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# LAW OF THE RIVER

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PRESENTATION

TO THE BOARD OF DIRECTORS
OF THE IMPERIAL IRRIGATION DISTRICT

— THE LAW OF THE RIVER —

“Concededly, nothing in § 14, in § 46, or in the reclamation law in general would excuse the Secretary from recognizing his obligation to satisfy present perfected rights in Imperial Valley that were provided for by Art. VIII of the Compact and § 6 of the Project Act and adjudicated by this Court in Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963).”

Justice Byron White

THE LAW OF THE COLORADO RIVER
AND PRESERVATION OF IMPERIAL IRRIGATION DISTRICT’S PRESENT PERFECTED WATER RIGHTS

January 30, 2018
INTRODUCTION

Thousands of words have been written about the “Law of the Colorado River.” In a case decided last week by the 9th Circuit Court of Appeals, a federal judge referred to this complex set of laws as byzantine. The Imperial Irrigation District considers this an overstatement. The Law of the Colorado River is complex, but understandable. In the district’s view, the issue for consideration today is not the Law of the Colorado River as a body of jurisprudence. This is a topic that has been and will be continued to be debated by law professors and water lawyers. However, for purposes of this presentation, the relevant question is whether the Law of the Colorado River protects the water rights of the Imperial Irrigation District, its water users and the citizens of the Imperial Valley. IID argues below that it has in the past and continues to protect the Imperial Valley’s water rights. This is not a law review article; it is not a statement of the IID’s position on any issue and cannot be cited for that purpose. Rather, it is the district’s attempt to provide within the broadest contours an explanation of the manner in which all of the critical guideposts for allocation of Colorado River water have been structured to protect the water rights of the IID perfected under California state law.

Water is technically a mineral. But it contains amazing physical attributes, all of which have served to establish the legal rules for its allocation. It is a mobile resource that contains the power of momentum as it moves downhill to gravity. This momentum value makes it possible to use it to generate electricity as it passes through turbines. Sophisticated laws and rules have been developed to regulate this particular value. Hydropower generation is a key component of the values extracted from the Colorado River.

Along with its mobility characteristics, water is dense enough to have buoyancy value. At the founding of our nation, it was the buoyancy value of water that generated a host of legal rules. Barge traffic using rivers as mobile waterways generated a set of rules for that use of the
river. United States Supreme Court case law addressed the need to keep these channels of interstate commerce open for the good of the nation, while at the same time preserving the rights of states to protect their own self-interests. In early years, the Colorado River served as an international and interstate waterway, but that use has ended and its value as a transportation corridor no longer exists.

The pressures among overlapping tectonic plates generate heat, which, in turn, cause geothermal activity in the Imperial Valley because the steam and the heat conducted by the water are close to the Earth’s surface. The process of extracting these sources of energy has likewise generated an entire collection of legal rules.

Water has the capacity to change its form from a liquid to a gas; from frozen snow to a solid in the form of ice. The Colorado River is completely dependent upon the snowpack for its perennial flows, which has prompted the Upper Colorado River Basin States to experiment with cloud seeding. All allocation systems in the Lower Basin and Upper Basin of the Colorado River are based upon estimates of future storage in Lake Powell and Lake Mead and predicted on future snowpack estimates. Changes in the availability of this anticipated resource are placing pressure on the Law of the River, as will be discussed below.

Water is essential for all plant life and its application to agricultural production is paramount worldwide, as well as in the Imperial Valley. Further, it is a universal solvent that makes it possible to leach minerals and dissolved solids from the soils so that agricultural production can be renewed on an annual basis.
This paper discusses the legal rules that have developed to support the agricultural values generated by water. But, agricultural production does not exist in the abstract. Rather, it exists only because of demand. Agricultural demand is generated only if there are members of society to consume it. Thus, domestic entitlement to water and the rules to ensure it is available for that purpose are all part of the Law of the River. There are, of course, other core values relevant to the Imperial Valley, including the protection and restoration of the Salton Sea, and the physical and economic health of the Valley’s residents. All of those issues are beyond the scope of this paper.

This paper raises four basic questions:

— What are state constitutional bases for the IID’s entitlement to own and utilize its water rights?
— What are the constitutional bases for federal control or limitation on the water rights held by an institution like IID?
— Has the Law of the Colorado River destroyed the ownership interests of IID in its water rights?
— What are the greatest future threats to IID’s water rights?

I. THE CONSTITUTIONAL BASES: STATE POWERS — FOR THE IID AND ITS USERS TO HOLD AND ENJOY THE BENEFITS OF THEIR WATER RIGHTS ON THE COLORADO RIVER.

It is interesting to note that the word “water” does not appear in the United States Constitution. In contrast, in virtually all Latin American countries, and in those in Eastern Europe, the word “water” is prominently displayed within their constitutions. The context is that the waters of those nations are said to belong to the nation and are allocated based upon political choices. In the United States, the power to regulate water is delegated to the states in the absence of some congressional preemption of this right. Accordingly, pursuant to the 10th Amendment of the U.S. Constitution, the states have the reserved right to recognize property interests in water and regulate water use through each state’s constitution. The right to create property interests in
water is one “reserved to the States, respectively or to the people.” The state of California has this power and the “people” of the Imperial Valley, through the IID, likewise have the right to use the water allocated to them under the California Constitution.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. CONST. Amend. X.

In virtually every western state, the right to hold water is in the form of a _usufruct_. This means the right to receive water for beneficial use, and apply it to beneficial use, is vested in persons who are actually using it for purposes deemed beneficial, such as agriculture, municipal, industrial or related uses. Were it otherwise, no one would invest the capital necessary to develop a farm, an industry or a town. In the case of IID, it is the district that holds title to the water rights in trust. Those water rights held in trust are a form of property right. It is the right of a water user to receive water from the IID for reasonable beneficial uses. The water rights cannot be arbitrarily “taken” without compensation, but the regulation of the use of water is not a “taking.” In all of the cases involving the “takings” clause, the question is whether the action of the agency is an outright permanent deprivation of the property right or “regulation” intended to require reasonable conservation of water and to ensure the water is being beneficially used. An unconstitutional “taking” is prohibited by the U. S. Constitution; in contrast, regulatory actions intended to ensure reasonable beneficial use and to guard against waste are not.

[N]or shall private property be taken for public use, without just compensation.

U.S. CONST. amend. V.

There are numerous federal bases for regulation of water. But, as discussed below, none has the legal effect of destroying the water rights held by IID and its users in the Imperial Valley.
II. THE UNITED STATES CONSTITUTIONAL BASES FOR FEDERAL REGULATION OF WATER USE ON THE COLORADO RIVER.

A. Treaty Power.

[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.

U.S. CONST. Art. II, §2, cl. 2.

The United States, by necessity, has the obligation to enter into international agreements with the bordering nations of Canada and Mexico over water resources that are common to both nations. In general, the power of the executive branch to make treaties controls over federal statutes, compacts or regulations and any state entitlements, such that a quantity of water can be agreed by treaty to be delivered to a downstream nation. An important fact regarding this internationally created obligation is that the international treaty does not have the effect of altering existing relationships of power within affected States. Thus, for example, the IID is obligated to honor the Mexican Water Treaty of 1944. Under that Treaty, 1.5 million acre-feet of water is delivered to Mexico, and federal regulations provide for storage under limited circumstances in federal reservoirs. But that Treaty does not eliminate the rights of the IID under the Prior Appropriation Doctrine with respect to other users on the Colorado River.

The Mexican Water Treaty is implemented by the International Boundary and Water Commission on the United States side and its counterpart in Mexico. The IBWC has the full authority to enforce delivery of water under the treaty through the U.S. Department of State. The IID does not attempt to divert treaty water; at the same time, the IBWC’s authority does not modify the nature of the IID’s legal rights to water under the laws of California. To this end, in the latest set of domestic documents implementing Minute No. 323 to the Mexican Water Treaty, all of the seven states of the Colorado River that agreed to support the treaty minute, along with the United States, entered into a memorandum of agreement stipulating that the minute shall
have no effect on water rights of any signatory under applicable state or federal law.

B. Compact Clause.

No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State.

U.S. CONST., art. I, §10, cl. 3.

In the same way that international treaties are required to allocate power among nations, interstate compacts may be entered into with the approval of the Congress of the United States. Once approved, interstate compacts become federal law. Water can also be allocated among states by equitable apportionment decisions made by the U.S. Supreme Court. Georgia, Florida and Alabama are currently before the Supreme Court seeking an equitable apportionment of the Chattahoochee and Flint rivers. Finally, interstate rivers can be apportioned by Congress, as occurred in the Lower Colorado by virtue of the Boulder Canyon Project Act.

As you are aware, the Colorado River was divided into upper and lower segments at Lees Ferry in 1922. California, Arizona and Nevada are the three principal states in the Lower Basin; Colorado, New Mexico, Utah, Wyoming and portions of Arizona are in the Upper Basin. The Colorado River Compact of 1922 is responsible for at least four significant impacts. First, it required that the Upper Basin deliver water to the Lower Basin so as to guarantee an amount that averaged 7.5 million acre-feet of water per year over a 10-year period. Second, it contains a provision that the Upper Basin cannot retain water that is not in beneficial use. Third, it defines “domestic use” very broadly, to include industrial and related uses; however, the Compact also makes clear that it has no effect on water rights within each State. Fourth, and most importantly, it has no impacts on “present perfected water rights”—such as those perfected by the IID prior to the passage of the Compact, nor does it affect the rights of Native American Tribes.

Interestingly, in a case (in which IID was a party) decided last week in the 9th Circuit Court of Appeals, involving the effect of the Law of the River on Indian tribes, the Court
specifically noted that present perfected rights and Indian Reserved Water rights were not modified by the Colorado River Compact of 1922.

Thus, although the Colorado River Compact could have been negotiated to modify the rights of the IID, ultimately the preservation of IID’s present perfected water rights was enshrined in the act of Congress approving the Compact. The Upper Colorado River Compact of 1948, approved by Congress in 1949, also has no effect on the present perfected water rights of the IID.

C. Power to Regulate Commerce.

[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

U.S. Const. Art. I, § 8, cl. 3.

The power to regulate commerce among the states is by far the most expansive lever that can be pulled by the United States to control allocation of water within and among states. Of course, the ability to regulate water allocation between and among states is vested in the United States only if the water is part of commerce among the states. While the obligation to impact commerce appears to be a limitation on regulation of surface water, it is nothing more than a fiction. The special master in Arizona v. California wryly observed that a stream is part of interstate commerce if it can float a Supreme Court Opinion. Thus, only if the legislation causes limitations on regulatory authority under the commerce power are those expressly exempted from the legislation itself, or an unlawful “taking” of property prohibited by the 5th Amendment.

The United States Bureau of Reclamation operates under the authority of the Reclamation Act of 1902. Under this Act, the major reservoirs on the Colorado were constructed. This Act, however, contains an internal limitation on the authority of the USBOR to regulate water use within a State, even water delivered by a federal project. Section 8 of the Reclamation Act of
1902 provides that

*Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder...* Provided, that the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.

Reclamation Act of 1902, § 8 (emphasis added). This language was construed by Justice Rehnquist in his opinion in *California v. United States*:

> Appropriation was made not for the use of the government, but, under the Reclamation Act, for the use of the landowners; and, by the terms of the law and of the contract already referred to, the water rights became the property of the landowners, wholly distinct from the property right of the government in the irrigation works. . . . The government was and remained simply a carrier and distributor of the water . . . , with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works.


**D. Spending Power.**

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence [sic] and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States


While Congress can spend for the general welfare, it can regulate only for congressionally delegated purposes, e.g., regulation of Lake Mead and Lake Powell under the
commerce power. This spending power can be wielded in at least two different ways. First, USBR can make grants available to water users holding rights under state law, but condition the receipt of those grants on waivers relating to State water law. Second, there are no major reservoirs on the Colorado not controlled by USBR and, in this sense, USBR is a federal water master. Water can only be taken from these federal projects through federal contracts. The USBR can condition its delivery contracts with those receiving water from the reservoirs on waivers of water rights under state law. The IID has not expressly waived its rights to use of its present perfected water rights under state law in any water delivery contract with USBR.


During the difficult negotiations over whether IID would agree to participate fully in the Quantification Settlement Agreement and reduce California’s consumption of water to the amount required in the Boulder Canyon Project Act of 4.4 MAF, USBR invoked a federal regulation applicable to projects receiving water from the United States. This federal regulation is 43 C.F.R. Part 417. Part 417 provides that USBR will consult with each contractor and make recommendations relating to:

- water conservation measures and operating practices
- USBR’s annual determination of each contractor’s estimated requirements for the year, such that “deliveries of Colorado River water . . . will not exceed those reasonably required for beneficial use”

USBR utilized this provision as leverage to argue that it had authority to withhold water from IID under its federal contract because the use of water by IID was greater than the amount “reasonably required for beneficial use.” This determination was set aside on procedural grounds for failure to follow applicable environmental review, and the QSA was signed, making the issue moot.

Congress shall have the power to regulate Commerce with foreign nations and among the several states, and with the Indian tribes.

U.S. Const. Art. I, § 8, cl. 3.

The Government, on behalf of five Indian Reservations in Arizona, California, and Nevada, asserted rights to water in the mainstream of the Colorado River. The Colorado River Reservation, located partly in Arizona and partly in California, is the largest. It was originally created by an Act of Congress in 1865, but its area was later increased by Executive Order. Other reservations were created by Executive Orders and amendments to them ranging in dates from 1870 to 1907. The Master found both as a matter of fact and law that when the United States created these reservations or added to them, it reserved not only land but also the use of enough water from the Colorado to irrigate the irrigable portions of the reserved lands. The aggregate quantity of water which the Master held was reserved for all the reservations is about 1,000,000 acre-feet, to be used on around 135,000 irrigable acres of land.


Congress has the authority to reserve water rights for Indian Tribes when reservations are created for those tribes. This is what occurred in Arizona v. California. The most recent example of recognition of a federal reserved right is Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., wherein the 9th Circuit Court of Appeals relied on U.S. Supreme Court precedent that established a reservation of water rights for Indian tribes. See Winters v. United States, 207 U.S. 564 (1908). The Winters case held that when a reservation is created by treaty or act of Congress, a quantity of water is reserved for the Indian tribe for which the reservation was made sufficient to support that tribe’s existence in perpetuity. Id. Most recently, the 9th Circuit Court has stated:
The *Winters* doctrine does not distinguish between surface water and groundwater. Rather, its limits derive only from the government’s intent in withdrawing land for a public purpose and the location of the water in relation to the reservation created. For example, because the United States intended to reserve water for the tribe when it established a home for the Agua Caliente Band of Cahuilla Indians, the federal district court ruled that it intended to reserve a right to ground water for the Agua Caliente Band of Cahuilla Indians. The 9th Circuit court of Appeals affirmed finding that “. . . the government reserved appurtenant water sources—including groundwater—when it created the Tribe’s reservation in the Coachella Valley.”

*Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262, 1272 (9th Cir. 2017). This case is now final. The Supreme Court refused to review the *Agua Caliente Band* case. On remand, the quantity of water to which the Cahuilla Indian Tribe has a right will now be determined, but the right also extends to groundwater. This case is relevant to the Colorado River issues because the Tribe contends that injection of Colorado River water into the aquifer damages the aquifer from which it is entitled to draw water. Most importantly, in determining the quantity of water for the Tribe, the Tribe’s water will be first priority. Of additional importance is that state law rules of historical beneficial use will not be applied for quantifying the Tribe’s water rights. For comparison, the California Constitution states:

> It is hereby declared that because of the conditions prevailing in this State the general welfare requires *that the water resources of the State be put to beneficial use* to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

CA. CONST. Art. X, § 2 (emphasis added).
III. THE LAW OF THE RIVER AND PROTECTION OF IID’S WATER RIGHTS IN TIMES OF SHORTAGE AND THE PRESS FOR SHARING OF SHORTAGES.


It is a well-known fact that the predecessors of the Imperial Valley residents of today carved out an irrigation project unheard of at that time. This massive project developed vested water rights without requirement of a formal permit. The IID became the principle basis for the leverage California wielded in bringing about the Colorado River Compact of 1922. The Upper Basin had no beneficial use and California, through the IID, had extensive vested beneficial use. But for the predecessors of the IID, the Compact would have neither created the downstream preferential entitlement nor preserved the water rights of the IID. Even further, IID participated in the Seven Party Agreement that cemented its entitlements to prior rights to the water that is critical to the IID’s future and those of others.

1. Seven Party Agreement of 1931.

California water rights holders divided California’s allotment via the California Seven Party Agreement of 1931, which established priorities for water delivery, but did not quantify a firm amount each party was to receive annually.¹ The Secretary adopted these priorities into regulations for contracts, which USBOR then entered into with the water agencies in California pursuant to the Boulder Canyon Project Act.² California contractors for Colorado River water from federal facilities agreed to apportion 5.362 MAF. This plan included surplus water from the Upper Basin well in excess of California’s entitlement to 4.4 MAF.

The parties agreed to the following priorities and allocations:

• IID, along with “other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys,” was allocated Priority 3(a), equal to PVID’s Priority 3(b).
• Priorities 1 (PVID), 2 (Yuma Project), 3(a) (IID/CVWD) and 3(b) (PVID) were allocated 3.85 MAFY of California’s 4.4 MAFY allocation under non-surplus conditions.
• None of Priorities 1, 2, 3(a) or 3(b) were defined in terms of acre-feet per annum, but instead by the number of acres on which these irrigation rights would be used.

IID, along with “other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys,” was also allocated Priority 6(a) which, together with Priority 6(b) (PVID), equals 300,000 afy.

The following table summarizes the priorities and allocations to each of the parties to the Seven Party Agreement of 1931:

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<td>3(b)</td>
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<tr>
<td>3(a)</td>
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<tr>
<td>3(b)</td>
</tr>
<tr>
<td><strong>Total of 1, 2, 3 not to exceed:</strong></td>
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<tr>
<td>4</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
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<td>5(a)</td>
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4 Adapted from U.S. Bureau of Reclamation, *The Colorado River Documents 2008*, Tbl. 6-2 at 6-6 (Katherine Ott Verburg ed., 2010).
5 Coachella Valley Water District subordinated its priority to Imperial Irrigation District in a 1934 Compromise Agreement with Imperial Irrigation District. See U.S. Bureau of Reclamation, *The Colorado River Documents 2008*, 6-7 (Katherine Ott Verburg ed., 2010).
Recall that, in Arizona v. California, 373 U.S. 546 (1963), the Supreme Court interpreted the Boulder Canyon Project Act and specified the amount of water to which each state in the Colorado River Compact was entitled. It holds that Arizona’s tributary water was not included in their 2.8 MAF, but only apportioned main stem water. And, the Supreme Court stated specifically that the secretary has discretion to weigh factors in time of shortage, but rejected pro-rata sharing in times of shortage. Rather, the Supreme Court stated that: “It will be time enough for the courts to intervene when and if the Secretary, in making apportionments or contracts, deviates from the standards Congress has set for him to follow, including his obligation to respect ‘present perfected rights’ as of the date the Act was passed.” Arizona v. California, 373 U.S. 546, 594 (1963) (emphasis added). Subsequently, in Arizona v. California, 376 U.S. 340 (1964), the Supreme Court protected present perfected rights as senior priorities across state lines.

2. **Central Arizona Project Legislation (1968).**

Even though Arizona had an entitlement from the Colorado River, it lacked the infrastructure to move the water from the Colorado upgradient to the Phoenix area and as far

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6 Coachella Valley Water District subordinated its priority to Imperial Irrigation District in a 1934 Compromise Agreement with Imperial Irrigation District. See U.S. Bureau of Reclamation, The Colorado River Documents 2008, 6-7 (Katherine Ott Verburg ed., 2010).
south as Tucson. Although the Colorado River Basin Project authorized construction of the infrastructure, Central Arizona Project ("CAP") legislation of 1968 required that, in times of shortage, water under that pipeline be junior to California users. In limiting CAP deliveries, Section 301(b) provides that, “[w]ater users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of this subsection 301(b). 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.” Colorado River Basin Project Act, Public Law 90-537, § 301(b), 82 Stat. 885 (1968).

The IID received one final and very significant ruling from the Supreme Court. In Bryant v. Yellen, the U.S. Supreme Court, in interpreting section 6 of the Boulder Canyon Project Act, held that the federal 160-acre limit was not applicable to present perfected rights—instead these rights were based on state law, not federal law, and state law controls:

“Concededly, nothing in § 14, in § 46, or in the reclamation law in general would excuse the Secretary from recognizing his obligation to satisfy present perfected rights in Imperial Valley that were provided for by Art. VIII of the Compact and § 6 of the Project Act and adjudicated by this Court in Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963).”


3. Pressure Within California to limit IID’s Water Right Entitlement.

In the 1980s, the Metropolitan Water District of Southern California, being junior to IID as a result of the Seven Party Agreement and the application of prior appropriation water law, began to apply pressure to require IID to engage in water conservation so as to make more water available for its junior use. The ideal circumstance arose for MWD when an action was filed charging the IID with waste of water. The state of California Water Resources Control Board
took this opportunity to rule that IID was diverting more water than it could put to reasonable and beneficial use.

In response to a complaint that IID was wastefully using water by allowing irrigation drainage flow to reach the Salton Sea, the SWRCB issued Decision 1600 in June 1984. It was followed by Order 84-12, which affirmed Decision 1600, and Order 88-20. In Order 88-20, the SWRCB ordered, among other things, that IID submit a detailed conservation plan and that it identify the funding sources for the conservation measures, and submit proof of diligent efforts to secure funding, as well as evidence of meeting specific conservation targets the board set forth.

In Decision 1600, the SWRCB assumed broad authority to evaluate IID’s use “in view of the increasing need for water conservation within California” and “other beneficial uses to be made of water which could be conserved.” Toward that purpose, regarding IID’s water use, the SWRCB stated that “there are impending shortages of water which are reasonably certain to exist . . . [and] it is proper to initiate steps immediately which will assist in alleviating the shortage.” The board found that “the evidence indicates that there are beneficial uses to be made of water conserved by IID and that in the near future there are likely to be substantial water shortages among California users of Colorado River water.”

