (b) Reasonable consumptive use requirements of mainstream users in the *Lower Basin;* (c) Net river losses; (d) Net reservoir losses; (e) Regulatory wastes.”
- *Subsection (3) – Lower Basin.* “After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of *Article III(1)(b)* of these Operating Criteria will be met to the following extent:

- (a) *Normal*: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500,000 acre-feet of annual consumptive use in accordance with the decree in *Arizona v. California*, 376 U.S. 340 (1964).
- (b) *Surplus*: The Secretary shall determine from time to time when water in quantities greater than "Normal" is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in *Arizona v. California* after consideration of all relevant factors, including, but not limited to, the following: (i) the requirements stated in Article III(1) of these Operating Criteria; (ii) requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in *Arizona v. California*; (iii) actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and (iv) estimated net inflow to Lake Mead.
- (c) *Shortage*: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following: (i) the requirements stated in Article III(1) of these Operating Criteria; (ii) actual and forecast quantities of active storage in Lake Mead; (iii) estimate of net inflow to Lake Mead for the current year; (iv) historic streamflows, including the most critical period of record; (v) priorities set forth in Article II(A) of the decree in *Arizona v. California*; and (vi) the purposes stated in Article I(2) of these Operating Criteria. The shortage provisions of Article II(B)(3) of the decree in *Arizona v. California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required by [CRBPA § 301].”

Article IV – Definitions

- “In addition to the definitions in [CRBPA § 606), . . . ‘Surplus’ as used in Article III(3)(b) herein is water which can be used to meet consumptive use demands in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term ‘surplus’ as used in these Operating Criteria is not to be construed as applied to, being interpretive of, or in any manner having reference to the term ‘surplus’ in the Colorado River Compact.”

Minute 242

(“Permanent and Definitive Solution to the International Problem of the Salinity of the Colorado River”)

Adopted August 30, 1973

Para. 1

- *Salinity Standard for Mexico’s Entitlement.* “Referring to the annual volume of Colorado River waters guaranteed to Mexico under the Treaty of 1944, of 1,500,000 acre-feet (1,850,234,000 cubic meters): a) The United States shall adopt measures to assure that . . . the approximately 1,360,000 acre-feet (1,677,545,000 cubic meters) delivered to Mexico upstream of Morelos Dam, have an annual average salinity of no more than 115 p.p.m. \pm 30 p.p.m. U.S. count (121 p.p.m. \pm 30 p.p.m. Mexican count) over the annual average salinity of Colorado River waters which arrive at Imperial Dam, with the understanding that any waters that may be delivered to Mexico under the Treaty of 1944 by means of the All American Canal shall be considered as having been delivered upstream of Morelos Dam for the purpose of computing this salinity. b) The United States will continue to deliver to Mexico on the land boundary at San Luis and in the limitrophe section of the Colorado River downstream from Morelos Dam approximately 140,000 acre feet (172,689,000 cubic meters) annually with a salinity substantially the same as that of the waters customarily delivered there . . .”

Para. 3 – Bypass Drain

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

Para. 4 – Bypass Drain

- “To complete the drain referred to in point 3, Mexico, through the Commission and at the expense of the United States, shall construct, operate and maintain an extension of the concrete-lined bypass drain from the Arizona-Sonora international boundary to the Santa Clara Slough of a capacity of 353 cubic feet (10 cubic meters) per second. Mexico shall permit the United States to discharge through this drain to the Santa Clara Slough all or a portion of the Wellton-Mohawk drainage waters, the volumes of brine from such desalting operations in the United States as are carried out to implement the Resolution of this Minute, and any other volumes of brine which Mexico may agree to accept. . . .”

**Colorado River Basin
Salinity Control Act**

Enacted June 24, 1974

Section 101

- *Subsection (a) – Minute 242.* “The Secretary of the Interior, hereinafter referred to as the ‘Secretary’, is authorized and directed to proceed with a program of works of improvement for the enhancement and protection of the quality of water available in the Colorado River for use in the United States and the Republic of Mexico, and to enable the United States to comply with its obligations under the agreement with Mexico of August 30, 1973 (*Minute No. 242* of the International Boundary and Water Commission, United States and Mexico)”
- *Subsection (b) – Desalting Complex.* “The Secretary is authorized to construct, operate, and maintain a desalting complex, including (1) a *desalting plant* to reduce the salinity of drain water from the Wellton-Mohawk division of the Gila project, Arizona . . . ; (3) the necessary extension in the United States and Mexico of the existing *bypass drain* to carry the reject stream from the desalting plant and other drainage waters to the Santa Clara Slough in Mexico . . . ; (5) reduction of the quantity of irrigation return flows through *acquisition of lands* to reduce the size of the division, and irrigation *efficiency improvements* to minimize return flows[.]”

