

CHAPTER 12B—COLORADO RIVER STORAGE PROJECT

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§ 620. Upper Colorado River Basin; purpose of development of water resources; initial units; construction of Wayne N. Aspinall unit contingent upon certification; participating projects; Rainbow Bridge National Monument

In order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes, the Secretary of the Interior is authorized (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works: Wayne N. Aspinall, Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon: *Provided*, That the Wayne N.

Aspinall Dam shall be constructed to a height which will impound not less than nine hundred and forty thousand acre-feet of water or will create a reservoir of such greater capacity as can be obtained by a high waterline located at seven thousand five hundred and twenty feet above mean sea level, and that construction thereof shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, reexamined the economic justification of such unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgment, the benefits of such unit will exceed its costs; and (2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase and the Uintah unit), San Juan-Chama (initial stage), Emery County, Florida, Hammond, La Barge, Lyman, Navajo Indian, Paonia (including the Minnesota unit, a dam and reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel, Seedskadee, Savery-Pot Hook, Bostwick Park, Fruitland Mesa, the Navajo-Gallup Water Supply Project, Silt and Smith Fork: *Provided further*, That as part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument.

(Apr. 11, 1956, ch. 203, §1, 70 Stat. 105; Pub. L. 87-483, §18, June 13, 1962, 76 Stat. 102; Pub. L. 88-568, §1, Sept. 2, 1964, 78 Stat. 852; Pub. L. 90-537, title V, §501(a), Sept. 30, 1968, 82 Stat. 896; Pub. L. 96-375, §7, Oct. 3, 1980, 94 Stat. 1507; Pub. L. 96-470, title I, §108(c), Oct. 19, 1980, 94 Stat. 2239; Pub. L. 111-11, title X, §10401(a), Mar. 30, 2009, 123 Stat. 1371.)

AMENDMENT OF SECTION

For termination of amendment by section 10701(e)(2) of Pub. L. 111-11, see Termination Date of 2009 Amendment note below.

CODIFICATION

The provisions of subsec. (a) of section 501 of Pub. L. 90-537 which amended this section are only a part of said subsec. (a). The remainder of said subsec. (a) amended section 620a of this title and enacted provisions set out as notes under this section and section 620k of this title.

AMENDMENTS

2009—Pub. L. 111-11, §§10401(a), 10701(e)(2), temporarily inserted “the Navajo-Gallup Water Supply Project,” after “Fruitland Mesa,” in cl. (2). See Termination Date of 2009 Amendment note below.

1980—Pub. L. 96-470 struck out proviso that construction of Uintah unit of Central Utah project not be undertaken by the Secretary until he has completed a feasibility report on such unit and submitted it to Congress, along with his certification that, in his judgment, the benefits of such unit or segment will exceed the cost and that such unit is physically and financially feasible, and that the Congress has authorized appropriations for construction thereof.

Pub. L. 96-375 substituted “Wayne N. Aspinall” for “Curecanti”.

1968—Pub. L. 90-537 added Uintah unit to initial phase in Central Utah project, substituted “Animas-La Plata, Dolores, Dallas Creek, West Divide, San Miguel” for “Pine River Extension”, and inserted proviso prohibiting construction of Uintah unit of Central Utah project until a feasibility study is made, a determination is made that its benefits will exceed its costs and an authorization for appropriations is made by Congress.

1964—Pub. L. 88-568 included Savery-Pot Hook, Bostwick Park, and Fruitland Mesa as participating projects.

1962—Pub. L. 87-483 included San Juan-Chama (initial stage) and Navajo Indian as participating projects in cl. (2).

TERMINATION DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-11 to be null and void on issuance of a court order terminating a certain Agreement and Contract between New Mexico, the Navajo Nation, and the United States, see section 10701(e)(2) of Pub. L. 111-11, set out as an Agreement note below.

SHORT TITLE

Act Apr. 11, 1956, which enacted this chapter, is popularly known as the “Colorado River Storage Project Act”.