The SWRCB identified five possible uses for water conserved by IID: 1) future use by

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7 In re Imperial Irrigation District Alleged Waste and Unreasonable Use of Water, State Water Resources Control Board, Decision 1600, Decision Regarding Misuse of Water by Imperial Irrigation District (1984) [hereinafter Decision 1600].
8 In re Imperial Irrigation District Alleged Waste and Unreasonable Use of Water, State Water Resources Control Bd., Order 84-12, Order Affirming Decision 1600 and Denying Petitions for Reconsideration (1984) [hereinafter Order 84-12].
10 Order 84-12, Order at 44-45.
11 Decision 1600 § 8.3 at 23.
12 Decision 1600, § 8.4.1 at 24.
13 Decision 1600, § 8.4.7 at 29.
14 Decision 1600, § 11.0 at 52.
IID to maintain its present irrigated acreage; 15) 2) use by Coachella Valley Water District; 3) use by MWD; 4) groundwater storage for recharge; and 5) development of geothermal power in the Imperial Valley.16

Ultimately, the SWRCB found that IID’s flow runoff entering the Salton Sea was “lost to further beneficial consumptive use” and that after the CAP is online, “there will be insufficient water available from the Colorado River to satisfy the existing level of demand of California water users.”17 The SWRCB concluded that IID’s “failure to implement additional water conservation measures . . . is unreasonable and a misuse of water under Article X, Section 2 of the California Constitution and Section 100 of the California Water Code”18 and ordered IID to undertake certain conservation measures and submit a comprehensive conservation plan.19 In Order 84-12, the SWRCB affirmed Decision 1600.20

Following appeal and review, in 1988, the SWRCB issued Order 88-20, in which the board articulated legal authority for requiring that IID conserve water and transfer it to other California entities. The Board noted that, “[w]ith the enactment of Water Code Section 109 in 1980, the California Legislature went on record in favor of promoting voluntary transfers of water or water rights as a means of meeting the State’s growing water needs.”21 Furthermore, the California Legislature’s 1984 enactment of Water Code 1012 encouraged IID conservation by specifically providing that where IID undertakes Colorado River conservation efforts, and thus reduces its use, IID will suffer “no forfeiture, diminution, or impairment of the right to use the water conserved . . . except as set forth in the agreements between the parties and the United

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15 The Board, in this 1984 Decision, noted that IID had a present perfected right to 2,600,000 afa, but had been diverting approximately 2,900,000 afa and noted that after the Central Arizona Project went online the IID may need to conserve to maintain its present irrigated acreage. Decision 1600, § 11.1 at 52.
16 Decision 1600, §§ 11.2-11.5 at 52-55.
17 Decision 1600, § 15.0 at 66.
18 Decision 1600, § 15.0 at 66.
19 Decision 1600, Order at 66.
20 Order 84-12 (emphasis added).
21 Order 84-12, § 8.3 at 39.
States.” The board summarized its position in Order 88-20 as follows:

[I]t must be recognized that a water right is not necessarily protected simply by diverting water and applying it to a beneficial use. Protection of the water right also requires that the method of diversion and use must be reasonable in view of all relevant circumstances. The availability of financial resources for implementing proposed water conservation measures is a factor to be considered in evaluating the reasonableness of an existing method of diversion and use. If sufficient funding is available to implement reasonable water conservation measures, then the failure to implement such measures could endanger the underlying water right. A water right is protected most effectively under California law by making reasonable and beneficial use of water while implementing all reasonably available water conservation measures.23

Order 88-20 (emphasis added).

Additionally, the SWRCB noted that it or the courts could develop and order implementation of a physical solution should IID and MWD or other interested parties fail to reach voluntary agreement for a transfer of IID’s conserved water.24 Specifically, “[u]nder the physical solution doctrine, a junior appropriator or appropriators could finance improvements to IID’s water distribution system in exchange for receiving the water made available through such conservation measures.”25 This decision has served to haunt IID because it establishes two baseline principles: 1) SWRCB has the authority to determine that use in irrigation may be unreasonable in the face of other demands on the Colorado; and 2) the quantities diverted at that time were in excess of the beneficial needs of the IID. Every effort must be made to limit the ruling in this case.


22 Order 84-12, § 8.1 at 35.
23 Order 84-12, § 8.1 at 36 (emphasis added).
24 Order 84-12, § 8.4 at 39-41.
25 Order 84-12, § 8.4 at 40.
While one might think things could not get worse, the California appellate court upheld the SWRCB Decision 1600 with even stronger criticism of the IID and the prior appropriation doctrine, stating:

All things must end, even in the field of water law. It is time to recognize that this law is in flux and that its evolution has passed beyond traditional concepts of vested and immutable rights. In his review of our Supreme Court’s recent water rights decision in *In re Water of Hallett Creek Stream System* (1988) 44 Cal.3d 448, 243 Cal. Rptr. 887, 749 P.2d 324, Professor Freyfogle explains that California is engaged in an evolving process of governmental redefinition of water rights. He concludes that “California has regained for the public much of the power to prescribe water use practices, to limit waste, and to sanction water transfers.” He asserts that the concept that “water use entitlements are clearly and permanently defined,” and are “neutral [and] rule-driven,” is a pretense to be discarded. It is a fundamental truth, he writes, that “everything is in the process of changing or becoming” in water law.

In affirming this specific instance of far-reaching change, imposed upon traditional uses by what some claim to be revolutionary exercise of adjudicatory power, we but recognize this evolutionary process, and urge reception and recognition of same upon those whose work in the practical administration of water distribution makes such change understandably difficult to accept.


5. **1998-1999 Pressure Mounts on California to Live Within its 4.4 million Acre-Foot Entitlement of Colorado River Water.**

Numerous activities continued to put pressure on the IID to solve the problem of bringing California back to a maximum use of 4.4 MAF. These included:

- Arizona and Nevada begin to take their full entitlement
- Severe drought conditions
- IID agreed at one point to a transfer with SDCWA
- IID, CVWD and MWD had numerous disputes about their respective water rights

While it is not part of the Law of the River discussed in this paper, current deliveries within California are also governed by the Quantification Settlement Agreement, which includes the 2003 California Quantification Settlement Agreement related intra-state agreements and a federal implementing agreement—the 2003 federal Quantification Settlement Agreement. These agreements settled certain disputes among the United States, the state of California, IID, Metropolitan Water District, CVWD and the San Diego County Water Authority. It is not the purpose of this discussion to fully describe the QSA but, rather, to explain the current threats to IID’s present perfected rights in this era of shortage.

Briefly stated, as set out in the CA-QSA, it, and the related agreements were:

intended to consensually settle longstanding disputes regarding the priority, use and transfer of Colorado River water, to establish by agreement the terms for the further distribution of Colorado River water among the Parties for up to seventy-five (75) years based upon the water budgets set forth herein, and to facilitate agreements and actions which will enhance the certainty and reliability of Colorado River water supplies available to the Parties and assist the Parties in meeting their water demands within California’s apportionment of Colorado River Water by identifying the terms, conditions and incentives for the conservation and distribution of Colorado River water within California.

The related agreements include those between IID and SDCWA, IID and CVWD and IID and MWD for delivering water conserved by IID to the other entities.

These contracts identify the conserved water volumes and transfer schedules for IID along with the price and payment terms. As specified in the agreements, IID will transfer to SDCWA up to

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26 CA-QSA.
27 FED-QSA.
29 CA-QSA, Recitals at G.
200,000 AFY and to CVWD and MWD combined up to 103,000 Acre Feet per Year (AFY) of water conserved from delivery system improvements and on-farm efficiency improvements, all in return for payments totaling billions of dollars. In addition, IID will transfer up to 67,000 AFY of conserved water from the lining of the All-American Canal to SDCWA and certain San Luis Rey Indian Tribes in exchange for the payment of all lining project costs and a grant to IID of certain rights to use the conserved water.30 31

7. 2007 Interim Guidelines.

The Interim Guidelines will further be explained in the oral presentation regarding these issues. However, the adoption of these Guidelines reflects the basic reality that, in times of shortage, IID’s present perfected rights are under great pressure to bend to the needs of others on the Colorado River.

In general, the Interim Guidelines cover four areas of substance: 1) shortage guidelines for reduced deliveries from Lake Mead; 2) rules for coordination of reservoir operations at Lake Powell and Lake Mead; 3) storage and delivery of conserved “system” and “non-system” water; and 4) conditions for delivery of surplus water.

The discussion of the 2007 Interim Guidelines does not include any of the complex negotiating positions being discussed between and among the USBOR and the IID at this time or in negotiations with other partners on the River.

IV. WHAT ARE THE GREATEST THREATS IN THE FUTURE TO IID’S PRESENT PERFECTED WATER RIGHTS?

31 Conserved Water is defined in the CA-QSA as “Water made available for acquisition under this Agreement and Related Agreements attributable to: (i) Temporary Land Fallowing or crop rotation, if an allowed use is for irrigation, or (ii) projects or programs that enable the use of less water to accomplish the same purpose or purposes of allowed use; provided, however, that such term does not include water attributable to:” a) involuntary conservation activities, or b) voluntary activities for which reimbursement is received from a governmental source other than certain specified California parties, and c) the water produced from (a) or (b) cannot be used anywhere within the IID Service Area. CA-QSA at 4, Sec. 1.1(17), available at http://www.iid.com/home/showdocument?id=882 (last visited December 12, 2017).
The IID and its water users have weathered tremendous political pressure and sacrificed greatly to bring California into compliance with its obligation to limit its consumption to 4.4 MAF. Now, as the threats of dwindling snowpack are raised once more, IID and its water users are being asked to do more to address the drought.

There is an obvious reason why Colorado River water users turn to IID—the district holds the rights to the lion’s share of the 4.4 MAF for its operations. But IID has already sacrificed. It has conserved over 400,000 acre-feet to bring California into compliance. And circumstances have significantly changed from those years just prior to the time of the QSA. IID has developed extensive conservation programs and is a full partner on the River and is working to acquire storage in Lake Mead to help build its elevation in order to avoid shortage triggers that would harm Arizona and Nevada. Finally, the overwhelming risk to the Imperial Valley, if the Salton Sea could not be restored, that was looming over the IID shortly after the passage of the QSA and the approval of the transfer by the SWRCB, has been addressed.

Below is a listing of the currently pressing threats to IID’s present perfected water rights and responses to those threats.

**Threat 1**

In the event of an even greater shortage, IID could be pressed once more by USBR and the urban water users to improve its water conservation methods in a proceeding before the SWRCB or under Part 417.

**Response of IID to Threat 1**

IID can no longer be accused of ignoring its responsibilities to place water to reasonable and beneficial use, as occurred at the time of SWRCB Decision 1600. IID has adopted an
extensive program to encourage conservation, and it has implemented the Equitable Distribution Plan, which applies to all water users. The EDP, even though currently under attack, will ultimately, in whatever form, result in a demonstrable showing that IID is ensuring that every drop of water applied to the land is used reasonably and beneficially within the meaning of state law.

**Threat 2**

The QSA could fail because the costs of restoration of the Salton Sea that are foisted upon IID and other purchasers of water far exceed the benefits. An express *quid pro quo* for the IID entering into the QSA was that the state would pay for all costs of restoration of the Salton Sea. Legislation was put in place to that end but, thus far, funding has been inadequate.

**Response of IID to Treat 2**

The process of developing plans for restoration of the Salton Sea was allowed to languish for over 10 years while water was delivered to the Salton Sea created through fallowing by the IID, with the goal of maintaining salinity levels at those that would otherwise exist without the QSA. IID, recognizing that urgent action was needed, filed a petition with the SWRCB asking that an immediate process be commenced to develop and implement a plan for restoration prior to the end of the mitigation water deliveries in 2017. This triggered a response from the Office of the governor, creation of a task force, creation of a Salton Sea czar position within the Natural Resources Agency and a commitment by the United States to assist in whatever fashion possible. This effort was supported by multiple non-governmental organizations and institutions within the Imperial Valley, including the county of Imperial. When no concrete action was taken, IID filed a Motion for an Evidentiary Hearing, supported by the county of Imperial, asserting that the restoration obligation must be met or the QSA was at risk. After extensive negotiations among
the IID, county of Imperial, SDCWA and the responsible state agencies, a Stipulated Order was agreed to that includes specific milestones for restoration accompanied by a finding that the Salton Sea can be and must be restored. The Stipulated Order was supported by key environmental NGOs. The Stipulated Order has been adopted and published by the SWRCB. Even so, it is not enough—IID, and all of the stipulating parties, must take concerted action to see that the order is implemented and that the results flowing from it protect the IID. The state’s failure to restore the Salton Sea is not an option. Such a failure would threaten the IID.

**Threat 3**

IID has developed an excellent working relationship with California, SDCWA, MWD and CVWD. But, as the largest single Colorado River contractor, IID continues to face pressures from other states in the Lower Basin that are of the view that IID can increase its efficiency and/or should waive its right to assert its priority position in times of extreme drought.

**Response to Threat 3**

To address this threat, IID will be obligated to assert its position in the face of political pressure from other states and, to some degree, from USBR. IID has worked tirelessly to be part of a Drought Contingency Plan in which IID will relieve pressures on other states holding junior water rights, including those junior rights held by Arizona. As noted above, IID’s proposal is to work with MWD to build elevation in Lake Mead by acquisition of a storage right within existing ICS limitations and proposals. However, other states and USBR, while currently supportive, may refuse to accept this option, believing IID should suffer and not benefit from its senior status. If IID is unable to make this elevation proposal work, then the district may be forced to assert its priority status.
Threat 4

IID anticipates that there will be economic development in the Imperial Valley through the development of renewable energy projects (e.g. geothermal, solar and wind) and other municipal, commercial and industrial uses that will need water supplies to occur and contribute to vital economic growth and diversification.

Response to Threat 4

It would be a loss to the Imperial Valley residents if a policy were adopted to deny water to this vital economic development. A long-term plan will need to be developed and adopted by IID that ensures that agricultural needs and future economic development needs are met, optimizing the needs of both. It is hard to imagine any outcome worse than pitting the water needs of economic development against those of the grower community.

Threat 5

The demand for water in Southern California is great, and the amount of financial resources necessary to satiate it is massive. It is conceivable that a major landowner or non-agricultural industry could come in and file suit against the IID arguing that it has an absolute right to vest the water away from IID and put it to beneficial use elsewhere. Offering land purchase prices well above market prices and then through non-use divest the Imperial Valley of the majority of the water available it to allow that water to be used elsewhere by a junior water right, as has appeared to occurred in the Palo Verde Irrigation District area.

Response to Threat 5

Ironically, the proposal to move water away from the IID for consumptive use elsewhere makes the Salton Sea the ally of the IID. The Salton Sea relies on the unused irrigation return
flows to sustain itself and will continue to do so even in the face of a commitment to a smaller but sustainable Salton Sea. Therefore, removing massive quantities of water to be consumed in its entirety in another basin would be an unacceptable outcome for the state of California, and all of those who support the Salton Sea. Thus, those who seek to achieve the goal of water use from IID would be obligated to locate in the Imperial Valley, where their return flows continue to sustain the Sea.
Colorado River Compact, 1922

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

W.S. Norviel for the State of Arizona,
W.F. McClure for the State of California,
Delph E. Carpenter for the State of Colorado,
J.G. Scrugham for the State of Nevada,
Stephen B. Davis, Jr., for the State of New Mexico,
R.E. Caldwell for the State of Utah,
Frank C. Emerson for the State of Wyoming,
who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

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

ARTICLE II

As used in this compact-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

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

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

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

ARTICLE V

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

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

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

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

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

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

ARTICLE VII

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

ARTICLE VIII

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

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

ARTICLE IX

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

ARTICLE X

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

ARTICLE XI

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

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.
DONE at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-two.

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

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

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

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

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.
(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest, during construction, upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

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

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

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

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

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters
unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive
beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and
(4) that the waters of the Gila River and its tributaries, except return flow after the same enters the
Colorado River, shall never be subject to any diminution whatever by any allowance of water which may
be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of
Article III of the Colorado River compact, it shall become necessary to supply water to the United States
of Mexico from waters over and above the quantities which are surplus as defined by said compact, then
the State of California shall and will mutually agree with the State of Arizona to supply, out of the main
stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower
basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona
and Nevada that none of said three States shall withhold water and none shall require the delivery of
water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the
provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado
River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact
by Arizona, California, and Nevada.

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

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

If during the period of amortization the Secretary of the Interior shall receive revenues in excess
of the amount necessary to meet the periodical payments to the United States as provided in the contract,
or contracts, executed under this Act, then, immediately after the settlement of such periodical payments,
he shall pay to the State of Arizona 18¾ per centum of such excess revenues and to the State of Nevada
18¾ per centum of such excess revenues.

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

After the repayments to the United States of all money advanced with interest, charges shall be
on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within
the Colorado River Basin as may hereafter be prescribed by the Congress.
General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

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

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

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

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

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

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

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

SEC. 6. That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as herein otherwise provided: Provided, however, That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this Act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

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

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

SEC. 7. That the Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him. The said districts or other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost
SEC. 8. (a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: Provided, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

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

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

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

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

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

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

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

“Domestic” whenever employed in this Act shall include water uses defined as ‘domestic’ in said Colorado River compact.

SEC. 13. (a) The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled “An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes,” is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article II 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

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\(^1\) As amended by act of March 6, 1946 (60 Stat. 36)
such waiver, as herein provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved, December 21, 1928.
BOULDER CANYON PROJECT

AGREEMENT

REQUESTING APPORTIONMENT OF CALIFORNIA’S SHARE OF THE WATERS OF THE COLORADO RIVER AMONG THE APPLICANTS IN THE STATE

August 18, 1931

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

WITNESSETH:

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

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

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

ARTICLE I.

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

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

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

SECTION 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the “Lower Palo Verde Mesa”, adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 3,850,000 acre feet of water per annum less the beneficial consumptive use under the priorities designated in Sections 1 and 2 above. The rights designated (a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in Sections 1, 2 and 3 of this article shall not exceed 3,850,000 acre feet of water per annum.
SECTION 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the Coastal Plain of Southern California, 550,000 acre feet of water per annum.

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

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

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

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

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

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

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

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

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

ARTICLE III.

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

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

Recommended for Execution:

Palo Verde Irrigation District,
By Ed J. Williams,
Arvin B. Shaw, Jr.

Imperial Irrigation District,
By Mark Rose,
Chas. L. Childers,
M. J. Dowd.

Coachella Valley County Water District,
By Thos. C. Yager.

Metropolitan Water District
of Southern California,
By W. B. Matthews,
C. C. Elder.

WATER CONTRACTS

City of Los Angeles,
By W. W. Hurlbut,
C. A. Davis.

City of San Diego,
By C. L. Byers,
H. N. Savage.

County of San Diego,
By H. N. Savage,
C. L. Byers.
AGREEMENT OF COMPROMISE

BETWEEN

IMPERIAL IRRIGATION DISTRICT

AND

COACHELLA VALLEY COUNTY WATER DISTRICT

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Sec. 1. THIS AGREEMENT, Made the 14th day of February, 1934, by and between IMPERIAL IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the California Irrigation District Act of the State of California and acts amendatory thereof or supplementary thereto, with its principal office at El Centro, Imperial County, California, said District being hereinafter sometimes styled "Imperial District"; and COACHELLA VALLEY COUNTY WATER DISTRICT, a County Water District organized and existing under and by virtue of the County Water District Act of the State of California and acts amendatory thereof or supplementary thereto, and having its office at Coachella, Riverside County, California, said District being hereinafter sometimes styled "Coachella District";

WITNESSETH:

RECITALS.

Sec. 2. THAT, WHEREAS, Pursuant to the terms of the Boulder Canyon Project Act, approved December 21, 1928 (45 Stat. 1057), the Secretary of the Interior is authorized to construct a main canal and appurtenant structures located entirely within the United States, connecting Laguna Dam or other suitable diversion dam, which said Secretary is authorized to construct, with Imperial and Coachella Valleys in California; and

Sec. 3. WHEREAS, The Secretary of the Interior has determined upon engineering and economic considerations to construct a new diversion dam on the Colorado River approximately four and one-half miles above Laguna Dam, which new diversion dam has
heretofore been and is designated Imperial Dam; and

Sec. 4. WHEREAS, Pursuant to the Boulder Canyon Project Act, a contract, dated December 1, 1932, hereinafter styled "Imperial Contract", has heretofore been executed between the United States and Imperial District for the construction of said Imperial Dam, main canal and appurtenant structures, which said main canal and appurtenant structures are hereinafter styled "All-American Canal", and for the repayment of the cost thereof as provided by law; and

Sec. 5. WHEREAS, By said Imperial Contract, certain lands in Coachella Valley, and within Coachella District and lands adjacent to said District may, by petition, be included within the boundaries of Imperial District, and if said lands are not so included, then the works and capacity to serve said lands shall not be constructed under said contract; and

Sec. 6. WHEREAS, Said Coachella District through its Board of Directors has determined that said lands will not become a part of Imperial District pursuant to said contract, and that Coachella District desires to obtain a contract, hereinafter styled "Coachella Contract", with the United States, separately from Imperial District, for capacity in said Imperial Dam and All-American Canal to be provided for the benefit of said Coachella District, in addition to the capacity therein provided for Imperial District, and to pay the proper cost of such capacity; and

Sec. 7. WHEREAS, Under date of August 18, 1931, an agreement was made between certain interested agencies in California, including the parties to this agreement, for the apportionment of the Colorado River water available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act, a portion of which agreement is set out in Article 17 of said Imperial Contract as being a recommendation of the Chief of the Division of Water Resources of the State of California; and
Sec. 8. WHEREAS, Water for irrigation and domestic uses in the areas to be served under or from the All-American Canal in Imperial and Coachella Valleys will be supplied pursuant to the third and sixth priorities of said recommendation of the Chief of the Division of Water Resources of the State of California; and

Sec. 9. WHEREAS, Imperial District has certain prior rights to the use of the waters of the Colorado River, and the extent of said rights is in dispute as between the parties hereto, and each of said parties makes certain claims as to the use of said waters; and

Sec. 10. WHEREAS, The parties hereto, upon their respective contracts with the United States becoming effective and said All-American Canal being constructed, will respectively have certain power possibilities on the All-American Canal, which it is desired to have developed, operated and controlled as a unified project; and

Sec. 11. WHEREAS, Controversy has arisen and now exists between the parties hereto as to the extent and relation of their respective present and future rights to water and power on and from said All-American Canal, which controversy it is desired to have compromised and settled by this agreement;

NOW, THEREFORE, In consideration of the premises and the mutual obligations and convenants of the parties hereto and as a compromise and settlement of their said respective rights, privileges and claims respecting the matters herein contained, it is agreed;

COACHELLA CONTRACT

Sec. 12. Coachella District will forthwith apply to the proper governmental authorities for a contract between itself and the United States for the construction by the United States of the portion of the Imperial Dam and All-American Canal which will serve said District, and for the payment of its proper proportion of construction and other costs and for delivery of water; said contract to be in harmony with the provisions of the Imperial Contract and this agreement. The draft of said proposed Coachella Contract attached hereto and marked "Annex A" has been examined by
Imperial District and the substance of said draft is approved by the parties hereto. Imperial District agrees that said draft, or such other draft as may be acceptable to the United States and in harmony with the provisions of the Imperial Contract and of this agreement, may be executed between the Coachella District and the United States. Imperial District will actively assist Coachella District in obtaining execution of such contract by the United States.