Section 102

- *Subsection (a) – Canal Lining.* “To assist in meeting salinity control objectives of Minute No. 242 during an interim period, the Secretary is authorized to construct a new concrete-lined canal or, to line the presently unlined portion of the Coachella Canal of the Boulder Canyon project, California”
- *Subsection (c) – Land Acquisition.* “The Secretary is authorized to acquire by purchase, eminent domain, or exchange private lands or interests therein, as may be determined by him to be appropriate, within the Imperial Irrigation District on the Imperial East Mesa which receive, or which have been granted rights to receive, water from Imperial Irrigation District's capacity in the Coachella Canal.”

Section 201

- This section authorizes the Secretary to implement a salinity control program.

Section 202

- This section authorizes the Secretary to construct, operate, and maintain an array of “salinity control units” throughout the basin as part of the program.

	<p><u>Section 204 – Advisory Council</u></p> <ul style="list-style-type: none"> • <i>Subsection (a).</i> “There is hereby created the Colorado River Basin Salinity Control Advisory Council composed of no more than three members from each State appointed by the Governor of each of the Colorado River Basin States.” • <i>Subsection (b).</i> “The 'Council shall be advisory only and shall—(1) act as liaison between both the Secretaries of Interior and Agriculture and the Administrator of the Environmental Protection Agency and the States in accomplishing the purposes of this title; (2) receive reports from the Secretary on the progress of the salinity control program and review and comment on said reports; and (3) recommend to both the Secretary and the Administrator of the Environmental Protection Agency appropriate studies of further projects, techniques, or methods for accomplishing the purposes of this title.” <p><u>Section 206</u></p> <ul style="list-style-type: none"> • <i>Biannual Reports.</i> “[E]very two years . . . the Secretary shall submit, simultaneously, to the President, the Congress, and the Advisory Council . . . a report on the Colorado River salinity control program . . .” <p><u>Section 207</u></p> <ul style="list-style-type: none"> • This section provides that the Act generally conforms to other parts of the Law of the River. <p><u>Section 209 – Definitions</u></p> <ul style="list-style-type: none"> • “[A]ll terms that are defined in the Colorado River Compact shall have the meanings therein defined.”
<p>Grand Canyon Protection Act of 1992</p> <p>Enacted October 30, 1992</p>	<p><u>Section 1802</u></p> <ul style="list-style-type: none"> • <i>Subsection (a) – Mandate for Operating Criteria and Plans.</i> “The Secretary shall operate Glen Canyon Dam in accordance with the additional criteria and operating plans specified in section 1804 and exercise other authorities under existing law in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use.” • <i>Subsection (b) – Conformity with Law of the River.</i> “The Secretary shall implement this section in a manner fully consistent with and subject to the Colorado River Compact, the Upper Colorado

River Basin Compact, the Water Treaty of 1944 with Mexico, the decree of the Supreme Court in *Arizona v. California*, and the provisions of the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 that govern allocation, appropriation, development, and exportation of the waters of the Colorado River basin.”

Section 1804

- *Subsection (c)(1) – Criteria & Operating Plans.* “Based on the . . . environmental impact statement prepared pursuant to subsection (a) and the audit performed pursuant to subsection (b), the Secretary shall – (A) adopt criteria and operating plans separate from and in addition to those specified in section 602(b) of the Colorado River Basin Project Act of 1968 and (B) exercise other authorities under existing law, so as to ensure that Glen Canyon Dam is operated in a manner consistent with section 1802.”
- *Subsection (c)(2) – Annual Report.* “Each year after the date of the adoption of criteria and operating plans pursuant to paragraph (1), the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report, separate from and in addition to the report specified in section 602(b) of the Colorado River Basin Project Act of 1968 on the preceding year and the projected year operations undertaken pursuant to this Act.”
- *Subsection (c)(3) – Consultation.* “In preparing the criteria and operating plans described in section 602(b) of the Colorado River Basin Project Act of 1968 and in this subsection, the Secretary shall consult with the Governors of the Colorado River Basin States and with the general public, including – (A) representatives of academic and scientific communities; (B) environmental organizations; (C) the recreation industry; and (D) contractors for the purchase of Federal power produced at Glen Canyon Dam.”

Section 1805

- *Subsection (a) – Monitoring Programs.* “The Secretary shall establish and implement long-term monitoring programs and activities that will ensure that Glen Canyon Dam is operated in a manner consistent with that of section 1802.”
- *Subsection (c) – Consultation.* “The monitoring programs and activities conducted under subsection (a) shall be established and implemented in consultation with – (1) the Secretary of Energy; (2) the Governors of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming; (3) Indian tribes; and (4) the general public, including representatives of academic and scientific communities, environmental organizations, the recreation industry, and