PURPOSE OF 1968 AMENDMENT

Pub. L. 90-537, title V, §501(a), Sept. 30, 1968, 82 Stat. 896, provided that the amendment of this section and section 620a of this title by section 501(a) were made in order to provide for the construction, operation, and maintenance of the Animas-La Plata Federal reclamation project, Colorado-New Mexico; the Dolores, Dallas Creek, West Divide, and San Miguel Federal reclamation projects, Colorado; and the Central Utah project (Uintah Unit), Utah, as participating projects under the Colorado River Storage Project Act, and to provide for the completion of planning reports on other participating projects.

EFFECT ON FEDERAL WATER LAW

Pub. L. 111-11, title X, §10403, Mar. 30, 2009, 123 Stat. 1375, provided that: “Unless expressly provided in this subtitle [subtitle B (§§10301-10704) of title X of Pub. L. 111-11, enacting section 407, former section 615jj, and section 620n-1 of this title, amending this section, former section 615ss, and section 620o of this title, repealing former section 615jj of this title, and enacting provisions set out as notes under this section and section 407 of this title], nothing in this subtitle modifies, conflicts with, preempts, or otherwise affects—

“(1) the Boulder Canyon Project Act (43 U.S.C. 617 et seq.);

“(2) the Boulder Canyon Project Adjustment Act (54 Stat. 774, chapter 643) [43 U.S.C. 618 et seq.];

“(3) the Act of April 11, 1956 (commonly known as the ‘Colorado River Storage Project Act’) (43 U.S.C. 620 et seq.);

“(4) the Act of September 30, 1968 (commonly known as the ‘Colorado River Basin Project Act’) (82 Stat. 885) [43 U.S.C. 1501 et seq.];

“(5) Public Law 87-483 (76 Stat. 96) [former 43 U.S.C. 615ii et seq.];

“(6) the Treaty between the United States of America and Mexico respecting utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington February 3, 1944 (59 Stat. 1219);

“(7) the Colorado River Compact of 1922, as approved by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000);

“(8) the Compact;

“(9) the Act of April 6, 1949 (63 Stat. 31, chapter 48);

“(10) the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237); or

“(11) section 205 of the Energy and Water Development Appropriations Act, 2005 (118 Stat. 2949).”

[Section 10403 Pub. L. 111-11, set out above, to be null and void on issuance of a court order terminating a cer-

tain Agreement and Contract between New Mexico, the Navajo Nation, and the United States, see section 10701(e)(2) of Pub. L. 111-11, set out as an Agreement note below.]

[For definition of Compact, see section 10302 of Pub. L. 111-11, set out as a Definitions note under section 407 of this title.]

AGREEMENT

Pub. L. 111-11, title X, §10701, Mar. 30, 2009, 123 Stat. 1396, provided that:

“(a) AGREEMENT APPROVAL.—

“(1) APPROVAL BY CONGRESS.—Except to the extent that any provision of the Agreement conflicts with this subtitle [subtitle B (§§10301-10704) of title X of Pub. L. 111-11, see Effect on Federal Water Law note above], Congress approves, ratifies, and confirms the Agreement (including any amendments to the Agreement that are executed to make the Agreement consistent with this subtitle).

“(2) EXECUTION BY SECRETARY.—The Secretary shall enter into the Agreement to the extent that the Agreement does not conflict with this subtitle, including—

“(A) any exhibits to the Agreement requiring the signature of the Secretary; and

“(B) any amendments to the Agreement necessary to make the Agreement consistent with this subtitle.

“(3) AUTHORITY OF SECRETARY.—The Secretary may carry out any action that the Secretary determines is necessary or appropriate to implement the Agreement, the Contract, and this section.

“(4) ADMINISTRATION OF NAVAJO RESERVOIR RELEASES.—The State of New Mexico may administer water that has been released from storage in Navajo Reservoir in accordance with subparagraph 9.1 of the Agreement.

“(b) WATER AVAILABLE UNDER CONTRACT.—

“(1) QUANTITIES OF WATER AVAILABLE.—

“(A) IN GENERAL.—Water shall be made available annually under the Contract for projects in the State of New Mexico supplied from the Navajo Reservoir and the San Juan River (including tributaries of the River) under New Mexico State Engineer File Numbers 2849, 2883, and 3215 in the quantities described in subparagraph (B).