VALIDATION ACTION

Sec. 13. That forthwith upon the execution of this agreement Coachella District will cause to be dismissed on behalf of itself and A. B. Cliff, John H. Colbert, R. C. Egnew, J. C. Jones and Washington McIntyre, with the stipulation that remittance issue forthwith and that each party pay his or its own costs, their appeal now pending in the Supreme Court of California, in that certain action entitled: "In the Matter of the validation of a Contract Dated Dec. 1, 1932, Entitled 'Contract for Construction of Diversion Dam, Main Canal and Appurtenant Structures, and for Delivery of Water', between the United States of America and Imperial Irrigation District. John L. Dubois, et al., Plaintiffs and Respondents, vs. All Persons, Defendants; Coachella Valley County Water District et al., Defendants and Appellants", being L.A. No. 14487, and this agreement shall not become effective for any purpose unless and until said appeal is so dismissed on behalf of all of said parties within ten (10) days from the execution hereof. Coachella District will actively assist in bringing said action to an early and final conclusion to the end that the present judgment be sustained.

GENERAL PROVISIONS

Sec. 14. The provisions of this agreement hereinafter set forth shall be effective and binding upon the parties hereto only in the event that the Coachella contract above mentioned is executed by and between the United States and said Coachella District prior to the transfer of constructed works to Imperial District.
for operation and maintenance, as provided by said Imperial Contract, and such
Coachella Contract prior to such transfer or thereafter becomes binding upon the
parties thereto, pursuant to law. After this agreement becomes effective, it, to-
gether with the lease herein provided for, shall terminate in the event Coachella
District shall be relieved of all obligations under the Coachella Contract, by reason
of failure of the United States to complete the works to be constructed thereunder.

WATER

Sec. 15. As a full and complete compromise and settlement of the controversy
existing between the parties hereto as to the extent and priority of their respective
rights and claims to the use of the waters of the Colorado River, it is agreed, as
between said parties, that:

Imperial Irrigation District shall have the prior right for irrigation and potta-
ble purposes only, and exclusively for use in the Imperial Service Area, as herein-
after defined, or hereunder modified, to all waters apportioned to said Imperial
Irrigation District and other lands under or that will be served from the All-
American Canal in Imperial and Coachella Valleys as provided in the third and sixth
priorities set out in the recommendation of the Chief of the Division of Water Re-
sources of the State of California, as contained in Article 17 of the Imperial Con-
tract. Subject to said prior right of Imperial Irrigation District, Coachella Valley
County Water District shall have the next right, for irrigation and potable purposes
only and exclusively for use in the Coachella Service Area, as hereinafter defined,
or hereunder modified, to all waters so apportioned to said Imperial Irrigation Dis-
trict and other lands under or that will be served from the All-American Canal in the
Imperial and Coachella Valleys, as provided in said third and sixth priorities. The
use of water for generation of electric energy shall be, in all respects, secondary
and subservient to all requirements of said two districts for irrigation and potable
purposes as above limited.
As hereinabove used, the term "Imperial Service Area" shall comprise all lands within the boundaries of Imperial Irrigation District as said District was constituted on June 23, 1931, and all lands in Imperial and San Diego Counties, California, shown on map marked Exhibit "A", attached to said Imperial contract, and included within hatched border lines indicated on said map by legend as "Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District", other than (a) such of said lands as are labeled "Dos Palmas Area" and (b) such of said lands as lie West of Salton Sea and North of the Northerly boundary line of Township 11, South of the San Bernardino Base Line. The term "Coachella Service Area" shall comprise all lands described on statements hereto attached and marked "Exhibits" "B", "C", "D" and "E", respectively, being approximately, but not exactly, the lands within said hatched border lines shown on said Exhibit "A", other than those included in said Imperial Service Area. Upon application of either district and with the written consent of the Secretary of the Interior, the boundaries of the service area which such district is entitled hereunder to serve may at any time or from time to time be changed, but may not be so changed as, in the aggregate, to add more than 5000 acres to, nor to subtract more than 5000 acres from such service area, as herein defined, without the written consent of the district entitled hereunder to serve the other service area. Coachella District shall not participate in any revenues received by Imperial District for diverting, carrying and delivering at or near Pilot Knob, water for irrigation or domestic use for any person or agency other than the parties hereto, and Coachella District shall perform no such service at or near Pilot Knob.

APPLICATIONS TO APPROPRIATE WATER

Sec. 16. The parties hereto agree that their respective applications to appropriate water from the Colorado River for irrigation and domestic purposes heretofore filed with the Division of Water Resources of the State of California be deemed amended to conform with the foregoing provisions of this agreement and stipulate
that permits be issued to them, respectively, in accordance herewith and agree to file with said Division all necessary papers and stipulations to that end. Except as between the parties hereto the provisions of this agreement shall not affect nor impair any rights of either party to the waters of the Colorado River.

LEASE OR POWER RIGHTS

Sec. 17. As a compromise and settlement of the controversy existing between the parties hereto as to all power possibilities, power rights, power resources and power privileges upon the whole of said All-American Canal in both Imperial and Riverside Counties, now or hereafter held, owned, or possessed by said parties, or either of them, including all those at or near Pilot Knob, which said power possibilities, power rights, power resources and power privileges are hereinafter styled "power rights", and to combine and co-ordinate all of said power rights as a unified project so as to produce the maximum benefits to the parties hereto and to the United States, it is agreed that the parties hereto will, within a reasonable time after the execution of said Coachella Contract, execute a good and sufficient lease agreement, wherein Coachella District shall demise to Imperial District all of said power rights which the Coachella District may now have or hereafter obtain. Said lease, among other reasonable provisions, shall provide:

(a) That the term of said lease shall commence with the date thereof and terminate on January 1, 2033; provided, that should the term herein or in said lease fixed exceed that permitted by law at the date of said lease, then said term shall be deemed reduced to the longest period permitted by law;

(b) That said lease shall vest in Imperial District the entire and exclusive operation, management, development and control of all said power rights and the use, sale and control of power produced therefrom;
(c) That subject to the conditions hereinafter contained, Imperial District shall pay, on March first of each year, as rental for said demised power rights, eight per cent of the net proceeds, as defined in sub-section (f) hereof, received by Imperial District during the preceding calendar year from all said power rights held, owned or possessed by both parties hereto and from all power works and power facilities by or in connection with which Imperial District utilizes said power rights;

(d) That said rentals shall be paid by Imperial District to the United States and credited on the Coachella Contract until Coachella District's obligations to the United States under said contract are fully paid, and thereafter Imperial District shall pay said rentals to Coachella District;

(e) That no rentals shall be due or payable unless and until capacity in the All-American Canal shall have been provided for Coachella District down to Pilot Knob;

(f) That in determining said net proceeds, as between the parties hereto, there shall be taken into consideration all items of cost of production and disposal of power, including, but not necessarily limited to amortization of and interest on capital investment for power purposes, improvements, operation and maintenance, and depreciation, and any other proper factor of cost not herein expressly enumerated;

(g) That the determination of said net proceeds for the purpose of ascertaining rentals payable under said lease shall be made without reference to the fact that as to Imperial District said rentals will constitute a part of the cost of doing business;

(h) That on March first of each year Imperial District shall furnish to Coachella District a statement of account showing the computation of said rental;

(i) That Coachella District shall not be required to contribute in any manner to the cost of construction, operation or maintenance of any power works or facilities on or in connection with the All-American Canal, except indirectly, as said
items may be taken into consideration in determining rentals to be paid under said lease;

(j) That said lease shall terminate upon Coachella District being relieved of obligations as provided in Section 14 hereof and/or at the option of Coachella District, in the event of default in any payment of rentals by Imperial District for a period of two years;

(k) That any overdue rental shall bear interest at the rate of one-half of one per cent per month until paid;

(l) That when Imperial District is ready to undertake construction of facilities to serve electrical energy (herein designed "power") in Coachella Valley, Coachella District shall obtain for Imperial District signed contracts or applications for power as provided in Section 18 hereof, and be otherwise subject to the provisions of said Section 18;

(m) That when Imperial District is ready to serve power from the All-American Canal in Coachella Valley, then, if and while said lease is in effect, Imperial District will furnish such power in Coachella District at the rates and upon the conditions provided in Section 19 hereof;

(n) That Coachella District shall, by its officials or designated representatives, have the right of ingress to and egress from all power works and facilities of Imperial District for the purpose of inspection thereof, and full and free access to and the right during office hours to inspect and copy all books and records of Imperial District relating to its power operations;

(o) That the interest of Imperial District under said lease shall not, nor shall any part thereof nor interest therein, be assigned, nor shall Imperial District sublet any part of nor interest in said demised power rights without the written consent of Coachella District;

(p) That at the termination of said lease the rights and privileges of the
parties thereto shall be segregated and/or adjusted as may be equitable and just, having in view the business, interests and investments of the parties and their respective legal and equitable rights in said power rights, works and facilities on or in connection with the All-American Canal;

(q) That in the event the parties cannot agree upon such segregation or adjustment, then the same shall be made by a board of arbitration, consisting of five persons, one to be selected by Imperial District, one by Coachella District, and three by the Secretary of the Interior and the decision of said board of arbitration shall be final and binding upon the parties to said lease;

(r) That nothing contained in said lease shall be construed as in any manner abridging, limiting, or depriving either of the parties thereto of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions of said lease which it would otherwise have;

(s) That the waiver of a breach of any of the provisions of said lease shall not be deemed to be a waiver of any other provision thereof or of a subsequent breach of such provision.

POWER CONTRACTS

Sec. 18. When the lease provided for in Section 17 hereof has been executed and Imperial District is ready to undertake construction of facilities to serve electrical energy, (herein styled "power") in Coachella Valley it shall notify Coachella District of said fact in writing and it shall thereupon be the duty of Coachella District to obtain for Imperial District, within six months after service of such notice, contracts or applications for power signed by consumers using at the time of service of such notice not less than eighty per cent of the power load then being consumed in the Coachella Service Area. Such contracts or applications shall be in such form and substance as reasonably required by Imperial District and shall among other things bind the consumer to take from Imperial District all power that
he may require in Coachella District for a period of three years. In the event of
disagreement between the parties as to whether or not Coachella District has complied
with the foregoing provisions of this section on its part to be complied with, then
the Secretary of the Interior may, at the written request of either party, determine
said fact and notify the parties hereto of such determination in writing, and such
determination shall be final and binding upon the parties hereto. Notwithstanding
anything herein or in said lease contained, there shall be no obligation on the part
of the Imperial District for rentals under said lease during the time, if any, after
said six months period that said signed contracts or applications for said eighty per
cent of power load have not been so delivered.

POWER RATES

Sec. 19. When the lease provided for in Section 17 hereof has been executed and
Imperial District is ready to serve power from the All-American Canal in Coachella
Valley then, and while said lease remains in effect, Imperial District will furnish
such power in Coachella District upon the following terms:

A. To Coachella District, for use by itself for project purposes within said
Coachella Service Area as such project purposes are hereinafter defined, at rates in
no case exceeding the cost of power delivered in Coachella Valley, plus fifteen per
cent, and in no event at rates higher than are charged by Imperial District to itself
for like uses with such additional charges as may be necessary to offset difference
in costs of transmitting power as between Imperial and Coachella Valleys. Subject to
the foregoing provisions, Coachella District agrees that, for a period of five years
from and after the service of the notice provided for in Section 18 hereof said
Coachella District will purchase from Imperial District and pay for all power
Coachella District may require for project purposes within the Coachella Service Area,
and for which Imperial District has sufficient facilities and is prepared to serve.
Imperial District shall not be required to furnish power to Coachella District for
project purposes at points where Imperial District does not then have sufficient facilities for such power service.

"Project Purposes" as used in this section shall be understood to mean construction, operation and maintenance of Coachella District's irrigation and drainage system within the Coachella Service Area, where such construction, operation, or maintenance is of a general public nature and not individual or private in character.

B. To all consumers within Coachella District, other than to Coachella District for project purposes, at no higher rates than those charged, and under the same conditions and regulations as those prescribed, by Imperial District for like service to consumers within Imperial District with such additional charges as may be necessary to offset difference in costs of transmitting power as between Imperial and Coachella Valleys. In no event shall such rates to such consumers exceed seventy-five percent of the rates paid for like service by individual consumers in Coachella District on January 1, 1934, based upon the purchasing power of the dollar on said date. Imperial District shall make such further reduction in rates to such consumers as may be necessary to meet competitive rates for like service of any public utility, at the time authorized by the Railroad Commission of the State of California, or other authority succeeding to its functions, and able to serve such consumers, but in no event shall Imperial District be required to charge rates that will return less than the cost of service.

POWER PERMITS

Sec. 20. The parties hereto agree to cooperate to the end that all necessary and proper permits and licenses to appropriate water for power purposes and construct power facilities may be obtained from the Division of Water Resources of the State of California and/or Federal Power Commission as may be authorized by law and hereby stipulate that such permits and licenses issue to the parties hereto, as follows, to-wit:
1. To Imperial District, as to all such permits and licenses on the portion of the All-American Canal shown on said Exhibit "A" and marked "Main (All American) Canal to Imperial Valley" lying west of the southerly end of the "Main (All American) Canal to Coachella Valley" as same is shown on said Exhibit "A";

2. To Coachella District, as to all such permits and licenses on the portion of the All-American Canal shown on said Exhibit "A" and marked "Main (All American) Canal to Coachella Valley" lying North of the Northerly boundary line of Township 11, South of the San Bernardino Base Line;

3. To Imperial District and Coachella District, as their respective privileges to utilize power possibilities may appear from their said contracts with the United States, as to all such privileges on all portions of the Imperial Dam and All-American Canal, including Pilot Knob, not hereinabove specified.

AGREEMENT VOID IF CERTAIN LANDS INCLUDED IN IMPERIAL DISTRICT

Sec. 21. In the event lawful petition or petitions sufficient in all respects for inclusion within Imperial District of ninety per cent (90%) of the lands shown on said Exhibit "A" lying north of the northerly boundary line of Township Eleven (11), South of the San Bernardino Base Line and bounded by the lines indicated on said Exhibit "A" as "Boundary of Additional Areas in Proposed Enlarged Imperial Irrigation District", exclusive of the Dos Palmas Area and exclusive of Indian lands and public lands of the United States, shall be filed pursuant to and within the time limited by said Imperial Contract, and said lands shall be thereafter included
within said Imperial District pursuant to such petition or petitions, then, as of the date of such inclusion, this agreement shall terminate and be at an end.

**REMEDIES UNDER AGREEMENT NOT EXCLUSIVE**

Sec. 22. Nothing contained in this agreement shall be construed as in any manner abridging, limiting, or depriving either of the parties hereto of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof which it would otherwise have. The waiver of a breach of any of the provisions of this agreement shall not be deemed to be a waiver of any other provision hereof or of a subsequent breach of such provision.

Sec. 23. This agreement shall not be interpreted nor construed so as to amend, modify or change said Imperial Contract in any particular, and no provision hereof in conflict with said Imperial Contract shall be of any force or effect. As to any provisions hereof in which the United States is interested this agreement shall be deemed to be made expressly for the benefit of the United States, as well as of the parties hereto.

Sec. 24. This agreement shall inure to and be binding upon the parties hereto, their and each of their respective successors and assigns.

IN WITNESS WHEREOF, Said parties have executed this agreement in triplicate original by their respective officers, thereunto duly authorized by resolutions of their respective Boards of Directors, the day and year first above written.

**IMPERIAL IRRIGATION DISTRICT**

(Seal)

By [Signature]
Its President

ATTEST: [Signature]
Its Secretary

**COACHELLA VALLEY COUNTY WATER DISTRICT**

(Seal)

By [Signature]
Its President

ATTEST: [Signature]
Its Secretary
SUPREME COURT OF THE UNITED STATES

No. 8, Original

STATE OF ARIZONA, plaintiff

v.

STATE OF CALIFORNIA, et al., defendants

DECREES—MARCH 9, 1964.

It is ORDERED, ADJUDGED AND DECREED that

I. For purposes of this decree:

(A) “Consumptive use” means diversions from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation;

(B) “Mainstream” means the mainstream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon;

(C) 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;

(D) “Regulatory structures controlled by the United States” refers to Hoover Dam, Davis Dam, Parker Dam, Headgate Rock Dam, Palo Verde Dam, Imperial Dam, Laguna Dam and all other dams and works on the mainstream now or hereafter controlled or operated by the United States which regulate the flow of water in the mainstream or the diversion of water from the mainstream;

(E) “Water controlled by the United States” refers to the water in Lake Mead, Lake Mohave, Lake Havasu and all other water in the mainstream below Lee Ferry and within the United States;

(F) “Tributaries” means all stream systems the water of which naturally drain into the mainstream of the Colorado River below Lee Ferry;

(G) “Perfected right” means 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;

(H) “Present perfected rights” means perfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act;

(I) “Domestic use” shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power;

(J) “Annual” and “Year,” except where the context may otherwise require, refer to calendar years;

(K) Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed.
II. 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 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 priorities specified in this subdivision (A);

(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) 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) If sufficient mainstream water is available for release, as determined by the Secretary of 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) 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;

(4) Any mainstream water consumptively used within a state shall be charged to its apportionment, regardless of the purpose for which it was released;

(5) Notwithstanding the provisions of Paragraphs (1) through (4) of this subdivision (B), mainstream 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 thereto 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;

(6) If, in any one year, water apportioned for consumptive use in a state will not be consumed in that state, whether for the reason that delivery contracts for the full amount of the state’s apportionment are not in effect or that users cannot apply all of such water to beneficial uses, or for any other reason, nothing 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;

(C) From applying the provisions of Article 7 (d) of the Arizona water delivery contract dated February 9, 1944, and the provisions of Article 5 (a) of the Nevada water delivery contract dated March 30, 1942, as amended by the contract dated January 3, 1944, to reduce the apportionment or delivery of mainstream waters to users within the States of Arizona and Nevada by reason of any uses in such states form the tributaries flowing therein;

(D) From releasing water controlled by the United States for use in the States of Arizona, California, and Nevada for the benefit of any federal establishment named in this subdivision (D) except in accordance
with the allocations made herein; provided, however, that such release may be made notwithstanding the provisions of Paragraph (5) of subdivision (B) of this Article; and provided further that nothing herein shall prohibit the United States from making future additional reservations of mainstream water for use in any of such States as may be authorized by law and subject to present perfected rights and rights under contract theretofore made with water users in such State under Section 5 of the Boulder Canyon Project Act or any other applicable federal statute:

(1) The Chemehuevi Indian Reservation in annual quantities not to exceed (in) 11,340 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,900 acres and for the satisfaction of related uses, whichever of (in) or (ii) is less, with a priority date of February 2, 1907;

(2) The Cocopah Indian Reservation in annual quantities not to exceed (in) 2,744 acre feet in diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 431 acres and for the satisfaction of related uses, whichever (in) or (ii) is less, with a priority date of September 27, 1917;

(3) The Yuma Indian Reservation in annual quantities not to exceed (in) 51,616 acre feet in diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 7,743 acres and for the satisfaction of related uses, whichever (in) or (ii) is less, with a priority date of January 9, 1884;

(4) The Colorado River Reservation in annual quantities not to exceed (in) 717,148 acre feet in diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,588 acres and for the satisfaction of related uses, whichever (in) or (ii) is less, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1965 (13 Stat. 541, 559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16, 1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date;

(5) The Fort Mohave Reservation in annual quantities not to exceed (in) 122,648 acre feet in diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 18,974 acres and for the satisfaction of related uses, whichever (in) or (ii) is less, and, subject to the next succeeding proviso, with priority dates of September 18, 1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date; provided, however, that lands conveyed to the State of California pursuant to the Swamp and Overflow Lands Act [9 Stat. 519 (1850) as well as any accretions thereto to which the owners of such land may be entitled, and lands patented to the Southern Pacific Railroad pursuant to the Act of July 27, 1966 (14 Stat. 292) shall not be included as irrigable acreage within the Reservation and that the above specified diversion requirement shall be reduced by 6.4 acre feet per acre of such land that is irrigable; provided that the quantities fixed in this paragraph and paragraph (4) shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined;

(6) The Lake Mead National Recreation Area in annual quantities reasonably necessary to fulfill the purposes of the Recreation Area, with priority dates of March 3, 1929, for lands reserved by the Executive Order of said date (No. 5105), and April 25, 1930, for lands reserved by the Executive Order of said date (No. 5339);

(7) The Havasu Lake National Wildlife Refuge in annual quantities reasonably necessary to fulfill the purposes of the Refuge, not to exceed (in) 41,839 acre feet of water diverted from the mainstream or (ii) 37,339 acre feet of consumptive use of mainstream water, whichever of (in) or (ii) is less, with a priority date of January 22, 1941, for lands reserved by the Executive Order of said date (No. 8647), and a priority date of February 11, 1949, for land reserved by the Public Land Order of said date (No. 559);

(8) The Imperial National Wildlife Refuge in annual quantities reasonably necessary to fulfill the purposes of the Refuge not to exceed (in) 28,000 acre feet of water diverted from the mainstream or (ii)
23,000 acre feet of consumptive use of mainstream water, whichever of (in) or (ii) is less, with a priority date of February 14, 1941;

(9) Boulder City, Nevada, as authorized by the Act of September 2, 1958, 72 Stat. 1726, with a priority date of May 15, 1931;

Provided further, that consumptive 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 regards to state liens, 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.