	<p>contractors for the purchase of Federal power produced at Glen Canyon Dam.”</p> <p><i>Section 1806 – Conformity w/ Law of the River and Other Federal Laws</i></p> <ul style="list-style-type: none"> • “Nothing in this title is intended to affect in any way – (1) the allocations of water secured to the Colorado Basin States by any compact, law, or decree; or (2) any Federal environmental law, including the Endangered Species Act [.]”
<p>Operating Criteria for Glen Canyon Dam</p> <p>Adopted October 9, 1996 (ROD)</p>	<p><i>Introduction</i></p> <ul style="list-style-type: none"> • <i>Purpose.</i> “This record of decision (ROD) of the Department of the Interior, Bureau of Reclamation (Reclamation), documents the selection of operating criteria for Glen Canyon Dam, as analyzed in the final Environmental Impact Statement (EIS), dated March 21, 1995.” • <i>§ 1802 Mandate.</i> Section § 1802 of the Grand Canyon Protection Act of 1992 requires the Secretary to operate Glen Canyon Dam: “in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use.” <p><i>Decision</i></p> <ul style="list-style-type: none"> • <i>Modified Low Fluctuating Flow Alternative.</i> “The Secretary's decision is to implement the Modified Low Fluctuating Flow Alternative (the preferred alternative) as described in the final EIS on the Operation of Glen Canyon Dam with a minor change in the timing of beach/habitat building flows” • <i>Beach/Habitat-Building Flows.</i> “The Modified Low Fluctuating Flow Alternative incorporates beach/habitat-building flows which are scheduled high releases of short duration designed to rebuild high elevation sandbars, deposit nutrients, restore backwater channels, and provide some of the dynamics of a natural system. . . . Instead of conducting these flows in years in which Lake Powell storage is low on January 1, they will be accomplished by utilizing reservoir releases in excess of power plant capacity required for dam safety purposes.” • <i>Upramp Rate & Maximum Releases.</i> “The upramp rate and maximum flow criteria were also modified between the draft and final EIS. The upramp rate was increased from 2,500 cubic feet per second per hour to 4,000 cubic feet per second per hour, and the maximum allowable release was increased from 20,000 to 25,000 cubic feet per second.” The Adaptive Management Working Group will notify the Secretary if impacts different from those in the final EIS occur.

	<ul style="list-style-type: none"> • <i>Summary.</i> A summary of the features of the preferred alternative is contained in Table 1 (G-6) – e.g., (1) minimum releases; (2) maximum releases; (3) allowable daily flow fluctuations; (4) ramp rates; and (5) “common elements” (e.g., adaptive management, protection of cultural resources, flood reduction measures, beach/habitat-building flows, new population of humpback chub). <p><u><i>Environmental Commitments and Monitoring</i></u></p> <ul style="list-style-type: none"> • This section describes in more detail the environmental components of the preferred alternative, including (1) <i>adaptive management</i> (establishment of an Adaptive Management Workgroup chartered pursuant to the Federal Advisory Committee Act) and (2) <i>beach/habitat-building flows</i> (providing for steady flows in excess of maximum releases for 1-2 week periods in the spring). <p><u><i>Basis for Decision</i></u></p> <ul style="list-style-type: none"> • <i>Rationale.</i> “[T]he Modified Low Fluctuating Flow Alternative was selected as the preferred alternative because it would provide the most benefits with respect to the original selection criteria, given existing information. This alternative would create conditions that promote the protection and improvement of downstream resources while maintaining some flexibility in hydropower production. Although there would be a significant loss of hydropower benefits due to the selection of the preferred alternative (between \$ 5.1 and \$44.2 million annually) a recently completed non-use value study conducted under the Glen Canyon Environmental Studies indicates that the American people are willing to pay much more than this loss to maintain a healthy ecosystem in the Grand Canyon.” • <i>Upper Basin Delivery Requirements.</i> “Once it was determined that <i>all alternatives would deliver at least 8.23 million acre feet of water annually</i>, water supply played a minor role in subsequent resource evaluations.”
<p>Lower Basin Water Bank Regulations (43 C.F.R. pt. 414) (2007)</p> <p>Promulgated in 1999</p>	<p><u>§ 414.1 – Purpose</u></p> <ul style="list-style-type: none"> • <i>Subsection (a).</i> “This part establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements in the Lower Division States (Arizona, California, and Nevada) that would: (1) Permit State-authorized entities to store Colorado River water offstream; (2) Permit State-authorized entities to develop intentionally created unused apportionment (ICUA); (3) Permit State-authorized entities to make ICUA available to the Secretary for release for use in another Lower Division State. This release may only take place in accordance with the Secretary’s