“(B) WATER QUANTITIES.—The quantities of water referred to in subparagraph (A) are as follows:

	Diver- sion (acre- feet/ year)	Deple- tion (acre- feet/ year)
Navajo Indian Irrigation Project	508,000	270,000
Navajo-Gallup Water Supply Project	22,650	20,780
Animas-La Plata Project	4,680	2,340
Total	535,330	293,120

“(C) MAXIMUM QUANTITY.—A diversion of water to the Nation under the Contract for a project described in subparagraph (B) shall not exceed the quantity of water necessary to supply the amount of depletion for the project.

“(D) TERMS, CONDITIONS, AND LIMITATIONS.—The diversion and use of water under the Contract shall be subject to and consistent with the terms, conditions, and limitations of the Agreement, this subtitle, and any other applicable law.

“(2) AMENDMENTS TO CONTRACT.—The Secretary, with the consent of the Nation, may amend the Contract if the Secretary determines that the amendment is—

“(A) consistent with the Agreement; and

“(B) in the interest of conserving water or facilitating beneficial use by the Nation or a subcontractor of the Nation.

“(3) RIGHTS OF THE NATION.—The Nation may, under the Contract—

“(A) use tail water, wastewater, and return flows attributable to a use of the water by the Nation or a subcontractor of the Nation if—

“(i) the depletion of water does not exceed the quantities described in paragraph (1); and

“(ii) the use of tail water, wastewater, or return flows is consistent with the terms, conditions, and limitations of the Agreement, and any other applicable law; and

“(B) change a point of diversion, change a purpose or place of use, and transfer a right for depletion under this subtitle (except for a point of diversion, purpose or place of use, or right for depletion for use in the State of Arizona under section 10603(b)(2)(D) [123 Stat. 1383]), to another use, purpose, place, or depletion in the State of New Mexico to meet a water resource or economic need of the Nation if—

“(i) the change or transfer is subject to and consistent with the terms of the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Contract, and any other applicable law; and

“(ii) a change or transfer of water use by the Nation does not alter any obligation of the United States, the Nation, or another party to pay or repay project construction, operation, maintenance, or replacement costs under this subtitle and the Contract.

“(C) SUBCONTRACTS.—

“(1) IN GENERAL.—

“(A) SUBCONTRACTS BETWEEN NATION AND THIRD PARTIES.—The Nation may enter into subcontracts for the delivery of Project water under the Contract to third parties for any beneficial use in the State of New Mexico (on or off land held by the United States in trust for the Nation or a member of the Nation or land held in fee by the Nation).

“(B) APPROVAL REQUIRED.—A subcontract entered into under subparagraph (A) shall not be effective until approved by the Secretary in accordance with this subsection and the Contract.

“(C) SUBMITTAL.—The Nation shall submit to the Secretary for approval or disapproval any subcontract entered into under this subsection.

“(D) DEADLINE.—The Secretary shall approve or disapprove a subcontract submitted to the Secretary under subparagraph (C) not later than the later of—

“(i) the date that is 180 days after the date on which the subcontract is submitted to the Secretary; and

“(ii) the date that is 60 days after the date on which a subcontractor complies with—

“(I) section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

“(II) any other requirement of Federal law.

“(E) ENFORCEMENT.—A party to a subcontract may enforce the deadline described in subparagraph (D) under section 1361 of title 28, United States Code.

“(F) COMPLIANCE WITH OTHER LAW.—A subcontract described in subparagraph (A) shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, and any other applicable law.

“(G) NO LIABILITY.—The Secretary shall not be liable to any party, including the Nation, for any term of, or any loss or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.

“(2) ALIENATION.—

“(A) PERMANENT ALIENATION.—The Nation shall not permanently alienate any right granted to the Nation under the Contract.

“(B) MAXIMUM TERM.—The term of any water use subcontract (including a renewal) under this subsection shall be not more than 99 years.

“(3) NONINTERCOURSE ACT COMPLIANCE.—This subsection—

“(A) provides congressional authorization for the subcontracting rights of the Nation; and

“(B) is deemed to fulfill any requirement that may be imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).

“(4) FORFEITURE.—The nonuse of the water supply secured by a subcontractor of the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.

“(5) NO PER CAPITA PAYMENTS.—No part of the revenue from a water use subcontract under this subsection shall be distributed to any member of the Nation on a per capita basis.