III. The States of Arizona, California and Nevada, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego, and all other users of water from the mainstream in said states, their officers, attorneys, agents and employees, be and they are hereby several enjoined:

(A) From interfering with the management and operation, in conformity with Article II of this decree, of regulatory structures controlled by the United States;

(B) From interfering with or purporting to authorize the interference with releases and deliveries, in conformity with Article II of this decree, of water controlled by the United States;

(C) From diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective states; and provided further that no party named in this Article and no other user of water in said states shall divert or purport to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for its particular use;

(D) From consuming or purporting to authorize the consumptive use of water from the mainstream in excess of the quantities permitted under Article II of this decree.

IV. The State of New Mexico, its officers, attorneys, agents and employees, be and they are after four years from the date of this decree hereby severally enjoined:

(A) From diverting or permitting the diversion of water from the San Simon Creek, its tributaries and underground water sources for irrigation of more than a total of 2,900 acres during any one year, and from exceeding a total consumptive use of such water, for whatever purpose, of 72,000 acre feet during any period of ten consecutive years; and from exceeding a total consumptive use of such water, for whatever purpose, of 8,220 acre feet during any one year;

(B) From diverting or permitting the diversion of water from the San Francisco River, its tributaries and underground water sources for the irrigation within each of the following areas of more than the following number of acres during any one year:

<table>
<thead>
<tr>
<th>Area</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Luna Area</td>
<td>225</td>
</tr>
<tr>
<td>Apache Creek-Aragon Area</td>
<td>316</td>
</tr>
<tr>
<td>Reserve Area</td>
<td>725</td>
</tr>
<tr>
<td>Glenwood Area</td>
<td>1,003</td>
</tr>
</tbody>
</table>

and from exceeding a total consumptive use of such water for whatever purpose, of 31,870 acre-feet during any period of ten consecutive years; and from exceeding a total consumptive use of such water, for whatever purpose, of 4,112 acre-feet during any one year;

(C) From diverting or permitting the diversion of water from the Gila River, its tributaries (exclusive of the San Francisco River and San Simon Creek and their tributaries) and underground water sources for the
irrigation within each of the following areas of more than the following number of acres during any one year:

- **Upper Gila Area**: 287 acres
- **Cliff-Gila and Buckhorn-Duck Creek Area**: 5,314 acres
- **Red Rock Area**: 1,456 acres

and from exceeding a total consumptive use of such water (exclusive of uses in Virden Valley, New Mexico), for whatever purpose, of 136,620 acre feet during any period of ten consecutive years; and from exceeding a total consumptive use of such water (exclusive of uses in Virden Valley, New Mexico), for whatever purpose, of 15,895 acre feet during any one year;

(D) From diverting or permitting the diversion of water from the Gila River and its underground water sources in the Virden Valley, New Mexico, except for use on lands determined to have the right to the use of such water by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in *United States v. Gila Valley Irrigation District, et al.* (Globe Equity No. 59) (herein referred to as the Gila Decree), and except pursuant to and in accordance with the terms and provisions of the Gila Decree; provided, however, that:

1. This decree shall not enjoin the use of underground water on any of the following lands:

<table>
<thead>
<tr>
<th>Owner</th>
<th>Subdivision and Legal Description</th>
<th>Sec.</th>
<th>Twp.</th>
<th>Rng.</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marvin Arnett and J.C. O’Dell</td>
<td>Part Lot 3</td>
<td>6</td>
<td>19S</td>
<td>21W</td>
<td>33.84</td>
</tr>
<tr>
<td></td>
<td>Part Lot 4</td>
<td>6</td>
<td>19S</td>
<td>21W</td>
<td>52.33</td>
</tr>
<tr>
<td></td>
<td>NW¼SW¼</td>
<td>5</td>
<td>19S</td>
<td>21W</td>
<td>38.36</td>
</tr>
<tr>
<td></td>
<td>SW¼SW¼</td>
<td>5</td>
<td>19S</td>
<td>21W</td>
<td>29.80</td>
</tr>
<tr>
<td></td>
<td>Part Lot 1</td>
<td>7</td>
<td>19S</td>
<td>21W</td>
<td>50.68</td>
</tr>
<tr>
<td></td>
<td>NW¼NW¼</td>
<td>8</td>
<td>19S</td>
<td>21W</td>
<td>38.03</td>
</tr>
<tr>
<td>Hyrum M. Pace, Ray Richardson, Harry Dan and N. O. Pace, Est.</td>
<td>SW¼NE¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>8.00</td>
</tr>
<tr>
<td></td>
<td>SW¼NE¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>15.00</td>
</tr>
<tr>
<td></td>
<td>SE¼NE¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>17.00</td>
</tr>
<tr>
<td>C. C. Martin</td>
<td>S. part SE¼SW¼SE¼</td>
<td>1</td>
<td>19S</td>
<td>21W</td>
<td>0.93</td>
</tr>
<tr>
<td></td>
<td>W½W½W½NE¼NE¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>0.51</td>
</tr>
<tr>
<td></td>
<td>NW¼NE¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>18.01</td>
</tr>
<tr>
<td>A. E. Jacobson</td>
<td>SW part Lot 1</td>
<td>6</td>
<td>19S</td>
<td>21W</td>
<td>11.58</td>
</tr>
<tr>
<td>W. LeRoss Jones</td>
<td>W. Central part: E½E½E½NW¼NW¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>0.70</td>
</tr>
<tr>
<td></td>
<td>SW part NE¼NW¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>8.93</td>
</tr>
<tr>
<td></td>
<td>N. Central part: N½N½NW¼SE¼NW¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>0.51</td>
</tr>
<tr>
<td>Conrad and James R. Donaldson</td>
<td>N½N½N½SE¼</td>
<td>18</td>
<td>19S</td>
<td>20W</td>
<td>8.00</td>
</tr>
<tr>
<td>James D. Freestone</td>
<td>Part W½NW¼</td>
<td>33</td>
<td>18S</td>
<td>21W</td>
<td>7.79</td>
</tr>
<tr>
<td>Virgil W. Jones</td>
<td>N½SE¼NW¼; SE¼NE¼NW¼</td>
<td>12</td>
<td>19S</td>
<td>21W</td>
<td>7.40</td>
</tr>
</tbody>
</table>
or on lands or for other uses in the Virden Valley to which such use may be transferred or substituted on retirement from irrigation of any of said specifically described lands, up to a maximum total consumptive use of such water of 838.2 acre-feet per annum, unless and until such uses are adjudged by a court of competent jurisdiction to be an infringement or impairment of rights confirmed by the Gila Decree; and

(2) This decree shall not prohibit domestic use of water from the Gila River and its underground water sources on lands with rights confirmed by the Gila Decree, or on farmsteads located adjacent to said lands, or in the Virden Townsite, up to a total consumptive use of 265 acre feet per annum in addition to the uses confirmed by the Gila Decree, unless and until such use is adjudged by a court of competent jurisdiction to be an infringement or impairment of rights confirmed by the Gila Decree;

(E) Provided, however, that nothing in this Article IV shall be construed to affect rights as between individual water users in the State of New Mexico, nor shall anything in this Article be construed to affect possible superior rights of the United States asserted on behalf of National Forests, Parks, memorials, Monuments, and lands administered by the Bureau of Land Management; and provided further that in addition to the diversions authorized herein the United States has the right to divert water from the mainstream of the Gila and San Francisco Rivers in quantities reasonably necessary to fulfill the purposes of the Gila National Forest with priority dates as of the date of withdrawal for forest purposes of each area of the forest within which the water is used.

(F) Provided, further, that no diversion from a stream authorized in Article IV (A) through (D) may be transferred to any of the other streams, nor may any use for irrigation purposes within any area on one of the streams be transferred for use for irrigation purposes to any other area on that stream.

V. The United States shall prepare and maintain, or provide for the preparation and maintenance of, and shall make available, annually and at such shorter intervals as the Secretary of the Interior shall deem
necessary or advisable, for inspection by interested persons at all reasonable times and at a reasonable place or places, complete, detail and accurate records of:

(A) Releases of water through regulatory structures controlled by the United States;
(B) Diversions of water from the mainstream, return flow of such water to the stream as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation, and consumptive use of such water. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;
(C) Releases of mainstream water pursuant to orders therefor but not diverted by the party ordering the same, and the quantity of such water delivered to Mexico in satisfaction of the Mexican Treaty or diverted by others in satisfaction of rights decreed herein. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;
(D) Deliveries to Mexico of water in satisfaction of the obligations of Part III of the Treaty of February 3, 1944, and, separately stated, water passing to Mexico in excess of treaty requirements;
(E) Diversion of water from the mainstream of the Gila and San Francisco Rivers and the consumptive use of such water, for the benefit of the Gila National Forest.

VI. Within two years from the date of this decree, the States of Arizona, California, and Nevada shall furnish to this Court and to the Secretary of the Interior a list of the present perfected rights, with their claimed priority dates, in waters of the mainstream within each state, respectively, in terms of consumptive use, except those relating to federal establishments. Any named party to this proceeding may present its claim of present perfected rights or its opposition to the claims of others. The Secretary of the Interior shall supply similar information, within a similar period of time, with respect to the claims of the United States to present perfected rights within each state. If the parties and the Secretary of the Interior are unable at that time to agree on the present perfected rights to the use of mainstream water in each state, and their priority dates, any party may apply to the Court for the determination of such rights by the Court.

VII. The State of New Mexico shall, within four years from the date of this decree, prepare and maintain, or provide for the preparation and maintenance of, and shall annually thereafter make available for inspection at all reasonable times and at a reasonable place or places, complete, detailed and accurate records of:

(A) The acreages of all lands in New Mexico irrigated each year from the Gila River, the San Francisco River, San Simon Creek and their tributaries and all of their underground water sources, stated by legal description and component acreages and separately as to each of the areas designated in Article IV of this decree and as to each of the three streams;
(B) Annual diversions and consumptive uses of water in New Mexico, from the Gila River, the San Francisco River and San Simon Creek and their tributaries, and all their underground water sources, stated separately as to each of the three streams.

VIII. This decree shall not affect:

(A) The relative rights inter sese of water users within any one of the states, except as otherwise specifically provided herein;
(B) 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;
(C) The rights or priorities, except as specific provision is made herein, of any Indian Reservation, National Forest, Park, Recreation Area, Monument or Memorial, or other lands of the United States;
(D) Any issue of interpretation of the Colorado River Compact.

IX. Any of the parties may apply at the foot of this decree for its amendment or for further relief. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the
decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject mat-

MR. JUSTICE DOUGLAS dissents.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART dissent to the extent that the decree conflicts with the views expressed in the dissenting opinion of MR. JUSTICE HARLAN, 373 U.S. 546, 603.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.
Supreme Court of the United States

John M. BRYANT et al., Petitioners,

v.

Ben YELLEN et al.

State of CALIFORNIA et al., Petitioners,

v.

Ben YELLEN et al.

IMPERIAL IRRIGATION DISTRICT et al., Petitioners,

v.

Ben YELLEN et al.

Nos. 79–421, 79–425, and 79–435.

Argued March 25, 1980.

Decided June 16, 1980.

Rehearing Denied Aug. 11, 1980.


Appeals were taken from a judgment of the United States Court of Appeals for the Ninth Circuit, 559 F.2d 509, 595 F.2d 524, and 595 F.2d 525, holding that the general rule under federal reclamation laws limiting irrigation water deliveries from reclamation projects to 160 acres under single ownership applied to Imperial Valley, California, lands which were already being irrigated through a privately owned irrigation system when the Boulder Canyon Project Act became effective in 1929. The Supreme Court, Mr. Justice White, held that: (1) the Project Act precluded application of the 160-acre limitation to the lands under irrigation in Imperial Valley in 1929, and (2) further questions involving the applicability of acreage limitations to lands in addition to lands that were under irrigation in 1929 remained for consideration initially by the lower courts.

Reversed in part, vacated in part, and remanded.

West Headnotes

[1] Federal Courts 170B 3255

170B Federal Courts

170BXVII Courts of Appeals

170BXVII(B) Appellate Jurisdiction and Procedure in General

170Bk3253 Persons Entitled to Seek Review or Assert Arguments; Parties; Standing

170Bk3255 k. Particular persons. Most Cited Cases

(Formerly 170Bk544)

Residents of Imperial Valley, who claimed that they desired to purchase farmlands in Imperial Valley, had standing to appeal district court order holding inapplicable to Imperial Valley lands the general rule under federal reclamation laws limiting irrigation water deliveries from reclamation projects to 160 acres under single ownership, since it was unlikely that any owners of excess lands would sell land at below market prices absent applicability of 160-acre limitation and it was likely that such lands would become available at less than market prices if limitation were applied. Omnibus Adjustment Act, 1926, § 46, 43 U.S.C.A. § 423e.


405 Water Law

405XIII Reclamation, Irrigation, and Other Agricultural Use

405XIII(B) Reclamation of Arid Land by Public Authorities

405XIII(B)3 Reclamation by United States

405k2344 k. Water user acreage limitations. Most Cited Cases
General rule under federal reclamation laws limiting irrigation water deliveries from reclamation projects to 160 acres under single ownership did not apply to lands in Imperial Valley, California, lands which were already being irrigated by privately owned delivery and distribution system when Project Act became effective in 1929. Boulder Canyon Project Act, § 6, 43 U.S.C.A. § 617e; Omnibus Adjustment Act, 1926, § 46, 43 U.S.C.A. § 423e.


170B Federal Courts
170BXVII Courts of Appeals
170BXVII(L) Determination and Disposition of Cause
170Bk3797 Powers, Duties, and Proceedings of Lower Court After Remand
170Bk3798 k. In general. Most Cited Cases
(Formerly 170Bk951.1, 170Bk951)

Following reversal of Court of Appeals' determination that federal reclamation law provision limiting irrigation water deliveries from reclamation projects to 160 acres under single ownership applied to private lands in Imperial Valley, California, which were being irrigated through privately owned irrigation system when Boulder Canyon Project Act became effective in 1929, further questions involving applicability of acreage limitations to lands in addition to those that were under irrigation in 1929 remained for consideration by lower courts. Boulder Canyon Project Act, § 6, 43 U.S.C.A. § 617e; Omnibus Adjustment Act, 1926, § 46, 43 U.S.C.A. § 423e.

**2233 352 Syllabus FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

The principal question in this action is whether the general rule under federal reclamation laws limiting irrigation water deliveries from reclamation projects to 160 acres under single ownership applies to certain private lands in Imperial Valley, Cal., being irrigated with Colorado River water through the irrigation system constructed pursuant to the Boulder Canyon Project Act (Project Act). When the Project Act became effective in 1929, a large acreage was already being irrigated by water delivered by the Imperial Irrigation District (District) through a privately owned irrigation system. Under the Project Act and a 1932 implementing contract, the United States constructed and the District agreed to pay for a new irrigation system. The Project Act, which implemented and ratified the seven-State Colorado River Compact (Compact) allocating the river's waters, provides in § 6 that project works shall be used for "irrigation and domestic uses and satisfaction of present perfected rights in pursuance of" the Compact, and in § 14 provides that the reclamation law “shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.” Section 46 of the Omnibus Adjustment Act of 1926 (1926 Act), a reclamation law, forbids delivery of reclamation project water to any irrigable land held in private ownership by one owner in excess of 160 acres. In contracting with the District for the building of the new irrigation system, the United States represented that the Project Act did not impose acreage limitations on lands that already had vested or present rights to Colorado River waters, and the United States officially adhered to that position until repudiating it in 1964. When the District refused to accept the Government's new position, the United States, in 1967, instituted the instant District Court proceedings for a declaratory judgment that the excess-acreage limitation of § 46 of the 1926 Act applies to all private
lands in the District, whether or not they had been irrigated in 1929. Meanwhile, in original proceedings involving the determination of how the state-allocated waters under the *353 Compact and the Project Act should be divided, this Court recognized that a significant limitation on the power of the Secretary of the Interior (Secretary) under the Project Act was the requirement that he satisfy present perfected rights, and defined such rights under § 6 as those that had been acquired in accordance with state law and that had been perfected as of 1929 by the actual diversion of a specific quantity of water and its application to a defined area of land. *353 Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542; 376 U.S. 340, 84 S.Ct. 755, 11 L.Ed.2d 757. And by a supplemental decree, 439 U.S. 419, 99 S.Ct. 995, 58 L.Ed.2d 627, this Court adjudged the District to have a present perfected right to a specified quantity of diversions from the mainstream or the quantity of water necessary to irrigate a specified number of acres, whichever was less. The District Court ruled against the Government in the instant action and, when the Government chose not to appeal, denied a **2234 motion to intervene for purpose of appeal that had been filed by respondents, a group of Imperial Valley residents who desired to purchase the excess lands that might become available at prices below the market value for irrigated land if § 46 were held applicable. The Court of Appeals reversed, holding that the appealing intervenors had standing under Art. III and that the 160-acre limitation of § 46 of the 1926 Act applied to Imperial Valley.

_Held:_

1. Since it is unlikely that any of the owners of excess lands would sell land at below current market prices absent the applicability of § 46, whereas it is likely that such lands would become available at less than market prices if § 46 were applied, the Court of Appeals properly concluded that respondents had a sufficient stake in the outcome of the controversy to afford them standing to appeal the District Court's decision, even though they could not with certainty establish that they would be able to purchase excess lands if § 46 were held applicable. Pp. 2240–2241.

2. Contrary to the Court of Appeals' conclusion, § 6 of the Project Act precludes application of the 160-acre limitation of § 46 of the 1926 Act to the lands under irrigation in Imperial Valley in 1929. Section 46 cannot be applied consistently with § 6 on the alleged ground that the perfected rights in Imperial Valley were owned by the District, not individual landowners, who were merely members of a class for whose benefit the water rights had been acquired and held in trust, and who had no right under the law to a particular proportion of the District's water. Such theory fails to take adequate account of § 6 and its implementation in this Court's opinion and decrees in *Arizona v. California*, which recognized that § 6 was an unavoidable limitation on the Secretary's power and that in satisfying “present perfected rights” the Secretary*354 must take account of state law. Prior to 1929 and ever since, the District, in exercising its rights as trustee, delivered water to individual farmer beneficiaries without regard to the amount of land under single ownership, and, as a matter of state law, not only did the District's water right entitle it to deliver water to the farms in the District regardless of size, but also the right was equitably owned by the beneficiaries to whom the District was obligated to deliver water. Pp. 2241–2244.

3. There is nothing in the Project Act's legislative history to cast doubt on the foregoing construction of the Act or to suggest that Congress intended § 14, by bringing the 1926 Act into play, to interfere with the delivery of water to those lands already under irrigation in Imperial Valley and having present perfected rights that the Secretary was bound to recognize. Moreover, the contemporary construction of the Project Act by the parties to the 1932 contract was that the acreage limitation did not apply to lands in the District presently being irrigated, and this contemporaneous view of the Act, which supports the foregoing con-
struction of the legislation, was not officially repudiated by the Secretary until 1964. Pp. 2244–2246.

4. Further questions involving the applicability of acreage limitations to approximately 14,000 acres in addition to those that were under irrigation in 1929, and the determination whether a live dispute remains in light of the foregoing “perfected rights” holding, should be considered initially by the courts below. Pp. 2246–2247.


*355 Mr. Justice WHITE delivered the opinion of the Court.

When the Boulder Canyon Project Act, 45 Stat. 1057, 43 U.S.C. § 617 et seq. (Project **2235 Act), became effective in 1929, a large area in Imperial Valley, Cal., was already being irrigated by Colorado River water brought to the Valley by a privately owned delivery and distribution system. Pursuant to the Project Act, the United States constructed and the Imperial Irrigation District (District) agreed to pay for a new diversion dam and a new canal connecting the dam with the District. The Project Act was supplemental to the reclamation laws, which as a general rule limited water deliveries from reclamation projects to 160 acres under single ownership. The Project Act, however, required that the Secretary of the Interior (Secretary) observe rights to Colorado River water that had been perfected under state law at the time the Act became effective. In the course of contracting with the District for the building of the new dam and canal and for the delivery of water to the District, the United States represented that the Project Act did not impose acreage limitations on lands that already had vested or present rights to Colorado River water. The United States officially adhered to that position until 1964 when it repudiated its prior construction of the Project Act and sued the District, claiming that the 160-acre limitation contained in the reclamation law applies to all privately owned lands in the District, whether or not they had been irrigated in 1929. The District Court found for the District and its landowners, 322 F.Supp. 11 (SD Cal. 1971).*356 but the Court of Appeals reversed and sustained the Government's position, 559 F.2d 509 (CA9 1977). We now reverse the Court of Appeals with respect to those lands that were irrigated in 1929 and with respect to which the District has been adjudicated to have a perfected water right as of that date, a water right which, until 1964, the United States Department of the Interior officially represented foreclosed the application of acreage limitations. The judgment is otherwise vacated.