	<p>obligations under Federal law and may occur in either the year of storage or in years subsequent to storage; and (4) Allow only voluntary interstate water transactions. These water transactions can help to satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management in accordance with the Secretary's authority under Article II(B)(6) of the [AZ v. CA Decree].”</p> <ul style="list-style-type: none"> • <i>Subsection (b) – Conformity with Law of the River.</i> “This part does not: (1) Affect any Colorado River water entitlement holder’s right to use its full water entitlement; (2) Address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities; (3) Change or expand existing authorities under the body of law known as the ‘Law of the River’; (4) Change the apportionments made for use within individual States; (5) Address intrastate storage or intrastate distribution of water; (6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law” <p><u>§ 414.2 – Definitions</u></p> <ul style="list-style-type: none"> • <i>Colorado River Water:</i> “water in or withdrawn from the main stream.” • <i>Consumptive Use:</i> “diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation” • <i>ICUA – Intentionally Created Unused Apportionment:</i> “unused apportionment that is developed . . . solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.” • <i>Storage and Interstate Release Agreement:</i> “an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of: (1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State; (2) Subsequent development of ICUA by the storing entity . . . ; (3) A request by the storing entity to the Secretary to release ICUA to the consuming entity; (4) Release of ICUA by the Secretary to the consuming entity; (5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.” • <i>Unused Apportionment.</i> “Colorado River water within a Lower Division State’s basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.”
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§ 414.3 – Storage and Interstate Release Agreements

- *Subsection (a) – Agreement Requirements.* This subsection addresses the basic requirements for storage and interstate release agreements. One notable provision: “(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State’s apportionment to qualify as unused apportionment available for storage under this part, the *water must first be offered to all entitlement holders within the Storing State* for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.”
- *Subsection (c). Execution of Agreements.* This subsection addresses the Secretary’s execution of storage and interstate release agreements. A few notable provisions:
 - *Public Input.* “The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input.”
 - *Review Criteria.* “In considering whether to execute a Storage and Interstate Release Agreement, . . . the Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species Based on this consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.”
- *Subsection (e) – § 5 Contract Requirement.* “Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.”
- *Subsection (g) – Consultation with Mexico.* “Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission”

	<p><u>§ 414.4</u></p> <ul style="list-style-type: none"> • <i>Subsection (b) – Accounting & Apportionments.</i> “The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the [AZ v. CA] Decree. (1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored. (2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State. (3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA.” <p><u>§ 414.5</u></p> <ul style="list-style-type: none"> • <i>Water Quality.</i> This section provides that the Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements (i.e., not liable) and that all entities involved in the agreements must comply with applicable water pollution laws. <p><u>§ 414.6</u></p> <ul style="list-style-type: none"> • <i>Environmental Compliance.</i> The section provides Release and Interstate Storage Agreements must abide by NEPA and the ESA and the Secretary’s execution of them is a federal action.
<p>Minute 306 (“Conceptual Framework for United States-Mexico Studies for Future Recommendations Concerning the Riparian and Estuarine Ecology of the Limitrophe Section of the Colorado River and Its Associated Delta”) Signed December 12, 2000 Effective December 13, 2000</p>	<p><u>Recommendations</u></p> <ul style="list-style-type: none"> • “The [IBWC] Commissioners submit the following recommendation for the approval of the two Governments: <ul style="list-style-type: none"> ○ 1. That in recognition of their respective governments' interest in the preservation of the riparian and estuarine ecology of the Colorado River in its limitrophe section and its associated delta, the Commission shall establish a framework for cooperation by the United States and Mexico through the development of joint studies that include possible approaches to ensure <i>use of water for ecological purposes</i> in this reach and formulation of recommendations for cooperative projects, <i>based on the principle of an equitable distribution of resources</i>. The Commission may elicit the support and technical advice of the competent agencies of each Government.

<p>Note: See also DOI SEMARNAP Joint Declaration of May 18, 2000</p>	<ul style="list-style-type: none"> ○ 2. That the Commission, through the binational technical task force, shall examine the effect of flows on the existing riparian and estuarine ecology of the Colorado River from its limitrophe section to its delta with a focus on defining the habitat needs of fish, and marine and wildlife species of concern to each country. ○ 3. That the Commission shall support the binational technical task force by establishing a forum for the exchange of information and advice among government and non-government organizations with an interest in the affected area. . . .”
<p>Interim Surplus Guidelines <i>(Note – Superseded by 2007 Interim Guidelines)</i></p> <p>January 16, 2001 (ROD)</p>	<p><u><i>Recommended Decision</i></u></p> <ul style="list-style-type: none"> ● “The recommendation is the approval of the following Federal action: the adoption of specific interim surplus guidelines identified in the Preferred Alternative (Basin States Alternative) as analyzed in the FEIS. These specific interim surplus guidelines would be used annually to determine the conditions under which the Secretary would declare the availability of surplus water for use within the states of Arizona, California and Nevada. These guidelines would be consistent with both the Decree entered by the United States Supreme Court in 1964 in the case of <i>Arizona v. California</i> (Decree) and Article III(3)(b) of the [LROC]. The guidelines would remain in effect for determinations made through calendar year 2015 regarding the availability of surplus water through calendar year 2016, may be subject to five-year reviews conducted concurrently with LROC reviews, and would be applied each year as part of the Annual Operation Plan (AOP) process.” <p><u><i>Background</i></u></p> <ul style="list-style-type: none"> ● <i>California 4.4 Plan.</i> “For many years, California has been diverting more than its normal 4.4 maf apportionment. Prior to 1996, California utilized unused apportionments of other Lower Division states that were made available by the Secretary. Since 1996, California has also utilized surplus water made available by Secretarial determination. California is in the process of developing the means to reduce its annual use of Colorado River water to 4.4 maf. Both Arizona and Nevada are approaching full use of their Colorado River apportionments. . . . Adoption of the interim surplus guidelines is intended to recognize California’s plan to reduce reliance on surplus deliveries, to assist California in moving toward its allocated share of Colorado River water, and to avoid hindering such efforts.”