“(d) WATER LEASES NOT REQUIRING SUBCONTRACTS.—

“(1) AUTHORITY OF NATION.—

“(A) IN GENERAL.—The Nation may lease, contract, or otherwise transfer to another party or to another purpose or place of use in the State of New Mexico (on or off land that is held by the United States in trust for the Nation or a member of the Nation or held in fee by the Nation) a water right that—

“(i) is decreed to the Nation under the Agreement; and

“(ii) is not subject to the Contract.

“(B) COMPLIANCE WITH OTHER LAW.—In carrying out an action under this subsection, the Nation shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Supplemental Partial Final Decree described in paragraph 4.0 of the Agreement, and any other applicable law.

“(2) ALIENATION; MAXIMUM TERM.—

“(A) ALIENATION.—The Nation shall not permanently alienate any right granted to the Nation under the Agreement.

“(B) MAXIMUM TERM.—The term of any water use lease, contract, or other arrangement (including a renewal) under this subsection shall be not more than 99 years.

“(3) NO LIABILITY.—The Secretary shall not be liable to any party, including the Nation, for any term of, or any loss or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.

“(4) NONINTERCOURSE ACT COMPLIANCE.—This subsection—

“(A) provides congressional authorization for the lease, contracting, and transfer of any water right described in paragraph (1)(A); and

“(B) is deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

“(5) FORFEITURE.—The nonuse of a water right of the Nation by a lessee or contractor to the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.

“(e) NULLIFICATION.—

“(1) DEADLINES.—

“(A) IN GENERAL.—In carrying out this section, the following deadlines apply with respect to implementation of the Agreement:

“(i) AGREEMENT.—Not later than December 31, 2010, the Secretary shall execute the Agreement.

“(ii) CONTRACT.—Not later than December 31, 2010, the Secretary and the Nation shall execute the Contract.

“(iii) PARTIAL FINAL DECREE.—Not later than December 31, 2013, the court in the stream adjudication shall have entered the Partial Final Decree described in paragraph 3.0 of the Agreement.

“(iv) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT.—Not later than December 31, 2016, the rehabilitation construction of the Fruitland-Cambridge Irrigation Project authorized under section 10607(a)(1) [123 Stat. 1394] shall be completed.

“(v) SUPPLEMENTAL PARTIAL FINAL DECREE.—Not later than December 31, 2016, the court in the stream adjudication shall enter the Supplemental Partial Final Decree described in subparagraph 4.0 of the Agreement.

“(vi) HOGBACK-CUDEI IRRIGATION PROJECT.—Not later than December 31, 2019, the rehabilitation construction of the Hogback-Cudei Irrigation Project authorized under section 10607(a)(2) [123 Stat. 1394] shall be completed.

“(vii) TRUST FUND.—Not later than December 31, 2019, the United States shall make all deposits into the Trust Fund under section 10702 [123 Stat. 1402].

“(viii) CONJUNCTIVE WELLS.—Not later than December 31, 2019, the funds authorized to be appropriated under section 10609(b)(1) [123 Stat. 1395] for the conjunctive use wells authorized under section 10606(b) [123 Stat. 1393] should be appropriated.

“(ix) NAVAJO-GALLUP WATER SUPPLY PROJECT.—Not later than December 31, 2024, the construction of all Project facilities shall be completed.

“(B) EXTENSION.—A deadline described in subparagraph (A) may be extended if the Nation, the United States (acting through the Secretary), and the State of New Mexico (acting through the New Mexico Interstate Stream Commission) agree that an extension is reasonably necessary.

“(2) REVOCABILITY OF AGREEMENT, CONTRACT AND AUTHORIZATIONS.—

“(A) PETITION.—If the Nation determines that a deadline described in paragraph (1)(A) is not substantially met, the Nation may submit to the court in the stream adjudication a petition to enter an order terminating the Agreement and Contract.