Imperial Valley is an area located south of the Salton Sea in southeastern California. It lies below sea level, and is an arid desert in its natural state. In 1901, however, irrigation began in the Valley, using water diverted from the Colorado River, which in that area marks the border between California and Arizona. Until at least 1940, irrigation water was brought to the Valley by means of a canal and distribution system that were completely privately financed. On June 25, 1929, when the Project Act became effective, the District FN1 was diverting, transporting, and delivering water to 424,145 acres of privately owned and very productive farmland in Imperial Valley. FN2 Under neither state law nor private irrigation arrangements in existence in Imperial Valley prior to 1929 was there any restriction on the number of acres that a single landholder could own and irrigate.

FN1. Under California law, an irrigation district is a public corporation governed by a board of directors, usually elected by voters
in the district. It is empowered to distribute and otherwise administer water for the beneficial use of its inhabitants and to levy assessments upon the lands served for the payment of its expenses.

FN2. The parties stipulated that the value of agricultural products in the Valley, overall, increased from some $4 million in 1909 to approximately $200 million in 1965.

Prior to 1929 and for several years thereafter, the water diverted from the Colorado River was carried to the Valley through the Alamo Canal, which left the river north of the *357 border with Mexico but then traversed Mexican territory for some 50 miles before turning northward into Imperial Valley. This distribution system, entirely privately financed and owned, comprised approximately 1,700 miles of main and lateral canals, all serving to divert and deliver the necessary waters to the lands in Imperial Valley.

The Project Act was the culmination of the efforts of the seven States in the Colorado River Basin to control flooding, regulate water supplies on a predictable basis, allocate waters among the Upper and Lower Basin States and among the States in each basin, and connect the river to the **2236 Imperial Valley by a canal that did not pass through Mexico. FN3 In 1922, the seven States executed the Colorado River Compact (Compact) allocating the waters of the river between the Upper and Lower Basins, and among other things providing in Art. VIII that “[p]resent perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact.” FN4 The Project Act, passed in *358 1928 and effective in 1929, implemented and ratified the Compact; contained its own formula for allocating Lower Basin water among California, Arizona, and Nevada, Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963); and authorized the construction of the works required for the harnessing and more efficient utilization of the unruly River. The principal works of the Project, consisting of the Hoover Dam at Black Canyon and the storage facilities behind it, served to implement the division of the Compact. The dam was completed and storage began in 1935.FN5

FN3. The Colorado River was subject to flooding. In 1905, the river broke through its banks and flooded the Alamo Canal and Imperial Valley. The California Development Co., then the major force in Imperial Valley, sought financial assistance from the Southern Pacific Co. whose tracks were threatened by the floodwaters. The railroad, taking as security a controlling interest in the California Development Co., returned the river to its channel and ultimately foreclosed on its security, transferring these interests to the District. The District acquired certain mutual water companies in 1922–1923 and has been solely responsible since that time for the diversion, transportation, and distribution of water from the Colorado River to the Imperial Valley.

Difficulties also arose because the Alamo Canal passed through Mexican territory and hence was partly subject to Mexican sovereignty. As a Senate Committee remarked, a new canal would “end an intolerable situation, under which the Imperial Valley now secures its sole water supply from a canal running for many miles through Mexico. . . .” S.Rep.No. 592, 70th Cong., 1st Sess., 8 (1928).

FN4. The provision apparently resulted from the concern of the farmers of Imperial Valley that after two decades of productive reliance on the Alamo Canal Project, their existing water rights might be impaired by the Compact allocation. Delph Carpenter, one of the draftsmen of the Compact, testified in hear-
ings on a precursor of the Project Act as follows:

“During the deliberations of the Colorado River Commission at Santa Fe, and after 10 days' work, a sketch or outline of the progress was released to the press, stating what had happened and the proposed terms of a treaty. . . . The Imperial Valley representatives were immediately responsive. They came before the Commission and presented their claims with great vigor. . . .

“In view of that claim, coming as it did from people who cultivated upward of half a million acres of very valuable land, . . . Article VIII of the compact was drawn at the last session of the proceedings.”

Hearings Pursuant to S.Res. 320 before the Senate Committee on Irrigation and Reclamation, 68th Cong., 2d Sess., pt. 1, p. 678 (1925).

Section 1 of the Project Act, which provided for the dam at Black Canyon, also authorized the construction of a new canal, the All-American Canal, which would replace the Alamo Canal and would traverse only territory located in the United States. A new diversion dam for Imperial Valley water was also authorized. Section 1 went on to provide that no charge should be made for the storage or delivery of irrigation or potable water to Imperial or Coachella Valley. 

Unlike Imperial Valley, it was not being irrigated with Colorado River water in 1929. Coachella Valley is not involved in these cases.

*359 Section 4(a) of the Project Act conditioned the effectiveness of the Act on the ratification of the Compact by the signatory States. FN7 Section 4(b), as well as requiring contractual provision for the repayment of **2237 specified costs with respect to the Hoover Dam, required that before any money was appropriated for the Imperial Valley works, the Secretary was to make provision for revenues “by contract or otherwise” to insure payment of all “expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.” Section 5 authorized the Secretary to contract for the storage of water and for its delivery at such points on the river and the canal as were agreed upon. Contracts were to be for permanent service and were required before any person would be entitled to stored water.


Section 6 of the Project Act, of critical importance in these cases, mandated that the works authorized by § 1 were to be used: “First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power.” Section 9 authorized the opening to entry of the public

FN6. Coachella Valley is an area lying north of Imperial Valley across the Salton Sea.

FN7. Section 4(a) also contained provisions which, together with the Secretary's power under § 5 to contract for storage and delivery of water with particular water users and with § 8's tying the Project Act and the Compact together, provided the basis for the Court's holding in Arizona v. California that the Project Act itself sufficiently revealed the intent of Congress with respect to the division of the project water among the Lower Basin States.
lands that would become irrigable by the Project but in tracts not greater than 160 acres in size in accordance with the provisions of the reclamation law.

Section 14 provided that the Project Act should be deemed supplemental to the reclamation law, “which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.” The “reclamation law” referred to was defined in § 12 as the Act of June 17, 1902 (Reclamation Act), 32 Stat. 388, and Acts amendatory thereof and supplemental thereto. One of the statutes amendatory of or supplemental to the Reclamation Act was the Omnibus Adjustment Act of 1926 (1926 Act), § 46 of which, 44 Stat. (part 2) 649, 43 U.S.C. § 423e, forbade delivery of reclamation project water to any irrigable land held in private ownership by one owner in excess of 160 acres, and required owners to execute recordable contracts for the sale of excess lands before such lands could receive project water.

FN8. Section 46 provides in relevant part:

“No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction.”

Pursuant to the Project Act, the United States and the District entered into a contract on December 1, 1932, providing for the construction of the Imperial Dam and the All-American Canal. The District undertook to pay the cost of the works, and to include within itself certain public lands of the United States and other specified lands. The United States undertook to deliver to the Imperial Dam the water which would be carried by the new canal to the various lands to be served by it. The contract contained no acreage limitation provision. Pursuant to this contract, the United States constructed the Imperial Dam in the Colorado River—some distance below Black Canyon but upriver from the existing point of diversion—and the All-American Canal connecting the dam and Imperial Valley. Use of the canal began in 1940, and by 1942 it carried all Colorado River water used by Imperial Valley.

FN9. In 1942, pursuant to this provision, the District expanded its boundaries to include 271,588 acres of the unpatented public lands.

FN10. The All-American Canal system was not declared completed until 1952. By that time, pursuant to the 1932 contract, the care, operation, and maintenance of the system, with specified exceptions, had been transferred to the District, although title to the Imperial Dam and the canal remained in the United States. Repayment of construction charges commenced on March 1, 1955. The District's financial obligation was determined to be approximately $25 million, repayable in 40 annual installments, without interest. All payments to date have been made from net power revenues derived from the sale of electrical energy generated by hydro-electrical facilities of the All-American Canal, facilities which cost the District approximately $15 million.
**2238** Article 31 of the contract between the District and the United States provided that the United States would not be bound by the contract until and unless court proceedings had been instituted by the District and a final judgment obtained confirming the authorization and the validity of the contract. FN11 Such an action, entitled *Hewes v. All Persons*, No. 15460, Superior Court, Imperial County, was instituted and final judgment was entered on July 1, 1933, confirming the validity of the contract in all respects. App. to Pet. for Cert. in No. 79–435, pp. 120a–154a.

In connection with these proceedings, the then Secretary, Ray Lyman Wilbur, on February 24, 1933, submitted a letter to the District dealing with the question whether the 160-acre limitation of the reclamation law was applicable in Imperial Valley. Among other things, the letter stated:

> "Upon careful consideration the view was reached that this limitation does not apply to lands now cultivated and having a present water right. These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned. Congress evidently recognized that these lands had a vested right when the provision was inserted that no charge shall be made for the storage, use, or delivery of water to be furnished these areas." FN12

FN11. The Act of May 15, 1922, ch. 190, § 1, 42 Stat. 541, 43 U.S.C. § 511, authorized the Secretary to contract with irrigation districts but provided that no contract under the section “shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid.” The 1926 Act also required that the “execution” of the contracts referred to in the section be judicially confirmed.

In addition, the law of California specified preconditions to the effectiveness of water district contracts. Approval by the governing body was required as well as by district members voting in an election for that purpose. A district was also permitted to submit the contract to Superior Court for validation proceedings. The decree in *Hewes v. All Persons*, discussed in the text, concluded that California law had been satisfied in all respects.

The trial court in the *Hewes* case expressly found and concluded that eligibility for project water was not limited to 160-acre tracts in single ownership. FN13 An appeal in the case was dismissed before judgment. The United States was not a party to the action.

FN12. App. 177a, 71 I.D. 496, 530 (1964). Secretary Wilbur’s letter referred specifically only to the applicability of § 5 of the Reclamation Act to the privately owned district lands. Five days later, the Assistant Commissioner and Chief Counsel of the Bureau of Reclamation, Porter W. Dent, issued a letter confirming that the Department’s interpretation likewise applied to § 46 of the 1926 Act. App. 179a, 71 I.D., at 531.

FN13. Finding of Fact No. 35 in pertinent part said that under the 1932 contract, “the delivery of water will not be limited to 160 acres in a single ownership . . . and that water service to lands regardless of the size of ownership will not be in any manner affected by said contract, so far as the size of individual ownership is concerned.” App. to Pet. for Cert. in No. 79–435, p. 144a. Conclusion of Law No. XI stated that “neither the United States nor Imperial Irrigation District is lim-
ited by the terms of said contract or by any law applicable thereto in the delivery of water to any maximum acreage of land held in a single ownership.” *Id.*, at 149a.

*363* The Wilbur letter expressing the view that lands under irrigation at the time the Project Act was passed and having a present water right were not subject to the 160-acre limitation remained the official view of the Department of the Interior until 1964 **FN14** when the Department adopted **2239** the view *364* of its then Solicitor that the limitation should have applied to all Imperial Valley lands in private ownership.

**FN14.** As the District Court pointed out, there was no suggestion by anyone during the construction of the All-American Canal that acreage limitations would be applicable to lands under cultivation in 1929. And based on its own “thorough review of Departmental policy,” the District Court also concluded that the Wilbur interpretation of the Project Act remained the official view of the United States “during the incumbencies of six successor Secretaries and four Presidential administrations.” 322 F.Supp. 11, 26 (SD Cal.1971).

In 1942, in response to inquiry from the Federal Land Bank as to the applicability of the 160-acre limitation in Imperial Valley, the Commissioner of the Bureau of Reclamation replied in the negative. In 1944, Assistant Commissioner of Reclamation Warne testified before a Senate Subcommittee that “the limitation was never applied under the law to the Imperial Valley, except as a matter of new lands . . . ,” and went on to make the Wilbur letter part of the Subcommittee's record. Hearings on H.R. 3961 before a Subcommittee of the Senate Committee on Commerce, 78th Cong., 2d Sess., pt. 4, pp. 599, 764–765 (1944).

In 1945, the Solicitor of the Interior Department rules that the 160-acre limitation was applicable to Coachella Valley. 71 I.D., at 533. In the course of the opinion, he also disagreed with the Wilbur letter with respect to Imperial Valley, but did not purport to overrule it. In 1948, Secretary Krug, in response to an inquiry from a veterans' organization, issued a letter affirming the Department's adherence to the Wilbur ruling. App. 253a–254a.

In 1952, after several years of negotiations, changes were effected in the 1932 contract between the District and the United States, but the Department did not insist that an acreage limitation be included or that the Wilbur position be abandoned.

In response to inquiry from the Solicitor General in 1958, the then Solicitor of the Department of the Interior reaffirmed the Department's position with respect to the Wilbur letter. *Id.*, at 255a–260a. The Solicitor General, however, without the concurrence of the Department, answered the inquiry of the Special Master in *Arizona v. California*, suggesting that the question of acreage limitations was irrelevant to the proceedings before the Master but also indicating in a footnote his disagreement with the Wilbur letter and the Department's position. App. 260a–263a. Also in 1958, the Solicitor General expressed the same opinion in the *Ivanhoe* litigation. Brief for United States as Amicus Curiae in *Ivanhoe Irrig. Dist. v. McCracken*, O.T. 1957, Nos. 122 et al., p. 37, n. 9. It was not until 1964 that the Secretary repudiated the Department's
Meanwhile, it having become apparent that neither the Compact nor the Project Act settled to the satisfaction of the Lower Basin States how the water allocated to them should be divided, an original action was begun in this Court in 1952 to settle this fundamental question and related issues, including the ascertainment of present perfected rights the unimpaired preservation of which was required by both the Compact and the Project Act. After more than 10 years of litigation, the opinion in Arizona v. California was handed down on June 3, 1963. 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542. Although the dispute among the Lower Basin States was at the heart of the controversy, for present purposes the primary aspect of the case was the recognition given to present perfected rights in the opinion and the ensuing decrees.

The opinion recognized that under § 14 of the Project Act, the construction, operation, and management of the works were to be subject to the provisions of the reclamation law, except as the Act otherwise provided, and that one of the most significant limitations in the Project Act on the Secretary's authority to contract for the delivery of water is the requirement to satisfy present perfected rights, “a matter of intense importance to those who had reduced their water rights to actual beneficial use at the time the Act became effective.” 373 U.S., at 584, 83 S.Ct., at 1490. The decree, which was entered on March 9, 1964, 376 U.S. 340, 84 S.Ct. 755, 11 L.Ed.2d 757, defined a perfected right as:

“[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 . . . .” Id., at 341, 84 S.Ct., at 756.

Present perfected rights were defined as those perfected rights “existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act.” Ibid. The decree also provided for the future determination of the specific present perfected rights in each of the Lower Basin States. A supplemental decree was eventually forthcoming, 439 U.S. 419, 99 S.Ct. 995, 58 L.Ed.2d 627 (1979), and in that decree the Imperial Irrigation District was adjudged to have a present perfected right in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 424,145 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901.” Id., at 429, 99 S.Ct., at 1000.

As already indicated, the Department of the Interior repudiated the Wilbur interpretation of the Project Act in 1964. It then sought to include its revised position in a renegotiated contract with the District. When the District refused to accept the Department's position, the United States sued the District in 1967 for a declaratory judgment that the excess-acreage limitation of § 46 applied to all private lands in the Valley. The District Court permitted several Imperial Valley landowners to intervene as defendants representing the certified class of all landowners owning more than 160 acres. FN15 It then ruled against the Government, holding for several reasons that “the land limitation provisions of reclamation law have no application to privately owned lands lying within the Imperial Irrigation District” and that the District is not bound to observe such limitations. 322 F.Supp., at 27. The Department of the Interior recommended and the Solicitor General decided, after reviewing the case, that an appeal not be prosecuted on behalf of the United States. FN16 In consequence, respondents, a group of Imperial Valley residents, who had been given leave to participate as amici in the District Court and who desired to purchase the excess lands that might become available if § 46 were held applicable, attempted to intervene for purpose of appeal, but the
District Court denied the motion. The Court of Appeals reversed the denial, 559 F.2d, at 543–544, and proceeded to hold that the appealing intervenors had standing under Art. III of the Constitution; that *Hewes v. All Persons* was not conclusive with respect to acreage limitation; that the clear import of § 46 and the Project Act was that the 160-acre limitation is applicable to the Imperial Valley; and that the Department's administrative practice over the years did not bar application of the limitation to the Valley.

FN15. The District Court found that there were some 800 owners in the District owning in the aggregate approximately 233,000 acres of excess land. 322 F.Supp., at 12.

FN16. As indicated in a memorandum for the file prepared by the Solicitor General, the essence of the case for him was that an official construction of the Project Act had been made by the Department and followed for 38 years. To overturn such a longstanding administrative decision did “not strike [the Solicitor General] as good administration, or good government.” 126 Cong.Rec. 3281 (1980). He concluded that an appeal to the Court of Appeals should not be taken because it would not, and, in his view, should not be successful. His second reason was prophetic.

Because of the importance of these cases, we granted the petitions for writs of certiorari filed by the District, the landowners, and the State of California. 444 U.S. 978, 100 S.Ct. 479, 62 L.Ed.2d 405 (1979).

II

[1] As a preliminary matter, we agree with the Court of Appeals that the respondents who sought to enter the suit when the United States forwent an appeal from the District Court's adverse decision had standing to intervene and press the appeal on their own behalf. Respondents, most of whom are farmworkers, reside in Imperial Valley. The essence of their claim was that they desired to purchase farmlands in Imperial Valley and that if § 46 were applied as they believed it should be, there would be excess lands available for purchase at prices below the market value for irrigated land. FN17 The Court of Appeals, although recognizing that no owner of excess lands would be required to sell, concluded that it would be highly improbable that all owners of excess lands would prefer to withdraw their irrigable lands from agriculture in order to avoid § 46. In these circumstances, the Court of Appeals ruled that under *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), and other cases, respondents had standing even though they could not with certainty establish that they would be able to purchase excess lands if § 46 were held applicable. FN18

FN17. Excess land offered for sale pursuant to § 46 must be sold at a price fixed by the Secretary of the Interior “on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works . . . .” The Secretary may “cancel the water right attaching to the land” if it is sold for a different price. Because the federal reclamation project has added substantially to the value of land in the District, excess lands would be sold at prices far below their current fair market values. Since purchasers of such land would stand to reap significant gains on resale, the absence of detailed information about respondents' financial resources does not defeat respondents' claim of standing. Even if improvements to the land, such as installation of drainage systems, have enhanced its value, the potential windfall would remain and petitioners would possess a further incentive for offering excess lands for sale—to recoup the value of improvements—rather than with-
drawing them from agricultural uses.

While the prospect of windfall profits could attract a large number of potential purchasers of the excess lands, respondents' interest is not "shared in substantially equal measure by all or a large class of citizens," *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975), because respondents are residents of the Imperial Valley who desire to purchase the excess land for purposes of farming.

FN18. In a subsequent opinion denying rehearing, the Court of Appeals reaffirmed that respondents had standing. 595 F.2d 525 (1979). The court rejected the argument that because the District had repaid more than one-half of the construction costs of the irrigation project the Secretary no longer had the authority to fix sale prices for excess land. Section 46 provides in pertinent part that "until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior . . . ." The Court of Appeals concluded that this portion of § 46 did not apply with respect to the initial breakup of excess lands for which the Secretary must fix the sale price "on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works."

*368* This was a proper application of our cases. It being unlikely that any of the 800 owners of excess lands would sell land at below current market prices absent the applicability of § 46 and it being likely that excess lands would become available at less than market prices if § 46 were applied, the Court of Appeals properly concluded that respondents had a sufficient stake in the outcome of the controversy to afford them standing to appeal the District Court's decision.

III

[2] We are unable, however, to agree with the Court of Appeals that Congress intended that the 160-acre limitation of the 1926 Act would apply to the lands under irrigation in Imperial Valley in 1929. FN19

Under § 14 of the Project Act, the construction, operation, and management of the project works were to be governed by the reclamation law, but only if not otherwise provided for in the Project Act. Section 46 of the 1926 Act is one of the reclamation laws; and its acreage limitation,*369* which expressly applies to contracts for "constructing, operating, and maintaining" project works, would appear to govern the delivery of project water unless its applicability is foreclosed by some other provision of the Project Act. The Court of Appeals, erroneously we think, found no such preclusion in § 6 of the Act.

FN19. Ever since its enactment in 1902, the reclamation law has generally limited to 160 acres the amount of private land in single ownership eligible to receive water from a reclamation project. This limitation helps open project lands to settlement by farmers of modest means, insures wide distribution of the benefits of federal projects, and guards against the possibility that speculators will earn windfall profits from the increase in value of their lands resulting from the federal project. See also *Ivanhoe Irrig. Dist. v. McCracken*, 357 U.S. 275, 292, 78 S.Ct. 1174, 1184, 2 L.Ed.2d 1313 (1958). The excess-acreage limitation has been retained in successive statutes culminating in § 46 of the 1926 Act.

**2242** Concededly, nothing in § 14, in § 46, or in the reclamation law in general would excuse the
Secretary from recognizing his obligation to satisfy present perfected rights in Imperial Valley that were provided for by Art. VIII of the Compact and § 6 of the Project Act and adjudicated by this Court in *Arizona v. California*, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542 (1963). The Court of Appeals nevertheless held that § 46 could be applied consistently with § 6 because the perfected rights in Imperial Valley were owned by and would be adjudicated to the District, not to individual landowners, who were merely members of a class for whose benefit the water rights had been acquired and held in trust. Individual farmers, the Court of Appeals said, had no right under the law to a particular proportion of the District’s water. Applying § 46 and denying water to excess lands not sold would merely require reallocation of the water among those eligible to receive it and would not reduce the water which the District was entitled to have delivered in accordance with its perfected rights.