Section 1 – Allocation of Unused Basic Apportionment Water under Art. II(B)(6)

- *Introduction.* “Article II(B)(6) of the Decree allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one year only and no rights to recurrent use of the water accrue to the state that receives the allocated water. Historically, this provision of the Decree has been used to allocate Arizona’s and Nevada’s apportioned but unused water to California. Water use projections made for the analysis of these interim Guidelines indicate that neither California nor Nevada is likely to have significant volumes of apportioned but unused water during the effective period of these Guidelines. Depending upon the requirements of the Arizona Water Banking Authority (AWBA) for intrastate and interstate Off-Stream Banking, Arizona may have significant amounts of apportioned but unused water.”
- *Unused Basic Entitlements & Order of Priority.* “Before making a determination of a surplus condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water from the basic apportionments under Article II(B)(6), and will allocate such water in the following order of priority: (1) Meet the Direct Delivery Domestic Use requirements of MWD and Southern Nevada Water Authority (SNWA), allocated as agreed by said agencies; (2) Meet the needs for Off-stream Banking activities in California by MWD and in Nevada by SNWA, allocated as agreed by said agencies; and (3) Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Quantification Settlement Agreement.”

Section 2 – Determination of Lake Mead Operation during the Interim Period

- *Normal and Shortage Conditions.* Lake Mead at or below 1,125 feet.
- *Surplus Conditions*
 - *Partial Domestic Surplus.* Lake Mead between 1,125 and 1,145 feet. Various entitlements for MWD, SNWA, and Arizona.
 - *Full Domestic Surplus.* Lake Mead above 1,145 feet and below 70R Strategy. Various entitlements for MWD, SNWA, and Arizona.
 - *Quantified Surplus.* “Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy. . . . [The Secretary shall] allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona, and 4% to Nevada, subject to [subsequent subsections].”
 - *Flood Control Surplus.*

	<ul style="list-style-type: none"> • <i>Allocation of Water and Forbearance and Reparation Arrangements.</i> “It is expected that water orders from Colorado River contractors will be submitted to reflect forbearance and reparation arrangements by Lower Division states and individual contractors. The Secretary will deliver Colorado River water to contractors in a manner consistent with these arrangements, provided that any such arrangements are consistent with the BCPA, the Decree and do not infringe on the rights of third parties.” <p><i>Section 5 – California’s Colorado River Water Use Plan Implementation Progress</i></p> <ul style="list-style-type: none"> • “The purpose of the California Colorado River Water Use Plan is to ensure that California limits its use of Colorado River water to no more than 4.4 maf in normal years at the end of the fifteen year period for these Guidelines, unless a surplus is determined under the 70R strategy.” • This section notes the QSA and establishes benchmarks for California agricultural usage throughout the effective period of the guidelines.
<p>Quantification Settlement Agreement</p> <p>Signed October 10, 2003</p> <p>(Note – The QSA modifies the entitlements set forth in two of the priorities contained in the Seven Party Agreement – Priorities 3(a) and 6(a))</p>	<p><i>Colorado River Water Delivery Agreement</i></p> <ul style="list-style-type: none"> • “The United States by and through the Secretary of the Interior (Secretary) hereby enters into this Colorado River Water Delivery Agreement (Agreement) with the Imperial Irrigation District (IID), the Coachella Valley Water District (CVWD), the Metropolitan Water District of Southern California (MWD) . . . , and the San Diego County Water Authority (SDCWA).” <p><i>Operative Terms</i></p> <ul style="list-style-type: none"> • <i>Section 1 – Scope of Agreement.</i> “Priorities 1, 2, 3(b), 6(b), and 7 of current Section 5 Contracts for the delivery of Colorado River water in the State of California and Indian and miscellaneous Present Perfected Rights (PPRs) within the State of California and other existing surplus water contracts are not affected by this Agreement.” • <i>Section 2 – Quantification of IID and CVWD Entitlements in Priority 3(a).</i> “(a) the Secretary shall deliver Priority 3(a) Colorado River water to IID in an amount up to but not more than a consumptive use amount of 3.1 million acre-feet per year less that amount of water equal to that to be delivered by the Secretary for the benefit of CVWD, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B hereto. . . . (b) the Secretary shall deliver Priority 3(a) Colorado River water to CVWD in an amount up to but not more than a consumptive use amount of 330,000 AFY less the amount of water equal to that to be delivered by the Secretary for the benefit of IID, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set

forth in Exhibits A and B hereto.”