“(B) TERMINATION.—On issuance of an order to terminate the Agreement and Contract under subparagraph (A)—

“(i) the Trust Fund shall be terminated;

“(ii) the balance of the Trust Fund shall be deposited in the general fund of the Treasury;

“(iii) the authorizations for construction and rehabilitation of water projects under this subtitle shall be revoked and any Federal activity related to that construction and rehabilitation shall be suspended; and

“(iv) this part and parts I and III [parts IV (§§10701–10704), I (§§10401–10403), and III (§§10601–10609) of subtitle B of title X of Pub. L. 111–11, enacting former section 615jj and section 620n–1 of this title, amending this section, former section 615ss, and section 620o of this title, repealing former section 615jj of this title, and enacting provisions set out as notes under this section] shall be null and void.

“(3) CONDITIONS NOT CAUSING NULLIFICATION OF SETTLEMENT.—

“(A) IN GENERAL.—If a condition described in subparagraph (B) occurs, the Agreement and Contract shall not be nullified or terminated.

“(B) CONDITIONS.—The conditions referred to in subparagraph (A) are as follows:

“(i) A lack of right to divert at the capacities of conjunctive use wells constructed or rehabilitated under section 10606 [123 Stat. 1392].

“(ii) A failure—

“(I) to determine or resolve an accounting of the use of water under this subtitle in the State of Arizona;

“(II) to obtain a necessary water right for the consumptive use of water in Arizona;

“(III) to contract for the delivery of water for use in Arizona; or

“(IV) to construct and operate a lateral facility to deliver water to a community of the Nation in Arizona, under the Project.

“(f) EFFECT ON RIGHTS OF INDIAN TRIBES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing in the Agreement, the Contract, or this

section quantifies or adversely affects the land and water rights, or claims or entitlements to water, of any Indian tribe or community other than the rights, claims, or entitlements of the Nation in, to, and from the San Juan River Basin in the State of New Mexico.

“(2) EXCEPTION.—The right of the Nation to use water under water rights the Nation has in other river basins in the State of New Mexico shall be forborne to the extent that the Nation supplies the uses for which the water rights exist by diversions of water from the San Juan River Basin under the Project consistent with subparagraph 9.13 of the Agreement.”

[For definitions of terms used in section 10701 of Pub. L. 111–11, set out above, see section 10302 of Pub. L. 111–11, set out as a note under section 407 of this title.]

§ 620a. Priority to planning reports of certain additional participating projects; reports to States; San Juan-Chama project; Juniper project

In carrying out further investigations of projects under the Federal reclamation laws in the Upper Colorado River Basin, the Secretary shall give priority to completion of planning reports on the Gooseberry, Eagle Divide, Bluestone, Battlement Mesa, Grand Mesa, Yellow Jacket, Basalt, Middle Park (including the Troublesome, Rabbit Ear, and Azure units), Upper Gunnison (including the East River, Ohio Creek, and Tomichi Creek units), Lower Yampa (including the Juniper and Great Northern units), Upper Yampa (including the Hayden Mesa, Wessels, and Toponas units) and Sublette (including a diversion of water from the Green River to the North Platte River Basin Wyoming), Ute Indian unit of the Central Utah Project, San Juan County (Utah), Price River, Grand County (Utah), Gray Canyon, and Juniper (Utah) participating projects: *Provided*, That the planning report for the Ute Indian unit of the Central Utah participating project shall be completed on or before December 31, 1974, to enable the United States of America to meet the commitments heretofore made to the Ute Indian Tribe of the Uintah and Ouray Indian Reservation under the agreement dated September 20, 1965 (Contract Numbered 14–06–W–194). Said reports shall be completed as expeditiously as funds are made available therefor and shall be submitted promptly to the affected States, which in the case of the San Juan-Chama project shall include the State of Texas, and thereafter to the President and the Congress: *Provided*, That with reference to the plans and specifications for the San Juan-Chama project, the storage for control and regulation of water imported from the San Juan River shall (1) be limited to a single off-stream dam and reservoir on a tributary of the Chama River, (2) be used solely for control and regulation and no power facilities shall be established, installed or operated thereat, and (3) be operated at all times by the Bureau of Reclamation of the Department of the Interior in strict compliance with the Rio Grande Compact as administered by the Rio Grande Compact Commission. The preparation of detailed designs and specifications for the works proposed to be constructed in connection with projects shall be carried as far forward as the investigations thereof indicate is reasonable in the circumstances.