We find this disposition of the § 6 defense to the application of the 1926 Act’s acreage limitation to be unpersuasive. *Arizona v. California*, supra, at 584, 83 S.Ct., at 1490, recognized that “one of the most significant limitations” on the Secretary’s power under the Project Act was the requirement that he satisfy present perfected rights, a matter of great significance to those who had reduced their water rights to beneficial use prior to 1929. Accordingly, in our initial decree, the perfected right protected by § 6 was defined with some care: a right that had been acquired in accordance with state law and that had been exercised by the actual diversion of a specific quantity of water and its application to a defined area of land. FN20

In our supplemental decree, entered prior to the opinion of the Court of Appeals denying rehearing and rehearing en banc, there was decreed to the District a present perfected water right of 2.6 million acre-feet of diversions from the mainstream or the quantity of water necessary to supply the consumptive use required to irrigate 424,145 acres and related uses, whichever was less, with a priority date of 1901. 439 U.S., at 429, 99 S.Ct., at 1000. We thus determined that, as of 1929, the District had perfected its rights under state law to divert the specified amount of water and had actually diverted that water to irrigate the defined quantity and area of land. As we see it, the Court of Appeals failed to take adequate account of § 6 of the Project Act and its implementation in our opinion and decrees filed in the *Arizona v. California* litigation.

FN20. This was the Special Master’s recommended definition. We accepted it over the objection of California. In requiring actual diversion of water and its application to a defined area of land, the definition did not reach all appropriative water rights under state law. See Report of Special Master, *Arizona v. California*, O.T.1960, No. 8 Orig., pp. 307–309 (hereinafter Special Master Report).

In the first place, it bears emphasizing that the § 6 perfected right is a water right originating under state law. In *Arizona v. California*, we held that the Project Act vested in the Secretary the power to contract for project water deliveries independent of the direction of § 8 of the Reclamation Act to proceed in accordance with state law and of the admonition of § 18 of the Project Act not to interfere with state law. 373 U.S., at 586–588, 83 S.Ct., at 1490–1491. FN21 We nevertheless clearly recognized that § 6 of the Project Act, requiring satisfaction of present perfected rights, was an unavoidable limitation on the Secretary’s power and that in providing for these rights the Secretary must take account of state law. In this respect, state law was not displaced by the Project Act and must be consulted in determining the content and characteristics of the water right that was adjudicated to the District by our decree. FN22

FN21. In terms of reclamation law generally, the import of the Court’s opinion in this respect was considerably narrowed in *California v. United States*, 438 U.S. 645, 98 S.Ct.
but the latter case did not question the description of the Secretary's power under the Project Act itself.

FN22. While the source of present perfected rights is to be found in state law, the question of whether rights provided by state law amount to present perfected rights within the meaning of § 6 is obviously one of federal law. See Ivanhoe Irrig. Dist. v. McCracken, supra, 357 U.S., at 289, 78 S.Ct., at 1182; California v. United States, supra, 438 U.S., at 668–669, n. 21, 678, n. 31, 98 S.Ct., at 2997–2998, n. 21, 2999–3000, 3002 n. 31.

It may be true, as the Court of Appeals said, that no individual farm in the District has a permanent right to any specific proportion of the water held in trust by the District. But there is no doubt that prior to 1929 the District, in exercising its rights as trustee, delivered water to individual farmer beneficiaries without regard to the amount of land under single ownership. It has been doing so ever since. There is no suggestion, by the Court of Appeals or otherwise, that as a matter of state law and absent the interposition of some federal duty, the District did not have the right and privilege to exercise and use its water right in this manner. Nor has it been suggested that the District, absent some duty or disability imposed by federal law, could have rightfully denied water to individual farmers owning more than 160 acres. Indeed, as a matter of state law, not only did the District's water right entitle it to deliver water to the farms in the District regardless of size, but also the right was equitably owned by the beneficiaries to whom the District was obligated to deliver water. FN23


In the Ivanhoe litigation, the California Supreme Court originally determined that to deny water to farms in excess of 160 acres in single ownership would contravene § 22250, and would work a denial of due process and equal protection of the laws. Following this Court's decision that the 160-acre limitations contained in irrigation contracts for the Central Valley Project were mandated by federal reclamation law, the California Supreme Court, on remand, held that in light of this Court's opinion, water could be denied to farms exceeding the acreage limitation without violating state law. Ivanhoe Irrig. Dist. v. All Parties and Persons, 53 Cal.2d 692, 3 Cal.Rptr. 317, 350 P.2d 69 (1960). However, the court's decision made clear that absent an overriding provision of federal law imposing an acreage limitation, state law debars an irrigation district from denying water to farms on the basis of size.

*372 These were important characteristics of the District's water right as of the effective date of the Project Act, and the question is whether Congress intended to effect serious changes in the nature of the water right by doing away with the District's privilege
and duty to service farms regardless of their size. We are quite sure that Congress did not so intend and that to hold otherwise is to misunderstand the Project Act and the substantive meaning of “present perfected rights” as defined by this Court's decree.

The Court of Appeals said it would not be a breach of trust by a water district to obey the dictates of § 46, relying on *Ivanhoe Irrig. Dist. v. All Parties and Persons*, 53 Cal.2d 692, 712, 3 Cal.Rptr. 317, 329, 350 P.2d 69, 81 (1960). But the issue here is whether § 46 applies to lands already being irrigated in 1929. In the *Ivanhoe* proceedings, the courts were not dealing with perfected rights to water that the project there involved would furnish, nor with a Project Act that specifically required present perfected rights to be satisfied. Here, we are dealing with perfected rights protected by the Project Act; and because its water rights are to be interpreted in the light of state law, the District should now be as free of land limitations with respect to the land it was irrigating in 1929 as it was prior to the passage of the Project Act. To apply § 46 would go far toward emasculating the substance, under state law, of the water right decreed to the District, as well as substantially limiting its duties to, and the rights of, the farmer-beneficiaries in the District.FN24

It should also be recalled that we defined a present perfected right as one that had not only been acquired pursuant to state law but as one that had also been exercised by the diversion of water and its actual application to a specific area of land. We did not intend to decree a water right to the District under this definition, conditioned upon proof of actual diversion and use, but nevertheless to require the District to terminate service to the lands on the basis of which the right was decreed. The District has itself no power to require that excess lands be sold, and it is a contradiction in terms to say, as the Court of Appeals did, that the District has present perfected rights but that § 46 requires it to terminate deliveries to all persons with excess lands who refuse to sell.FN25 We consequently hold that the perfected water right decreed to the District may be exercised by it without regard to the land limitation provisions of § 46 of the 1926 Act or to any similar provisions of the reclamation laws.FN26

FN24. In *Ivanhoe Irrig. Dist. v. McCracken*, supra, 357 U.S., at 292, 78 S.Ct., at 1184, the Court remarked that where a particular project has been exempted from the acreage limitation because of its peculiar circumstances, “the Congress has always made such exemption by express enactment.” As we have explained, we have little trouble in concluding that the Project Act's provision for the satisfaction of perfected rights acquired under state law is an effective expression that the acreage limitation would be inapplicable to the lands served under such rights. As the Special Master observed in *Arizona v. California*, “the congressional intention was to insure that persons actually applying water to beneficial use would not have their uses disturbed by the erection of the dam and the storage of water in the reservoir.” Special Master Report 309.

FN25. Indeed, the Department of the Interior observed in 1946 that the administrative practice under § 46 had usually been “to refuse to deliver water to any lands, excess or nonexcess, until the owner of excess land has executed the recordable contract agreeing to dispose of the excess.” Department of Interior, Landownership Survey on Federal Reclamation Projects 47 (1946).

FN26. The United States urges that § 6 merely specifies priorities among those entitled to water from the Project and is irrelevant in determining entitlement itself. The argument has no merit.
IV

The legislative history of the Project Act, which spans several years, raises no doubt in our minds about the foregoing construction of the Act. FN27 Our attention has been called to nothing in the relevant materials indicating that although Congress was careful to preserve present perfected rights in § 6, other provisions of the Project Act were nevertheless intended to invoke acreage limitation with respect to lands already being irrigated in Imperial Valley by means of water diverted from the Colorado River and delivered to the Valley by the District's own works. Indeed, the version of the Project Act passed in the House contained an express acreage limitation applicable to all privately owned lands; but the Senate substituted the provisions of its own bill, which did not contain an acreage limitation expressly applicable to lands then being irrigated, and it was this version which became the Project Act despite objections in the Senate that the bill should be amended to limit water deliveries to 160 acres under single ownership. There is nothing in this chain of events to suggest that Congress intended § 14, by bringing the 1926 Act into play, to interfere with the delivery of water to those lands already under irrigation in Imperial Valley and having present perfected rights that the Secretary was bound to recognize. FN28 If anything, the inference from the legislative history is to the contrary. This is not to say that we rely strongly on legislative materials in construing the Project Act. Statements by the opponents of a bill and failure to enact suggested amendments, although they have some weight, are not the most reliable indications of congressional intention. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 204, n. 24, 96 S.Ct. 1375, 1386, 47 L.Ed.2d 668 (1976); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381–382, n. 11, 89 S.Ct. 1794, 1801–1802, 23 L.Ed.2d 371 (1969). But we do say that the respondents have not called our attention to anything in the hearings, Committee Reports or floor debates suggesting in any substantial way that our construction of the Project Act is in error.

FN27. The Project Act was the result of the fourth attempt by Congressman Swing and Senator Johnson of California to cause the Federal Government to move forward with such an undertaking. Their first bills were introduced in 1922, in the 67th Congress. The fourth set of bills, which were successful, were introduced in 1927, in the 70th Congress. Congressional action was completed on December 18, 1928, and the President's signature followed on December 21 of that year.

FN28. Respondents point out that although the District was to repay the cost of the All-American Canal and the Imperial Dam, the repayment obligation carried no interest. We should not hold, it is urged, that Congress intended this permanent subsidy to large landholders. Rather, we should find that the benefits of the Project to the District justify the application of § 46 and the requirement that excess landholdings be sold. We think, however, that Congress struck the balance between public and private rights and determined to respect those rights to Colorado River water that had been put to use as of 1929. The Project Act recited its purposes as “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 . . . .” Section 1 of the Act, 45 Stat. 1057, 43 U.S.C. § 617. The 1932 contract between the District and the United States contained nearly identical recitals as to the purposes of the Project. It also recited that there were public lands already within the District and required that substantial additional acreages of public and private lands be included within the District. The District Court found
that certain national interests were advanced by the Project:

“1) The inclusion within the District by annexation, pursuant to Article 34 of the contract between the Government and the District dated December 1, 1932, of some 250,000 acres of Government lands.

“2) Added capacity in the Canal for the servicing of such lands and some 11,000 acres of Indian land.

“3) Flood control for the purpose of preserving the Laguna Dam and protecting the Yuma Reclamation Project as well as protecting the public lands and private interests in Imperial Valley.

“4) The control of silt because of the federal government's problem in handling silt in the Yuma Project.

“5) The need to build a canal on All-American soil to put the United States in a position to bargain with the Mexican Government over the use of the water of the Colorado River.

“6) It enabled the United States Government to reclaim and put to use large tracts of public and Indian lands of the United States in Coachella Valley.” 322 F.Supp., at 19.

The District Court concluded that Congress was aware of the water rights held in Imperial Valley and determined to exempt them from the acreage limitations “in recognition of the fact that the All-American Canal Project was not merely an arid lands reclamation project, but was a special purpose program designed for national purposes, including water negotiations with Mexico, as well as for regional agricultural development.” Id., at 22.

The Senate Report on S. 728, S.Rep. No. 592, 70th Cong., 1st Sess. (1928), stated several purposes of the Project, one of which was that it would “end an intolerable situation, under which the Imperial Valley now secures its sole water supply from a canal running for many miles through Mexico, as well as make possible the reclamation of public lands lying around the rim of the present cultivated section of the valley.” Id., at 8. The Report also stated as follows:

“The All-American Canal will carry a portion of the conserved waters to where they can be used for irrigation and domestic purposes. Looked at in a somewhat narrow way, it represents a cooperative enterprise between Imperial irrigation district, which serves the present irrigated area in Imperial Valley, the Coachella County water district, a public district embracing in its limits the Coachella Valley, and the United States as owner of approximately 200,000 acres of public land about the rim of Imperial Valley, and about 11,000 acres of Indian lands now without water but possessing the same possibilities of development with water as the fertile lands in the valley. Neither Imperial irrigation district, the Coachella district, nor the United States could afford alone to build a canal from the river. Acting in conjunction, the canal is entirely feasible.” Id., at 21.

No. 918, 70th Cong., 1st Sess., 6 (1928), also identified one of the purposes of the Project as ending the “intolerable situation” which existed in Imperial Valley:

“This valley now secures its sole water supply by a canal which runs for some 60 miles through Mexico. The All-American Canal will furnish a substitute for this and at the same time carry the water at an elevation sufficient to make possible, at some future date, the irrigation of additional land, mostly public, lying about the rim of the cultivated area.”

There can be little question that the contemporary construction of the Project Act by the parties to the 1932 contract was that the acreage limitation did not apply to lands in the District presently being irrigated. Secretary Wilbur, in his letter of February 24, 1933, stated that early in the negotiations on the All-American Canal contract, the question was raised as to the 160-acre limitation, and the view was reached that the limitation did not apply to lands that were under cultivation and having a present water right. *FN29 There is no reason to doubt that the parties went forward on this basis, especially since language in early drafts of the contract which might have indicated an acreage limitation was eliminated in the course of the negotiations. The Imperial Valley system was a going concern at the time, and the Alamo Canal continued to supply the water to the Valley for another 10 years. It is thus a fair inference that both the Imperial Valley landowners and the United States proceeded on the assumption that the 160-acre limit was of no concern to those who were receiving water from the Alamo Canal. This contemporaneous view of the Project Act, which supports our own construction of the legislation, was not officially repudiated by the Secretary until 1964. It is also a matter of unquestioned fact that in the ensuing years the Secretary has delivered water to the District pursuant to its contract and that the 160-acre *FN30 provision of the reclamation laws has to this date never been an operative limitation with respect to lands under irrigation in 1929.

*FN29. The matter had been called to the Secretary's attention by a memorandum of February 7 from Porter W. Dent, the Assistant Commissioner and General Counsel of the Bureau of Reclamation. His memorandum contained almost identical language to that in the Secretary's later letter. Mr. Dent said:

“Early in the negotiations connected with the All-American Canal contract the question was raised regarding whether and to what extent the 160-acre limitation is applicable to lands to be irrigated from this proposed canal. So far as I am advised, all who have given this matter consideration agree that this limitation does not apply to lands now cultivated and having a present water right. The view has been, and is, I believe, that these lands having already a water right, are entitled to have such right recognized without regard to the acreage limitation mentioned.” App. 220a.

*FN30. This was the case despite the fact that in 1945 in the course of concluding that the lands in Coachella Valley were subject to the acreage limitation, the Department's Solicitor also took exception to the Wilbur view with respect to Imperial Valley. The Solicitor's opinion, however, totally ignored the existence of present perfected rights in Imperial Valley and their absence in Coachella. His view as to Imperial Valley did not prevail, in any event, for in 1948, Secretary Krug expressly declined to depart from the Department's consistent adherence to the Wilbur view that the Project Act did not require limiting water deliveries in Imperial Valley.
to 160 acres under single ownership. Furthermore, in 1952, when the District and the Department negotiated a revision of the 1932 contract in some respects, there was no effort made by the Department to insist on a limitation provision.

The Department's repudiation of its prior position in 1964 was based on its Solicitor's view that § 46 of the 1926 Act applied to Imperial Valley by virtue of § 14 of the Project Act and that under that section no farmer in Imperial Valley could have project water for more than 160 acres of land. Excess lands must either be sold or the District must deny water to them. The Solicitor's opinion, however, gave only cursory attention to § 6. After stating that the proper rule of construction in cases such as he was considering was that "rights, privileges and immunities not expressly granted are reserved," the opinion went on to conclude:

"For the same reason the requirement in section 6 for 'satisfaction of present perfected rights' cannot be read as insulating the District lands from acreage limitation. It is not in plain terms an exemption from the limitations of reclamation law in connection with the obligation to repay the cost of Imperial Dam and the All-American Canal." 71 I.D., at 511.

We agree with the District Court's conclusion that this is a totally inadequate conception of perfected rights.

V

[3] There remains a further consideration. The parties stipulated and the District Court found that at the outset of this litigation, the District was irrigating approximately 14,000 more acres than the 424,145 acres under irrigation in 1929. If, in light of our perfected rights holding, an Art. III case or controversy remains with respect to the applicability of acreage limitations to this additional 14,000 acres, there would remain to be disposed of those arguments of petitioners for reversing the Court of Appeals which we have not addressed and which, if sustained, would exempt from acreage limitations all privately owned lands in Imperial Valley, a result which the District Court seemingly embraced. FN31 The parties, however, have not separately addressed the status of this additional 14,000 acres; nor does the record invite us to deal further with this case without additional proceedings in the lower court. We do not know, for example, whether the District is still irrigating the additional 14,000 acres, whether any of the 14,000 acres consists of lands held in excess of 160 acres, or whether for some other reason of fact or law there is not now a controversy that requires further adjudication. Even if a live dispute remains, it would be helpful to have the Court of Appeals, or the District Court in the first instance if the Court of Appeals deems it advisable, adjudicate the status of the 14,000 acres, freed of any misapprehensions about the applicability of the 160-acre limitation to lands under irrigation in 1929.

FN31. Petitioners contend that contrary to 28 U.S.C. § 1738, the Court of Appeals failed to give the same full faith and credit to the Hewes decision as that decision would have by law or usage in the courts of California. They urge that the United States embraced and consistently adhered to a construction of the Project Act that would exempt from acreage limitations all privately owned lands in the District, a position which the Government should not now be permitted to repudiate. They also argue that quite apart from § 6, the structure and other provisions of the Project Act negate the applicability of acreage limitations to privately owned lands in
Imperial Valley. Finally, they present a view of the legislative history of the Project Act that they claim supports the inference that Congress intended to exempt from acreage limitations any and all lands that the District might subsequently take into itself and irrigate with project water.

Accordingly, the judgment of the Court of Appeals is reversed with respect to those lands that were irrigated on June 25, 1929, and with respect to which the District has been *380 adjudicated to have a perfected water right as of that date. The judgment is otherwise vacated, and the case is remanded to that court for further proceedings consistent with this opinion. FN32

FN32. We note, further, that there has passed the Senate and is pending in the House a measure that would exempt lands in the District from the reach of acreage limitations in the reclamation law.

So ordered.

U.S.Cal.,1980.
Bryant v. Yellen
447 U.S. 352, 100 S.Ct. 2232, 14 ERC 1609, 65 L.Ed.2d 184, 10 Envtl. L. Rep. 20,482

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IMPERIAL IRRIGATION DISTRICT
ALLEGED WASTE AND UNREASONABLE
USE OF WATER

ORDER: 84-12
Affirming Decision 1600 and
Denying Petitions for Reconsideration

SEPTEMBER 1984

STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

George Deukmejian, Governor

STATE WATER RESOURCES
CONTROL BOARD

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Michael A. Campos, Executive Director
STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of

ALLEGED WASTE AND UNREASONABLE
USE OF WATER BY IMPERIAL
IRRIGATION DISTRICT

ORDER: WR 84-12
SOURCE: Colorado River
COUNTY: Imperial

ORDER AFFIRMING DECISION 1600 AND
DENYING PETITIONS FOR RECONSIDERATION

BY THE BOARD:
The Board having issued Decision 1600 on June 21, 1984; Decision 1600 having directed Imperial Irrigation District to take certain specified actions to increase water conservation; petitions for reconsideration of that decision having been filed by Imperial Irrigation District and Metropolitan Water District of Southern California; and the petitions having been duly considered; the Board finds as follows:

1.0 GROUNDS FOR RECONSIDERATION
The hearing notice dated August 23, 1983 informed the parties that the Board would conduct the proceedings in this matter as closely as practicable to the procedures applicable to appropriative water right proceedings as set forth in the California Administrative Code, Title 23, Article 14, Sections 731 through 735, and Article 14.5, Sections 737.1 through 737.5. Section 737.1 provides that reconsideration of a Board decision or order may be requested for any of the following causes:
a. A procedural irregularity which has prevented the petitioner from receiving a fair hearing;

b. The decision is not supported by substantial evidence;

c. There is relevant evidence available which, in the exercise of reasonable diligence, could not be produced at the hearing; or

d. An error in law.

2.0 SUMMARY OF PETITIONS AND RELATED SUBMITTALS

2.1 Imperial Irrigation District

The Imperial Irrigation District (District or IID) requests that the Board reconsider Decision 1600 based on the contention that the evidence shows the District is beneficially using all water which it diverts from the Colorado River. The District suggests that the Board should find no misuse at the present time and dismiss the proceeding. The arguments presented in support of the District's position are discussed in Section 3 below.

2.2 Metropolitan Water District of Southern California

The Metropolitan Water District of Southern California (MWD) requests that the Board delete the finding on page 66 of Decision 1600 regarding the current misuse of water by the District and substitute in its place a statement that additional water conservation measures are necessary to prevent a misuse of water. MWD also requests that the order be phrased as an "interim interlocutory order" since
additional data will be necessary to evaluate District operations more fully. Finally, MWD requests that the phrase "Water Rights Decision" be deleted from the cover of the Decision since the proceeding does not involve an application to appropriate water.

2.3 United States Bureau of Reclamation

The United States Bureau of Reclamation (Bureau) submitted a letter dated July 18, 1984 stating that the Board would be justified in reconsidering the decision since several points did not appear to be given adequate consideration. The Bureau stresses the contention that "surpluses" have existed in the Colorado River system for the past several years. The Bureau also argues that a comprehensive water conservation plan cannot be completed by the date specified in the Board's order.