- *Section 3 – Quantification of IID, CVWD, and MWD Entitlements in Priority 6(a).* “Subject to any rights that [Palo Verde Irrigation District] may have, and except as provided under the Interim Surplus Guidelines, or under the agreements contemplated by those guidelines, the Secretary shall deliver Priority 6(a) water to MWD, IID and CVWD in the following order and consumptive use volumes: (i) 38,000 AFY to MWD; (ii) 63,000 AFY to IID; and (iii) 119,000 AFY to CVWD, or as those parties may agree to occasionally forbear. (b) Any water not used by MWD, IID or CVWD as set forth above will be available to satisfy the next listed amount in Section 3.a. above.”
- *Section 4(a) – Transfer of IID Entitlement.* Addresses transfer of a portion of IID’s entitlement in priority 3(a) of the Seven Party Agreement to various other parties (CVWD, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B): “The Secretary shall deliver IID’s Priority 3(a) entitlement for the benefit of IID and others as specified in Exhibits A and B hereto and in the amounts and to the points of delivery set forth therein.”
- *Section 4(b) – Transfer of CVWD Entitlement.* Addresses transfer of a portion of CVWD’s entitlement in priority 3(a) of the Seven Party Agreement to various other parties (IID, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B): “The Secretary shall deliver IID’s Priority 3(a) entitlement for the benefit of the CVWD and others as specified in Exhibits A and B hereto and in the amounts and to the points of delivery set forth herein.”
- *Section 4(d) – MWD Entitlements.* “If in any given calendar year that the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3(b), exceeds the consumptive use amount of 420,000 AFY, the Secretary will reduce the amount of water otherwise available to MWD in Priorities 4, 5, or 6(a) by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3(b) is less than 420,000 AFY, the Secretary shall deliver to MWD the difference.”
- *Section 5(b) – Shortage Sharing Agreements.* “If for any reason there is less than 3.85 million AFY available under Priorities 1, 2 and 3 during the term of this Agreement, any water which is made available by the Secretary to IID and CVWD shall be delivered to IID, CVWD, MWD, and SDCWA in accordance with the shortage sharing provisions agreed upon prior to or concurrent with the execution of this Agreement by IID, CVWD, MWD, and SDCWA.”

	<ul style="list-style-type: none"> • <i>Section 8(b)(2) – Beneficial Use Review.</i> Subsection (b)(2) applies if California’s agricultural usage is at or below the prescribed benchmarks. In this circumstance, “[T]he Secretary does not anticipate any further review of the reasonable and beneficial use of Colorado River water by IID pursuant to the annual 43 C.F.R. Pt. 417 reviews that are conducted during the initial term of this Agreement [December 31, 2037]. Should the Secretary engage in any further review of the reasonable and beneficial use of Colorado River water by IID pursuant to 43 C.F.R. Pt. 417 under this Section, the Secretary will base her decision on (i) the purpose of the quantification of Priority 3(a) and the reductions and transfers set forth on Exhibit B hereto, and (ii) the implementation of the water transfers by IID as set forth in the schedule in Exhibit B, in addition to the consideration of the factors in 43 C.F.R. § 417.3.” <ul style="list-style-type: none"> ○ <i>See also</i> 43 C.F.R. § 417.2 (“The Regional Director or his representative will, prior to the beginning of each calendar year, arrange for and conduct such consultations with each Contractor as the Regional Director may deem appropriate as to the making by the Regional Director of annual recommendations relating to water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water, and to the making by the Regional Director of annual determinations of each Contractor's estimated water requirements for the ensuing calendar year <i>to the end that deliveries of Colorado River water to each Contractor will not exceed those reasonably required for beneficial use under the respective Boulder Canyon Project Act contract or other authorization for use of Colorado River water.</i>”) ○ <i>See also</i> 43 C.F.R. § 417.5(a) (“The Commissioner of Indian Affairs (herein termed ‘Commissioner’) will engage in consultations with various tribes and other water users on the Indian Reservations listed in Article II (D) of said Supreme Court Decree, similar to those engaged in by the Regional Director with regard to Contractors as provided in Sec. 417.2 of this part. After consideration of all comments and suggestions advanced by said tribes and other water users on said Indian Reservations concerning water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water, the Commissioner shall, within the limits prescribed in said decree, make a determination as to the estimated amount of water to be diverted for use on each Indian Reservation covered by the above decree.”) • <i>Section 8(c)(4) – Beneficial Use Review.</i> Subsection (c)(4) applies if California’s agricultural usage is above the prescribed benchmarks. In this circumstance, “The Secretary anticipates that a further review of the reasonable and beneficial use of Colorado River water by the Districts will
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	<p>be required pursuant to the annual 43 C.F.R. Pt. 417 reviews that are conducted during the initial term of this Agreement [December 31, 2037]. In any such review, the Secretary will base her decision on the factors set forth in Section 8.b.2 above as well as the basis for any District’s non-implementation of the transfers set forth in Exhibit B hereto, in addition to the consideration of the factors in 43 C.F.R. § 417.3.”</p> <ul style="list-style-type: none"> • <i>Section (10)(e) – Conformity with Other Laws:</i> “This Agreement does not . . . (ii) change or expand existing authorities under applicable federal law, except as specifically provided herein with respect to the Districts, (iii) address interstate distribution of water, (iv) change the apportionments made for use within individual States, (v) affect any right under the California Limitation Act . . . , or any other provision of applicable federal law.” • <i>Section (10)(i) – Control of Compact.</i> “This Agreement with the United States is subject to and controlled by the Colorado River Compact of 1922.”
<p>Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead</p> <p>Adopted December 13, 2007 (ROD) Effective until December 31, 2025, except for special provisions</p> <p>Note: The Guidelines appear in Section XI of the ROD – <i>i.e.</i>, sections XI.A, B, E, F, G (see p. 32).</p>	<p><u><i>Section X – Operational Setting</i></u></p> <ul style="list-style-type: none"> • <i>Implementation of LROC.</i> “Section 602 of the CRBPA required the Secretary to propose and adopt criteria for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act of 1956, the Boulder Canyon Project Act of 1928 (BCPA), and the Boulder Canyon Project Adjustment Act. The Secretary adopted such ‘Long-Range Operating Criteria’ (LROC) in 1970 and has been operating the Colorado River consistent with the LROC since 1970. In 2005, the Secretary approved minor changes to the text of the LROC. . . . It is the Department’s decision that <i>these Guidelines implement the LROC on an annual basis through the Interim Period</i> and that the operation of the relevant Colorado River reservoirs be documented in each year’s AOP. . . . [T]hese interim Guidelines will implement the relevant provisions of [LROC] Article II (Lake Powell) and Article III (Lake Mead) during the Interim Period.” <p><u><i>Section XI.A – Forbearance</i></u></p> <ul style="list-style-type: none"> • <i>Forbearance Agreements:</i> “For the purposes of these Guidelines, the term ‘forbearance agreements’ refers to agreements that a party who has a right to surplus Colorado River water could enter into that would provide that party’s agreement to forgo (or not exercise) its right to surplus Colorado River water. . . . In the absence of forbearance, surplus water is apportioned for use in the Lower Division states according to the specific percentages provided in Article II(B)(2) of the Consolidated Decree. In order to allow for management flexibility, the seven Colorado

River Basin States have recommended an operational program for the creation and deliver of [Intentionally Created Surplus (ICS)].”

Section XI.B – Delivery Agreement

- *ICS/DSS Contracts*: Based on the Secretary of Interior’s exclusive contracting authority over mainstem Colorado River water under BCPA § 5, “the Secretary anticipates entering into delivery contracts with any person or persons intending to create ICS or DSS.”

Section XI.E – Relationship w/ Existing Law

- This section provides that the Guidelines do not alter existing law – *i.e.*, “do not . . . (3) address intrastate storage or intrastate distribution of water . . . (4) change the apportionments made for use within individual states, or in any way impair or impeded the right of the Upper Basin to consumptively use water available to that Basin under the Colorado River Compact . . . (5) affect any obligation of any Upper Division state under the Colorado River Compact . . . (7) affect the rights of any holder of present perfected rights or reserved rights”

Section XI.F – Definitions

- *Delivery Agreement*: “an agreement consistent with these Guidelines entered into between the Secretary of the Interior and one or more contractors creating ICS.”
- *Developed Shortage Supply (DSS)*: “water available for use by a Contractor under the terms and conditions of a Delivery Agreement and Section 4 of these Guidelines in a Shortage Condition, under Article II(B)(3) of the Consolidated Decree.”
- *Forbearance Agreement*: “an agreement under which one or more Contractors agree to forbear a right to ICS, under a water delivery contract or the Consolidated Decree.”
- *Intentionally Created Surplus (ICS)*: “surplus Colorado River System water available for use under the terms and conditions of a Delivery Agreement, Forbearance Agreement, and these Guidelines.” Four types of ICS: extraordinary conservation, tributary conservation, system efficiency, imported.
- *Off-stream Banking*: “the diversion of Colorado River water to underground storage facilities for use in subsequent Years from the facility used by a Contractor diverting such water.”

Section XI.G.1 – Allocation of Unused Basic Apportionment Water under Art. II(B)(6)

- *Subsection (a) – Introduction.* “Article II(B)(6) of the Consolidated Decree allows the Secretary to allocate water that is apportioned to one Lower Division state, but is for any reason unused in that State, to another Lower Division state. This determination is made for one Year only and no rights to recurrent use of the water accrue to the state that receives the allocated water.”
- *Subsection (b) – Application to Unused Basic Apportionment.* “Before making a determination of a Surplus Condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water excluding ICS created in that Year from the *basic apportionments* under Article II(B)(6), and will allocate such water in the following *order of priority*: [(1) MWD, SNWA domestic use requirements; (2) MWD, SNWA off-stream banking requirements; (3) CA water users’ requirements per Seven Party Agreement as modified by QSA].