2.4 John and Stephen Elmore

John and Stephen Elmore submitted a memorandum of points and authorities which responds to the points raised in the petitions for reconsideration and which urges that reconsideration be denied.

3.0 ISSUES RAISED IN IID PETITION

The Imperial Irrigation District requests reconsideration because it contends that the evidence shows the District is beneficially using all water which it diverts from the Colorado River. The District does not challenge the Board's findings on specific factual issues (IID Petition for Reconsideration, p. 6), but contends that the facts do not support a finding of misuse.
The District's position that there is no misuse of water is based upon the following supporting contentions:

a. The District is making beneficial use of all water which it diverts;

b. There is no other present competing use for water used by IID; and

c. If not diverted by IID, the water would be "wasted" to the Gulf of California. (IID Petition for Reconsideration, pp. 3-5.)

In addition to presenting the District's view of the law and facts regarding the above contentions, the District's petition discusses several subjects referred to in Decision 1600 and argues at length that the existence of the particular fact or situation "does not constitute a misuse of water". (IID Petition for Reconsideration, pp. 6-35.)

Decision 1600 does not conclude that the existence of any particular fact in isolation requires a finding of misuse. Rather, the issue is whether all of the relevant facts together result in a misuse of water. Therefore, the discussion of each of the subjects addressed in the District's petition will focus upon the relevance of that subject to the issue of misuse.

3.1 Beneficial Use of Water by IID

The first point stressed in the District's petition is that the District makes beneficial use of all water diverted for consumptive
use and operational losses; power production; and fish, wildlife and recreational uses. The District argues that Decision 1600 should be reconsidered because the "evidence shows that IID is beneficially using -- not misusing -- all water diverted." (IID Petition for Reconsideration, p. 1).

At the outset, it is important to recognize that the existence of a beneficial use of water does not foreclose a finding of misuse under the California Constitution. To the contrary, Article X, Section 2 requires that the use of water be both beneficial and reasonable. The distinction between the dual requirements of beneficial use and reasonable use was addressed by the California Supreme Court in Joslin v. Marin Municipal Water District, 67 Cal.2d 132, 60 Cal.Rptr. 377, 429 P.2d 899 (1967) as follows:

"[P]laintiffs have not shown how their claimed use of the stream in the instant case, when measured by the constitutional mandate, is a reasonable one. In essence their position is that such use is a beneficial one encompassed within their riparian rights and that all beneficial uses are reasonable uses. Such a position ignores rather than observes the constitutional mandate. Article XIV, section 3, [now Article X, section 2] does not equate 'beneficial use' with 'reasonable use.' Indeed the amendment in plain terms emphasizes that water must be conserved in California 'with a view to the reasonable and beneficial use thereof in the interest of the people,' that the right to use water 'shall be limited to such water as shall be reasonably required for the beneficial use to be served,' and that riparian rights 'attach to, but to no more than so much of the flow' as may be required 'in view of such reasonable and beneficial uses.' (Emphasis added.) (Cal.Const., art.XIV, §3; see fn. 5, ante.) Thus the mere fact that a use may be beneficial to a riparian's lands is not sufficient if the use is not also reasonable within the meaning of section 3 of
article XIV and, as indicated, plaintiffs' use must be deemed unreasonable." (Id., 67 Cal.2d at 142, 143, emphasis in original).

In the present situation, there is no dispute that some beneficial use is made of the water diverted by IID. The critical issue is whether the use, method of use, and method of diversion are reasonable in light of all relevant conditions. Examining the beneficial use or uses made of the water diverted by the district is relevant to determining the reasonableness of District practices, but it is not dispositive of the issue. With that in mind, we proceed to discussion of the contentions raised in the District's petition regarding beneficial use of water.

3.1.1 Irrigation and Operational Losses
As mentioned above, the fact that IID makes some beneficial use of all water diverted for either irrigation or power production is not at issue. The Board does take issue, however, with the District's characterization of canal spills, tailwater and excess leachwater as a "beneficial use" of water. (IID Petition for Reconsideration, p. 9.)

Testimony presented by the District and other parties at the hearing focused on how these losses of water could be reduced. The fact that a portion of the losses may be difficult to eliminate does not make the losses "beneficial". Attempting to portray such losses as "beneficial" -- and therefore as desirable -- serves only to divert attention from the promotion of more efficient use of water.

The District also argues that "the amount of water used by IID consumptively and operationally is probably sanctioned by" the duty of
water provisions of Section 657(a)(1) of Title 23 of the California Administrative Code. (IID Petition for Reconsideration, p. 16.) The water duties specified in the regulation, however, provide only rough guidelines ranging from 1 cubic foot per second (cfs) for each 50 acres to 1 cfs for each 150 acres, depending upon the circumstances. The existence of such guidelines does not foreclose inquiry into the reasonableness of the method of use and the method of diversion of the water which is applied. In the case of IID, where large quantities of imported water end up in the Salton Sea, it is reasonable to expect better control of tailwater discharges and canal spills than was shown to exist by the evidence presented at the hearing.

3.1.2 Power Production

The District's petition for reconsideration discusses at length the value which it receives and has received from hydroelectric power production. Three observations with respect to the petition's discussion of hydroelectric power production are in order. First, Decision 1600 expressly acknowledges the use of water for hydroelectric generation and the economic benefit which IID receives from it. (Decision 1600, pp. 7 and 8.) Second, Mr. Welch's affidavit dated July 19, 1984, which is referred to repeatedly in the petition for reconsideration is not part of the hearing record, and in the exercise of reasonable diligence, much of the information presented in that affidavit could have been produced at the hearing. To the extent that the affidavit refers to more recent information, the Board does not believe the information is of sufficient significance to justify
reopening the hearing record. Therefore, the information in that affidavit does not provide grounds for reconsideration.
(Section 737.1, Title 23, California Administrative Code.)

Finally, it is not clear what the potential reduction of hydroelectric power generation and resulting revenue has to do with reconsideration of Decision 1600. The District has repeatedly stressed the efforts it is making to conserve water which, when successful, necessarily result in the reduction of diversions and a corresponding decrease in hydroelectric power generation. IID Board of Directors' Resolution No. 8-84 establishes that District policy is to expand its conservation program with the goal of reducing inflow to the Salton Sea by 100,000 acre-feet by July 1, 1985. (IID Memorandum, 2/21/84, Exhibit 1.) If successfully implemented, this policy will reduce the District's revenue from hydroelectric power generation. Thus, the District's existing policy, as reaffirmed by Resolution No. 8-84, stresses that water conservation efforts within IID should be increased at the present time, even at the expense of incidental hydroelectric power generation. The District cannot seriously contend that Decision 1600 should be reconsidered for following the same policy.

3.1.3 Fish, Wildlife and Recreation
The District urges that use of Colorado River water for maintenance of the Salton Sea fish, wildlife, and recreational uses "constitutes a present beneficial use -- not a misuse". (IID Petition, p. 21.)

Two points should be noted at the outset. First, the evidence establishes that the Imperial Irrigation District is not operated with
any intention of promoting the Salton Sea fishery. Neither its
appropriative water right permits, nor its contract for water delivery
with the Secretary of the Interior provide that fish and wildlife
enhancement or recreation are authorized purposes of use for the water
diverted by the District. IID presently treats the Salton Sea and
surrounding property as a drainage reservoir for agricultural return
flow and canal spills. An incidental beneficial effect of that inflow
is to postpone the increase in the Salton Sea salinity. The fact that
IID's operations result in an incidental beneficial effect does not
mean that the District is making an authorized beneficial use of
water.

The second point to be recognized is that the issue is not whether the
inflow into the Salton Sea has an incidental beneficial effect, but
whether it is a reasonable and beneficial use of water. Decision 1600
expressly recognizes the beneficial effect of inflow to the Salton Sea
on temporarily postponing the increase in the salinity.

(Decision 1600, p. 26, 59.) However, the decision also recognizes
that the rising water level of the Salton Sea between 1971 and 1981
resulted in the flooding of approximately 15,750 acres of adjoining
private and public land, and that, as of May of this year, the water
level was continuing to rise. (Decision 1600, pp. 57, 58.)

In view of the limited life of the Salton Sea fishery under current
conditions (Decision 1600, p. 61), the Board concludes that the
beneficial effect of the present quantity of IID inflow is outweighed
by the adverse effect of the rising water level on surrounding property and various uses associated with that property. Under present conditions, we do not believe that the existing quantity of IID inflow to the Salton Sea can be considered a reasonable use of water.\footnote{A statement presented by the Salton Sea Fish and Wildlife Club at the Board meeting on June 21, 1984 urged that an order resulting in reduction of inflow to the Salton Sea would violate the Board's duty to protect the public trust. The Board recognizes the beneficial effects of freshwater inflow on Salton Sea salinity. The Board also recognizes, however, that in the absence of an expensive salinity control project, the salinity will inevitably increase unless ever greater amounts of freshwater are diverted into the Salton Sea resulting in an ever larger body of water. The public trust doctrine is based upon the State's ownership of navigable waterways and underlying lands as trustee for the benefit of the people. Colberg Inc. v. State of California (1967) 67 Cal.2d 408, 416; 62 Cal.Rptr. 401, 406. Upon its admission to the Union in 1850, California acquired title as trustee to navigable waterways and underlying lands. National Audubon Society v. Los Angeles (1983) 33 Cal.3d 419, 435, 189 Cal.Rptr. 346, 355. No such title or public trust easement was acquired to the property underlying the present Salton Sea since the Sea was not created until 1905. Therefore, regardless of the extent to which the public trust doctrine may or may not apply to an artificial body of water, it is apparent that the doctrine does not justify continued inundation of property to which no public trust easement attaches. Although we believe that maintaining present levels of inflow is an improper way to postpone increases in the salinity level, we are encouraged by the District's concern about the fishery and by the discussion of physical solutions which could preserve the fishery indefinitely.}

3.2 Propriety of Considering the Effect of IID Operations on Flooded Property

The second point stressed in the District's petition for reconsideration is that "the fact that water which is beneficially
used may contribute to flooding does not constitute a misuse of water." (IID Petition, p. 24.) The issue, however, is not whether the existence of flooding constitutes a misuse of water, but whether the fact that productive property is being flooded should be considered in evaluating the reasonableness of IID water management policies. In essence, the position of the District is that the Board must consider the incidental beneficial effect of IID inflow on the Salton Sea fishery, but that it is barred from considering the adverse effects of that same inflow on the adjacent property and associated uses of that property. Such a position is neither logical nor consistent with prior judicial decisions.

The nature of the inquiry into the reasonableness of a particular use or method of use of water was addressed by the California Supreme Court as follows:

"The scope and technical complexity of issues concerning water resource management are unequalled by virtually any other type of activity presented to the courts. What constitutes a reasonable water use is dependent upon not only the entire circumstances presented but varies as the current situations changes." Environmental Defense Fund v. East Bay Municipal Utility District (1977) 20 Cal.3d 327, 344, 142 Cal.Rptr. 904, 913, 572 P.2d 1128, 1137. (Emphasis added.)

The District's petition repeats its previously stated position that determination of the nature and extent of private property rights is outside the jurisdiction of the Board. Contrary to the District's repeated inferences, the Board has made no attempt to evaluate issues regarding easements and liability for damages to others' property. In
view of the broad interpretation which the courts have consistently
given to Article X, Section 2 of the California Constitution, however,
it is inconceivable how the District can argue that the adverse
effects of District operations on thousands of acres of productive
property are irrelevant to an evaluation of the reasonableness of
District operations. Even if the Board's inquiry were limited to
examination of the beneficial uses of water for irrigation, domestic
uses and other purposes within the District, it is indisputable that
the flooding of property in the vicinity of the Salton Sea has
virtually eliminated the beneficial uses of water which previously
existed on that property and which could be reestablished if the water
level of the Salton Sea recedes.

Contrary to declared District policy, the petition for reconsideration
suggests that it is reasonable for the District to continue the
present methods of operation, at least until the demand for water for
other uses increases. In reference to Decision 1600, the petition
states:

"Finally the Board suggests that 'the danger level
for fish reproduction, [may occur] in less than
five years whether or not a planned reduction in
inflow takes place.' Decision 1600, 61. Again it
is not understood what prompts the Board to
postulate either the probability or advisability of
'a planned reduction in inflow.' ... It is known
that a reduction in inflow will not change the fact
that damages have been caused to some private
property in the past. But it is not known why IID
should, at the present time, plan a reduction in
inflow, only to have the water pass wastefully to
the Gulf." (IID Petition for Reconsideration,
p. 34.)
We make two observations with respect to the above statement. First, although a reduction of inflow will not eliminate past damage, it can reduce future damage to presently submerged property and prevent future flooding of additional property caused by continuing increases in the Salton Sea water level. Second, the Board was prompted to "postulate" the probability of a planned reduction in inflow to the Salton Sea based, in part, upon the provisions of IID Board of Directors Resolution No. 8-84. Among other things, the IID Resolution refers to the policy of the State Constitution that the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water should be prevented, and it declares that the District shall improve its water conservation programs "with the goal of reducing inflow to the Salton Sea [by] 100,000 acre-feet by July 1, 1985." (Emphasis added.)

Decision 1600 expresses the Board's concern about the need for the District to identify precisely how the planned reduction of inflow is to be achieved. From the language of Resolution No. 8-84, however, it is apparent that announced District policy recognizes the relationship between the present quantity of inflow to the Salton Sea and the reasonable use of water. The fact that Decision 1600 contains the same recognition does not provide grounds for reconsideration.2

2 The petition for reconsideration also objects that the beneficial effects of reduced inflow to the Salton Sea discussed in Decision 1600 are "generalized speculations". (IID Petition, pp. 30-34.) There is ample evidence in the record for the Board's conclusions that a reduction in inflow would be likely (CONTINUED)
3.3 Other Beneficial Uses For Conserved Water

The District's argument concerning other beneficial uses for conserved water is twofold. First, the District contends that there are no other beneficial uses for conserved water at the present time. Second, the District submits that the impending shortages of Colorado River water are irrelevant to a finding of present misuse. These contentions are discussed below.

3.3.1 Present Beneficial Uses

With respect to present alternative uses for conserved water, the record indicates that the parties to the Seven-Party Agreement have had their orders for Colorado River water satisfied in recent years. From this evidence, the District asks us to conclude that there are presently no other beneficial uses to be made of conserved water and that any water not diverted by IID would flow "wastefully" to the Gulf of California in violation of the constitutional mandate to maximize beneficial use. This argument cannot be accepted for several reasons.

First, as the Elmores point out, there was uncontroverted testimony that there is substantial storage capacity available in three Southern

\[ (FOOTNOTE CONTINUED) \]

2 to have the benefits noted. (Decision 1600, pp. 56-61 and passim.) Since the District's announced goal is to reduce inflow into the Salton Sea, however, we fail to understand the vehemence with which the petition argues that a reduction in present inflow would not be beneficial.
California groundwater basins. The arrangement between MWD and the Coachella Valley Water District provides an example of how a groundwater recharge project can work to the advantage of participating agencies. (Decision 1600, p. 54.) In recognition of the benefits of placing water in groundwater storage for future use, Water Code Section 1242 specifically provides that such storage is a beneficial use of water. Increased water conservation by IID would make additional water available for groundwater storage programs.

Also significant are the instream uses which could be made of water that becomes available as a result of IID conservation efforts. The discussion of alternative uses in Decision 1600 and much of the testimony at the hearing focused primarily on uses of conserved water for various consumptive uses within California. This was due to the evidence that present California water users will face reductions in Colorado River deliveries in the near future.\(^3\) Since many of the potential water conservation measures identified may not be fully implemented before the impending shortages are expected to occur, it was reasonable to focus on the expected consumptive use requirements as alternative uses for conserved water. That does not mean, however, that water which is conserved by IID in the meantime would serve no beneficial purpose.

The evidence in the record shows that the fishery and riparian vegetation in the lower Colorado River has improved significantly

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\(^3\) See Decision 1600, pp. 51-56, for discussion of impending reductions of Colorado River water available to California water users.
during past periods of high flows. There is also evidence that the fish populations downstream from Imperial Dam would be substantially increased by timed releases of water from Lake Mead and Lake Havasu. (Board 14, p. 31.) In most years, such releases would be facilitated by the availability of additional water due to increased water conservation by the Imperial Irrigation District.

Additional water made available as a result of water conservation could also be used to reduce the salinity in the Colorado River below Imperial Dam. The federal government has been extensively involved in the development of numerous salinity control projects aimed at decreasing salinity in the lower Colorado River. (USBR 1, pp. 1 and 2; Public Law 93-320, 43 U.S.C. §1571 et seq.; Public Law 98-63). Some of these projects are directed at making more water available to be used for salinity control purposes below Imperial Dam. Ensuring that there is adequate water to meet the United States' treaty commitments to Mexico is purely a federal responsibility which is to be met without reducing the quantity of water allocated by the U. S. Supreme Court to California or to water users within California. Nevertheless, in view of the relatively high salinity normally present in the lower Colorado River, it is incorrect for IID to suggest that making water available for increased flows below Imperial Dam would serve no useful purpose.

In summary, water conserved by IID will be needed for consumptive use within California in the very near future. In the interim, however, any water which may be conserved could be placed in groundwater
storage or could be left in the Colorado River where it would serve the important purposes of fishery enhancement and salinity reduction.

3.3.2 Future Beneficial Uses

The IID petition argues that the impending shortages of Colorado River water available to other California users "can hardly influence a determination of whether IID is misusing water at the present time." (IID Petition for Reconsideration, p. 35.) As discussed above, the record shows that water conserved by IID could be put into groundwater storage or could be used for various instream uses in the lower Colorado River.

It is also important to realize that many water conservation measures will take a considerable period of time to implement fully. If, as the evidence shows, a serious water shortage is approaching in 1985, 1986, or shortly thereafter, then it is unreasonable not to take steps now to deal with the impending shortage. It is entirely appropriate for the Board's evaluation of District operations to be based, in part, on conditions which will exist within the period necessary to implement certain water conservation measures.

3.4 Availability of Water Conservation Measures

The petition for reconsideration contends that IID is not required to make investments to improve efficiency in order to provide water to junior appropriators. The petition further contends that adoption of any potential conservation measures will increase the cost for IID water users. As noted in Decision 1600, however, a recent appellate
court decision acknowledged the fact that water users may be required to incur reasonable expenses if necessary to comply with the constitutional mandate of reasonable use. People ex rel. State Water Resources Control Board v. Forni, 54 Cal.App.3d 743, 751-752; 126 Cal.Rptr. 851 (1976). Furthermore, in this instance, there was considerable evidence presented that implementation of additional water conservation measures in IID would be cost effective. If done as part of a water transfer arrangement with another user, the evidence indicates that additional water conservation would be in the District's economic interest. Under existing circumstances, the availability of practical water conservation measures is clearly relevant to evaluation of the reasonableness of IID's water management practices.

3.5 Future Planning

The District's petition stresses the desirability of planning for efficient water use at the local level. (IID Petition for Reconsideration, pp. 40-42.) Planning at the local level is entirely consistent with the provisions of the Board's order which directs the District to prepare the required water conservation plan. This plan will be subject to review and approval by the Board, but the initial preparation of a plan is primarily the District's responsibility.

3.6 Summary of Board's Position Regarding IID Petition

Most of the contentions raised in the District's petition were raised previously and were addressed in Decision 1600. The preceding paragraphs elaborate further on the Board's position regarding these
subjects. The Board concludes that the petition does not provide
grounds for reconsidering or revising Decision 1600.

4.0 ISSUES RAISED IN METROPOLITAN WATER DISTRICT PETITION

4.1 Conclusion Regarding Misuse
Metropolitan Water District requests that the Board rephrase the last
sentence of the first paragraph on page 66 of Decision 1600 to state
that additional water conservation measures are necessary to prevent a
misuse of water. The suggested change would delete the finding of
present misuse of water by IID. MWD suggests that the proposed
wording would provide ample justification for the Board's order since
Section 275 of the Water Code directs the Board to undertake all
appropriate proceedings to "prevent" misuse. The MWD petition also
argues that the present inability to quantify IID water losses
accurately makes a finding of present misuse inappropriate.

The Board agrees that Water Code Section 275 provides jurisdiction to
enter preventative orders to avoid an impending misuse of water. For
the reasons described with respect to the IID petition, however, the
Board believes that the record supports the finding of current
misuse. The record is clear that the present method of District
operations has had substantial adverse impacts on the District and
others, that the District has not stringently or consistently
implemented certain elements of its announced water conservation
program and that there are other beneficial uses to be made of
conserved water. Several additional practical methods of conserving
water are described in the record. Under the circumstances, it is not necessary for the Board to quantify the amount of water which is unreasonably used in order to conclude that a misuse is occurring.

The difficulty in accurately quantifying the amount of water savings achievable through specific conservation measures is in large part due to incomplete or inaccurate recordkeeping by IID. The inability of the District to account for the large quantities of water losses in District operations is itself evidence that the District's existing water management practices are unreasonable. The District has acknowledged that it "has a present obligation to adopt more sophisticated measuring devices" and the Board's order specifically calls for development of accurate water accounting procedures by February 1, 1985. (IID Petition for Reconsideration, p. 40; Decision 1600, pp. 67, 68). In the interim, the Board has not directed the District to undertake any large capital improvements. Therefore, it is not necessary to revise any provisions of the decision due to the present limitations on data regarding IID operations.

MWD also expresses concern that a finding of present misuse may disrupt its efforts to participate in a joint water conservation program with IID "by unnecessarily polarizing the issues and the participants." (MWD Petition for Reconsideration, p. 5.) Its concern is based upon the possibility that Decision 1600 may be injected into
ongoing litigation against the District involving issues outside of this Board's jurisdiction.  