Section XI.G.2 – Determination of Lake Mead Operation During Interim Period

- *Subsection (A) – Normal Conditions.* Lake Mead elevation between 1,075 and 1,145 feet. Secretary will declare Normal or ICS Surplus Condition.
- *Subsection (B) – Surplus Conditions*
 - *Domestic Surplus* – Lake Mead elevation between 1,145 feet and level that triggers Quantified Surplus (70R Strategy). Entitlements to this surplus are set forth for MWD, SNWA, and Arizona.
 - *Quantified Surplus* – “In years when the Secretary determines that water should be delivered for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy the Secretary shall determine a Quantified Surplus Condition and allocate a Quantified Surplus sequentially as follows: . . . allocate a Quantified Surplus sequentially as follows: . . . (b) 50 percent to California, 46 percent to Arizona, and 4 percent to Nevada, subject to (c) through (e) that follow.”
 - *Flood Control Surplus* – Applies in years when space-building or flood control releases are made. “In such years, releases will be made to satisfy all beneficial uses within the United States, including unlimited Off-stream banking.”
 - *ICS Surplus* – If Lake Mead’s elevation is above 1,075 feet and delivery of ICS has been requested, Secretary may determine an ICS Surplus Condition in lieu of a normal condition or in addition to other operating conditions that are based solely on the elevation of Lake Mead.

- *Subsection (D) – Shortage Conditions*
 - Release of 7.167 maf (4.4 maf to CA, 2.48 maf to AZ, and 287,000 af to NV) if Lake Mead’s elevation is between 1,075 and 1,050 feet.
 - Release of 7.083 maf (4.4 maf to CA, 2.4 maf to AZ, and 283,000 af to NV) if Lake Mead’s elevation is between 1,050 and 1,025 feet.
 - Release of 7.0 maf (4.4 maf to CA, 2.32 maf to AZ, and 280,000 af to NV) if Lake Mead’s elevation is below 1,025 feet.
- Section XI.G.3 – Implementation of Intentionally Created Surplus*
- *Subsection (A)*: Describes the four categories of ICS: (1) extraordinary conservation ICS; (2) tributary conservation ICS; (3) system efficiency ICS; (4) imported ICS.
 - *Subsection (B)*: Identifies the process by which a Contractor may create ICS and notes limits on the quantity of extraordinary conservation ICS that can be created and accumulated.
 - *Subsection (C)*: Sets forth the process by which the Secretary will deliver ICS. Note: Secretary must have determined an ICS Surplus Condition; the necessary forbearance agreements must be in place “to bring the delivery of the ICS into compliance with Articles II(B)(2) and II(B)(6) of the Consolidated Decree”; and limitations apply to the quantity of extraordinary conservation ICS that can be delivered annually.
 - *Subsection (D)*: Outlines the Secretary’s procedures for accounting for and verifying ICS creation and delivery on an annual basis.
- Section XI.G.4 – Implementation of Developed Shortage Supply*
- *Subsection (A)*: Identifies the two categories of DSS – (1) tributary conservation DSS and (2) imported DSS – and outlines the process by which a Contractor can create DSS. Note: DSS can only be created during a year when the Secretary has determined a shortage condition, but DSS can only be created by a project that is approved by the Secretary for creation prior to a shortage determination.
 - *Subsection (B)*: Describes the conditions under which the Secretary will deliver DSS. Note: Secretary must have declared a shortage condition; delivery of DSS cannot cause total deliveries within Lower Division to exceed 7.5 maf; delivery of DSS must be in accordance with Art. II(B)(3) of the Decree; and DSS can only be delivered in the year of its creation.
 - *Subsection (C)*: This section provides for accounting and verification mechanisms for DSS.

Section XI.G.6 – Coordinated Operation of Lakes Powell and Mead During Interim Period

- Coordinated operation is consistent with CRBPA § 602 and Glen Canyon Operating Criteria.
- *Subsections (A)-(D)*: These subsections identify four operational tiers for Lake Powell and the annual releases associated with these tiers: (A) equalization tier; (B) upper elevation balancing tier; (C) mid-elevation release tier; (D) lower elevation balancing tier. The tiers are demarcated based upon the elevation of Lake Powell. Annual releases vary according to the tiers. Annual releases of less than 7.5 maf are permitted in the latter two tiers. See summary tables on 50-51.

Section XI.G.7 – Implementation of Guidelines

- *Consultation*. This section provides for consultation between the Secretary and the Basin States on a wide range of matters during the interim period, including modification of the Guidelines, claims or controversies stemming from the Guidelines, potential courses of action if the elevation of Lake Mead falls below 1,000 feet, and the administration of ICS.