The Board's interest and responsibility in this proceeding do not extend to providing ammunition for parties in private litigation, on any side. It would be untenable to suggest, however, that the existence of private litigation justifies a policy of Board inaction in the face of substantial evidence of misuse of water. Such inaction would indeed abrogate the Board's true interest and responsibility, which is plainly articulated in Water Code Section 275 and reinforced by decisions of the Supreme Court and appellate courts of this State. (Environmental Defense Fund, Inc. v. East Bay Municipal Utility District, 20 Cal.3d 327, 142 Cal.Rptr. 904 (1977); People v. Shirokow 26 Cal.3d 301, 162 Cal.Rptr. 30 (1980); and People ex rel. State Water Resources Control Board v. Forni 54 Cal.App.3d 743, 126 Cal.Rptr. 851 (1976).) In addition, our research has failed to disclose any judicial recognition of a private cause of action for money damages predicated upon the Constitutional mandates and prohibitions of Article X, Section 2. It is true that the Constitutional requirements may provide a basis for granting injunctive relief to a private party; however, the existence of this remedy is fully consistent with the

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4 Although this point is not mentioned in the IID Petition for Reconsideration, it was also raised on page 10 of the Supplemental Comments submitted by IID, dated June 20, 1984. These "Supplemental Comments" were resubmitted as an appendix to the IID Petition for Reconsideration. From counsel's oral remarks before the Board on June 21, 1984, the District's primary objection to the decision apparently is based on the concern that the decision might adversely affect the District's position in litigation not involved in this proceeding.
policy enunciated by the people of this State in approving the Constitutional provision which prohibits the waste or unreasonable use of water.

The Board shares MWD's concern that Decision 1600 not disrupt efforts to develop a more effective water conservation program. Whatever the Board's finding, however, it is equally possible that the finding would be referred to by some party in the ongoing litigation. The District has recently announced its willingness to prepare a water conservation plan as was previously requested by the Department of Water Resources. In view of this development, it is unfortunate for all parties that the matter was not resolved earlier without need of a formal hearing. Having conducted an adjudicatory hearing as provided by law, however, the Board's findings must be governed by the record before it rather than on speculation regarding how a particular party might respond.

4.2 Form of Order

MWD also requests that the order be phrased as an "interim interlocutory order" due to the recognized need to develop additional information regarding IID operations. The Board recognizes that the order entered in Decision 1600 is not a final resolution of what water conservation measures should be implemented by IID. Based on that recognition, the Board has reserved jurisdiction, and any future orders will be based upon the record before the Board at that time. It is not necessary to change the form or title of the present order.
4.3 **Description of Proceeding**

MWD's final request is that the phrase "Water Rights Decision" be deleted from the cover of Decision 1600 since the proceeding does not involve an application to appropriate water. First, we note that although the phrase is on the cover of the decision, it is not a part of the actual decision adopted by the Board. Second, we note that although the proceeding did not involve Board action on an application to appropriate water, it does involve Board findings and an order regarding the manner in which IID's water rights must be exercised. Thus, we believe that Decision 1600 is properly referred to as a water rights decision.

5.0 **BUREAU OF RECLAMATION COMMENTS**

A letter dated July 18, 1984, was received from the Bureau of Reclamation stating that the Bureau believes the Board "would be justified in reconsidering" Decision 1600. It is not clear whether the letter was intended to be a petition for reconsideration. If so, however, much of the proposed evidence referred to in the letter cannot be considered since: (1) the information was not presented at the hearing; (2) there is no showing that it could not have been produced at the hearing in the exercise of reasonable diligence, and (3) it is not presented in the form of an affidavit as required for new evidence submitted in support of a petition for reconsideration. (California Administrative Code, Title 23, Sections 737.1, 737.2.)

Nevertheless, to the extent that the Bureau's arguments are based on evidence in the record, the Board will briefly address them.
The Bureau's first contention is that several points were given inadequate consideration in reaching a conclusion of present misuse. With the exception of new evidence which is not in the record, all of the facts referred to in the Bureau's letter were considered in the formulation of Decision 1600. Most of the subjects to which the Bureau refers are further elaborated on in the preceding sections of this order. The Board believes there is ample evidence to support a finding of current misuse.

The second point raised in the Bureau's letter is the contention that a comprehensive water conservation plan cannot be prepared by February 1, 1985. However, the District advised the Board prior to adoption of Decision 1600 that the "scope of the proposed order, as understood by IID, is acceptable to IID." (Supplemental Comments by IID, June 20, 1984.) Similarly, the District's petition for reconsideration makes no suggestion that the required plan cannot be prepared by the time specified. The Board recognizes that certain aspects of the District's plan may be revised based on future information and future developments, but that is no justification to postpone preparation of a water conservation plan which is necessary to eliminate a current misuse of water. The Board believes that the seven-month period previously specified in Decision 1600 for preparation of a water conservation plan is adequate.

6.0 CONCLUSION

None of the parties requesting reconsideration of Decision 1600 argue that Imperial Irrigation District should not expand its water
conservation efforts. Prior to adoption of the order, the District even advised the Board that the scope of the proposed order was acceptable. The stated concern of the three parties seeking reconsideration is that the Board is unjustified in finding a current misuse of water. For the reasons discussed above and in Decision 1600, we affirm our previous conclusion that the District's failure to implement additional water conservation measures is unreasonable. Further, the record demonstrates that the present water management practices of the Imperial Irrigation District are resulting in a misuse of water. The petitions for reconsideration do not present sufficient cause to reconsider Decision 1600.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

a. The petition for reconsideration of Decision 1600 filed by the Imperial Irrigation District is denied.

b. The petition for reconsideration of Decision 1600 filed by The Metropolitan Water District of Southern California is denied.
c. The request for reconsideration of Decision 1600 submitted by the United States Bureau of Reclamation is denied.

d. The findings and order of Decision 1600 are affirmed.

Dated: **SEP 20 1984**

CAROLE A. ONORATO, Chairwoman

WARREN D. NOTEMARE, Vice-Chairman

KENNETH W. WILLIS, Member

DARLENE E. RUIZ, Member

Abstained

EDWIN H. FINSTER, Member
ORDER WR 2017-0134

In the Matter of the Petition of

Imperial Irrigation District

Regarding State Water Board Revised Order WRO 2002-0013

SOURCE: Colorado River
COUNTY: Imperial

ORDER ACCEPTING STIPULATION AND REVISING STATE WATER BOARD
REVISED ORDER WRO 2002-0013

BY THE BOARD:

The Salton Sea is California's largest lake and was once famous for its sport fishery and recreational uses. It is approximately 35 miles long and up to 15 miles wide with approximately 360 square miles of water surface and 105 miles of shoreline. The surface of the Salton Sea lies approximately 232 feet below sea level. Approximately 90 percent of the freshwater inflow to the Salton Sea is agricultural drain water from the Imperial Valley. As the Salton Sea has no outlets, salts and nutrients concentrate in it and nutrients enhance the formation of eutrophic conditions. Currently, the Salton Sea has a salinity level that is approximately 50 percent higher than the ocean. The Salton Sea is a critical stop on the Pacific Flyway for migrating birds, including several threatened and endangered species. The Salton Sea National Wildlife Refuge was established in 1930 to preserve wintering habitat for waterfowl and other migratory birds.

The California Water Action Plan (January 2014) calls for protection and restoration of key ecosystems, including the Salton Sea. The California Water Action Plan provides that the California Natural Resources Agency (CNRA), in partnership with the Salton Sea Authority, will coordinate state, local and federal restoration efforts and work with local stakeholders to develop a shared vision for the future of the Salton Sea. The California Department of Fish and Wildlife and the California Department of Water Resources are immediately to begin implementing the first phase of this effort with the construction of
600 acres of near shore aquatic habitat to provide feeding, nesting and breeding habitat for birds. This project could increase to 3,600 acres or more with additional resources. Concurrently, CNRA and the Salton Sea Authority are developing plans for the Salton Sea that will evaluate additional restoration projects and identify economic development opportunities through renewable energy development.

On October 5, 1998, the Imperial Irrigation District (IID) and the San Diego County Water Authority (SDCWA) submitted a joint petition to the State Water Board. After amendments, the final petition requested the long-term transfer of up to 300,000 acre-feet of water per year authorized for diversion and use from the Colorado River under IID’s water right permit 7643 as follows: (1) 200,000 acre-feet of water per year from IID to SDCWA; and (2) 100,000 acre-feet of water per year from IID to the Coachella Valley Water District (CVWD) and the Metropolitan Water District of Southern California (MWD). The approved transfer was for a term of 45 years with an optional 30-year renewal period, for a total of 75 years.

On October 28, 2002, the State Water Board approved the transfer with issuance of Order WRO 2002-0013. In the order, the State Water Board concluded that salinity levels at the Salton Sea that would have existed in the absence of the transfer should be maintained for a period of 15 years. This requirement was intended to mitigate project impacts to the Salton Sea to provide time to study the feasibility of long-term restoration actions and begin implementation of any feasible restoration projects. At the same time, it avoided prejudging those restoration-planning efforts.

The conservation and transfer of water from agricultural to urban uses is part of California’s Colorado River Water Use Plan, which provides a framework to reduce California’s use of Colorado River water to a 4,400,000 acre-foot apportionment in normal years. To facilitate implementation of the Plan, in 2003, IID, the State of California, other California water agencies, the federal government and Indian tribes entered into a collection of agreements commonly referred to as the Quantification Settlement Agreement (QSA). The QSA was intended to address longstanding disputes regarding the priority, use, and transfer of Colorado River water. The QSA established water budgets for the parties and authorized the contracting parties to pursue the long-term transfer of conserved water from IID to SDCWA, CVWD, and MWD.

An immediate, continued, and focused effort to manage a smaller but sustainable Salton Sea is necessary to protect public health and the environment.

The Salton Sea Restoration Act, California Fish & Game Code section 2931, subdivision (a) states that “it is the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on the ecosystem.”
The Salton Sea Restoration Act, California Fish & Game Code section 2942 provides that the Secretary of CRNA shall lead the state’s efforts to restore the Salton Sea.

In May 2015, Governor Edmund G. Brown Jr. established the Salton Sea Task Force (Task Force). The Task Force includes experts from the CNRA and the California Environmental Protection Agency, including representatives from the State Water Board. The Task Force has sought input from tribal leaders, federal agencies, local water districts, local leaders, and other public and private stakeholders with an interest in the Salton Sea. The Task Force relied on information gathered during these meetings to produce its recommendations, which were released on October 9, 2015, and included a description of the principles necessary for a successful Salton Sea Management Program (SSMP). Governor Brown appointed Bruce Wilcox as assistant secretary for Salton Sea Policy at the CNRA to oversee habitat restoration efforts along the shoreline of the Salton Sea. As a part of the Task Force, the State Water Board regularly monitors and assesses progress on the implementation of the SSMP, and periodically holds public workshops as part of this function.

CNRA has prepared Phase 1 of the SSMP in furtherance of its Salton Sea restoration objectives and is committed to constructing and maintaining habitat and dust-suppression projects that address public health and environmental concerns. The SSMP contemplates future phases, and a long-range plan.

On November 18, 2014, IID filed a petition with the State Water Board, seeking to have the State Water Board enter an order to ensure success of Salton Sea restoration. The State Water Board conducted workshops in 2015 and 2016 to examine issues related to Salton Sea restoration.

On August 31, 2016, CNRA entered into a Memorandum of Understanding with the United States Department of the Interior that provides, in pertinent part, that the State will have a lead role in the cooperative effort to restore the Salton Sea. On January 18, 2017, CNRA and the United States Department of the Interior entered into an Addendum to the Memorandum of Understanding expressly identifying the importance of Salton Sea restoration as a critical component of plans for maintaining California’s long-term water supply reliability.

On March 15, 2017, IID filed a motion with the State Water Board seeking to have an evidentiary hearing to address its November 18, 2014 petition regarding Salton Sea restoration. As a result of the motion, a draft stipulated order was developed for consideration by the State Water Board during a public workshop held on September 7, 2017. The draft stipulated order was revised following comments at the workshop and subsequent negotiations, resulting in a final draft stipulated order being shared with the State Water Board on October 20, 2017 (revised stipulation).
CNRA, IID, SDCWA, Imperial County, Audubon California, Defenders of Wildlife California, Sierra Club California, and the Pacific Institute (collectively Supporting Parties) have attested to their support for revised stipulation.

On October 26, 2017, the State Water Board provided notice of the revised stipulation and an opportunity to comment, circulated a redline reflecting the Supporting Parties’ changes incorporated into the revised stipulation after the September 7, 2017 workshop, and provided notice that the State Water Board would consider adopting an order accepting the revised stipulation at its November 7-8, 2017 board meeting.

In addition to the mitigation requirements imposed by the federal and state endangered species laws, the California Environmental Quality Act (CEQA) (Pub. Resources Code, §§ 21000-21177) establishes requirements for the implementation of mitigation measures imposed to minimize the projected significant impacts of the Transfer Project. These mitigation measures and the Mitigation Monitoring & Reporting Program for the QSA transfers are not addressed by and are unaffected by this Order.

ORDER

IT IS HEREBY ORDERED THAT:

1. The State Water Board accepts in its entirety the revised stipulation submitted by the Supporting Parties attached as Exhibit A.


3. As part of implementing this Order and to promote understanding of the issues within the vicinity of the Salton Sea, the Imperial Irrigation District, or another Supporting Party, shall:
   a. make available Spanish-language materials summarizing the Salton Sea Management Program, projects proposed to implement the program, and annual status reports related to milestones;
   b. conduct public meetings about the Quantification Settlement Agreement, the Salton Sea Management Program, and this Order.
4. The Division of Water Rights will work with the Supporting Parties to propose as part of an early milestone an appropriate monitoring framework to assess success in implementing the Salton Sea Management Program.

5. The State Water Board, consistent with the original transfer order and the stipulated order, retains continuing jurisdiction over Revised Water Right Order 2002-0013 as amended, as well as the stipulated order.

6. This Order is non-precedential pursuant to Government Code section 11425.60, subdivision (b).

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 7, 2017.

AYE: Vice Chair Steven Moore
     Board Member Tam M. Doduc
     Board Member Dorene D’Adamo
     Board Member E. Joaquin Esquivel

NAY: None

ABSENT: Chair Felicia Marcus

ABSTAIN: None

Jeanine Townsend
Clerk to the Board
A. Whereas, an immediate, continued, and focused effort to manage a smaller but sustainable Salton Sea is necessary to protect public health and the environment.

B. Whereas, the Salton Sea Restoration Act, California Fish & Game Code section 2931(a) states that “it is the intent of the Legislature that the State of California undertake the restoration of the Salton Sea ecosystem and the permanent protection of the wildlife dependent on the ecosystem.”

C. Whereas, the Salton Sea Restoration Act, California Fish & Game Code section 2942 provides that the Secretary of the California Natural Resources Agency (CRNA) shall lead the state’s efforts to restore the Salton Sea.

D. Whereas, CNRA has prepared Phase I of the Salton Sea Management Program (SSMP) in furtherance of its Salton Sea Restoration objectives and is committed to constructing and maintaining habitat and dust-suppression projects that address public health and environmental concerns. The SSMP contemplates future phases, and a long-range plan.

E. Whereas, the Imperial Irrigation District (IID) filed a petition with the State Water Resources Control Board (Board) on November 18, 2014, seeking to have the Board enter an order to ensure success of Salton Sea Restoration.

F. Whereas, the Board conducted workshops in 2015 and 2016 to examine issues related to Salton Sea restoration.

G. Whereas, on August 31, 2016, CNRA entered into a Memorandum of Understanding with the United States Department of the Interior that provides, in pertinent part, that the State will have a lead role in the cooperative effort to restore the Salton Sea.

H. Whereas, on January 18, 2017, CNRA and the United States Department of the Interior entered into an Addendum to the Memorandum of Understanding expressly identifying the importance of Salton Sea restoration as a critical component of plans for maintaining California’s long-term water supply reliability.

I. Whereas, on March 15, 2017, IID filed a motion with the Board seeking to have an evidentiary hearing to address its November 18, 2014 petition regarding Salton Sea Restoration.

J. Whereas, in addition to the mitigation requirements imposed by the federal and state endangered species laws, the California Environmental Quality Act (Public Resources Code §§21000-21177 et seq.) establishes requirements for the implementation of mitigation measures imposed to minimize the projected significant impacts of the Transfer Project. These mitigation measures and the Mitigation Monitoring & Reporting Program for the QSA transfers are not addressed and are unaffected by this Order.

The State Water Resources Control Board finds and determines as follows:

1. For the reasons set forth in Water Rights Order 2002-0013 (revised) and Water Rights Order 2002-0016, the delivery of “mitigation water” to the Salton Sea will terminate on December 31, 2017. Mitigation measures shall continue to proceed pursuant to the Mitigation Monitoring & Reporting Program as provided in the “Water Conservation and Transfer Project” Environmental Impact Report and Environmental Impact Statement certified by IID and Amended and Restated in a September 2003 Addendum and incorporated into Water Right Order 2002-0013 (revised) including the four-step air quality plan outlined therein.
Proposed SWRCB Order Revising WRO 2002-0013 (revised)

2. Water Right Order 2002-0013 (revised) is hereby modified by adding the following paragraphs as new independent conditions 19-29 pertinent to Salton Sea Restoration:

19. Conditions 20-29 are independent conditions pertinent to Salton Sea Restoration.

20. The Board finds and declares that restoration of a smaller but sustainable Salton Sea is feasible, that the State of California will lead and coordinate management efforts, and that implementation of projects to protect or improve air and water quality and wildlife habitat will be completed forthwith to avoid severe consequences to the State of California as a whole, to the health of Imperial and Coachella Valley residents, and to multiple wildlife habitats that exist at the Salton Sea and serve the Pacific Flyway.

21. The Board further finds and declares that successful management of a smaller but sustainable Salton Sea will require the active participation and support of the federal government, affected local and regional governing bodies, affected tribal governments, environmental and philanthropic organizations, and the State of California. While the importance, cost and scale of this endeavor will exceed what can be expected from any single entity, the State has acknowledged that its role as a catalyst is essential in advancing the cause of restoration.

22. The Board further finds that the ability to successfully manage a smaller but sustainable Sea will require cooperation from non-state property owners, surface lease holders, surface and subsurface mineral rights owners as well as air quality management districts with jurisdiction over the Sea to ensure land use entitlements are secured expeditiously and management project design is compatible with existing land use and water conveyance infrastructure.

23. The Board further finds that successful management of the exposed Salton Sea lakebed requires the cooperation of the State of California and air quality managers with jurisdiction over the Sea to develop future air quality projects.

24. Consistent with Recitals B, C, and D [of this Order], in addition to currently planned and funded habitat projects (Red Hill Bay, Torres Martinez wetlands and Species Conservation Habitat) and all QSA JPA funded Salton Sea mitigation projects, restoration milestones detailed below are necessary to address public health and environmental concerns during Phase 1 of the SSMP. Additional projects and milestones will be developed for subsequent phases to address public health and environmental concerns.

   a. By December 31, 2018, construction of habitat and dust-suppression projects shall be completed on 500 acres of exposed playa.

   b. By December 31, 2019, construction of habitat and dust-suppression projects shall be completed on an additional 1,300 acres of exposed playa.

   c. By December 31, 2020, construction of habitat and dust-suppression projects shall be completed on an additional 1,700 acres of exposed playa.

   d. By December 31, 2021, construction of habitat and dust-suppression projects shall be completed on an additional 3,500 acres of exposed playa.

   e. By December 31, 2022, construction of habitat and dust-suppression projects shall be completed on an additional 1,750 acres of exposed playa.
Proposed SWRCB Order Revising WRO 2002-0013 (revised)

f. By December 31, 2023, construction of habitat and dust-suppression projects shall be completed on an additional 2,750 acres of exposed playa.

g. By December 31, 2024, construction of habitat and dust-suppression projects shall be completed on an additional 2,700 acres of exposed playa.

h. By December 31, 2025, construction of habitat and dust-suppression projects shall be completed on an additional 3,400 acres of exposed playa.

i. By December 31, 2026, construction of habitat and dust-suppression projects shall be completed on an additional 4,000 acres of exposed playa.

j. By December 31, 2027, construction of habitat and dust-suppression projects shall be completed on an additional 4,000 acres of exposed playa.

k. By December 31, 2028, construction of habitat and dust-suppression projects shall be completed on an additional 4,200 acres of exposed playa.

25. No less than 50% of the acreage described in condition 24 shall provide habitat benefits for fish and wildlife that depend on the Salton Sea ecosystem. Projects that provide habitat benefits for fish and wildlife do not include dust control projects that involve surface roughening, vegetation enhancement and surface stabilization.

26. CNRA will develop subsequent 10-year phases of the SSMP based upon available information, with the development of each phase commencing no later than midway through each current phase. Beginning with the development of Phase II, and in close coordination with stakeholders, CNRA will complete a long-term plan by no later than December 31, 2022.

27. Annual milestones are cumulative and if they are not achieved or exceeded in any given year, the amount of the shortfall or excess in that year will carry over to the following year.

28. No later than March 31 each year, the Board will hold a public meeting to receive oral and written comments on the status of Salton Sea Restoration, including a report from state agencies identifying: (i) completed projects and milestones achieved in the prior year; (ii) amount of acreage of completed projects that provide dust suppression and habitat, broken down by habitat type; (iii) upcoming projects to be completed and milestones to be achieved prior to the next annual progress report; (iv) the status of financial resources and permits that have not been secured for future projects; (v) any anticipated departures from the dates and acreages identified in condition 24; and progress toward development of the long-range plan described in condition 26. Should an annual milestone shortfall exceed 20 percent of a year’s annual obligation, the report will also include a plan that will cure the deficiency within 12 months.

29. The Board reserves jurisdiction to further amend conditions 19-28 of this Order as necessary to ensure Salton Sea Restoration throughout the term of the QSA through its continuing jurisdiction under this Order.

3. This Order, like Water Right Order 2002-13 (revised) and Water Right Order 2002-16, is determined to be non-precedential pursuant to Government Code section 11425.60(b).