

INTRODUCTION

The Law of the River is an ever-evolving compendium of documents relating to the management of the Colorado River. On behalf of the Secretary of the Interior (Secretary), the Bureau of Reclamation operates and manages major dams, reservoirs, diversion works, and other facilities on the Colorado River. In February of 1933, the Federal government collected and published *The Hoover Dam Power and Water Contracts and Related Data*, bringing together the initial set of Law of the River documents governing the management of the Colorado River. A second volume, *The Hoover Dam Documents 1948*, was published 15 years later, followed in 30 years by a third volume, *Updating the Hoover Dam Documents 1978*. This new volume, *The Colorado River Documents 2008*, brings the series forward another 30 years, covering events through December 31, 2008.

This volume is a reference work, providing a broad overview of Federal actions spanning three decades. Although considerable effort has been put into verifying the material presented here, readers are strongly encouraged to turn to the underlying source materials, many of which may be found in the Appendix. This volume, together with the 1933, 1948, and 1978 volumes, appears on a DVD located in a pocket in the inside back cover, with the appendices to each volume also included. Also found on the DVD are selected Supplemental Documents discussed in this volume. In addition, the DVD contains a folder of the source documents for the Appendix, without the headers or footers added in this volume.

A List of References appears at the end of each chapter. Documents appearing in the List of References which have been included in the Appendix are designated as such. Documents appearing in the List of References which have been included in the Supplemental Documents and are only on the DVD are designated as such.

The List of References is organized in categories according to the nature of the document or authority referenced, with materials listed in chronological order under each category. These categories are: Treaties, Interstate Compacts, and Federal Statutes; Federal Court Decisions; Federal Regulations; Federal Register Notices; Records of Decision (RODs); Contracts and Agreements; Reports; Letters; Memoranda; and Other.

The Appendix to this volume is organized in categories relating to Colorado River management. These categories are: Colorado River Water Distribution; Water Regulations and Policies for Lower Division States; Colorado River Operations; Environment; and Power. The Supplemental Documents appearing on the DVD accompanying this volume are also organized in these categories.

An index of the Supplemental Documents on the DVD follows the Table of Contents.

All references in this book to Federal statutes or regulations are to those statutes and regulations as amended or modified through the end of 2008 unless otherwise evident from the context of the discussion.

Disclaimer

This volume is a reference work. Nothing in *The Colorado River Documents 2008* is intended to interpret the provisions of the Law of the River or any other Federal statute, any Federal court decision, any Federal regulation, contract, or policy described herein, including but not limited to: the Colorado River Compact, 45 Stat. 1057; the Upper Colorado River Basin Compact, 63 Stat. 31; the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Treaty Between the United States of America and Mexico, Treaty Series 994, 59 Stat. 1219; the United States/Mexico agreement in Minute No. 242 of August 30, 1973, Treaty Series 7708; 24 UST 1968; the Consolidated Decree entered by the Supreme Court of the United States in *Arizona v. California*, 547 U.S. 150 (2006); the Boulder Canyon Project Act, 45 Stat. 1057; the Boulder Canyon Project Adjustment Act, 54 Stat. 774; the Colorado River Storage Project Act, 70 Stat. 105; the Colorado River Basin Project Act, 82 Stat. 885; the Colorado River Basin Salinity Control Act, 88 Stat. 266; the Hoover Power Plant Act of 1984, 98 Stat. 1333; the Colorado River Floodway Protection Act, 100 Stat. 1129; or the Grand Canyon Protection Act of 1992, 106 Stat. 4669.

Brief Synopsis of the Law of the River

For those who are new to the Law of the River, it is helpful to understand the key roles of the Colorado River Compact, the Mexican Water Treaty, the Upper Colorado River Basin Compact, and the *Arizona v. California* litigation in the distribution of the waters of the Colorado River. A brief review of these essential components is provided here in chronological order, followed by a brief description of two Federal statutes essential to an understanding of the Law of the River.

Colorado River Compact

The Colorado River system is a major source of water supply for the States of Arizona, California, Nevada, Colorado, New Mexico, Utah, and Wyoming, known as the Colorado River Basin States (Basin States). Large-scale demand for Colorado River water first developed in California. The other Basin States became concerned that California might obtain first priority rights to most of the flow of the river under the doctrine of prior appropriation. In 1922, water rights negotiations resulted in the Colorado River Compact which divided the Colorado River Basin into two parts, the Upper Basin and the Lower Basin. The Colorado River Compact establishes Lee Ferry, Arizona, as the dividing point.

The Upper Basin is defined in Article II of the Colorado River Compact to mean:

...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.

The Lower Basin is defined in Article II of the Colorado River Compact to mean:

...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.

In the Colorado River Compact, the States of Colorado, New Mexico, Utah, and Wyoming are termed “States of the Upper Division” and the States of Arizona, California, and Nevada are termed “States of the Lower Division.”

The Compact defines the “Colorado River System” as “that portion of the Colorado River and its tributaries within the United States of America.” Under the Compact:

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.

The Colorado River Compact also provides a right to the Lower Basin “to increase its beneficial consumptive use of such waters by one million acre-feet per annum.”

The Compact provides that “[p]resent perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact” and further provides that “[n]othing in the compact shall be construed as affecting the obligations of the United States of America to Indian Tribes.”

The Compact sets forth the framework for supplying water to Mexico “[i]f, 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.”

The Colorado River Compact is discussed in detail in [Chapter II of *The Hoover Dam Documents 1948*](#) and in [Chapter I\(B\) of *Updating the Hoover Dam Documents 1978*](#).

Mexican Water Treaty

The Treaty between the United States of America and Mexico, Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, 59 Stat. 1219 (1944) (Mexican Water Treaty) provides for the allotment of Colorado River water to Mexico and identifies points of delivery. The treaty provides that:

The application of the present Treaty, the regulation and exercise of the rights and obligations which the two Governments assume thereunder, and the settlement of all disputes to which its observance and execution may give rise are hereby entrusted to the International Boundary and Water Commission, which shall function in conformity with the powers and limitations set forth in this Treaty.

The Mexican Water Treaty is discussed in [Chapter XIV of *The Hoover Dam Documents 1948*](#) and in [Chapter I\(F\) of *Updating the Hoover Dam Documents 1978*](#). Salinity issues involving Mexico are discussed in [Chapter XIII of *Updating the Hoover Dam Documents 1978*](#).

Upper Colorado River Basin Compact

In 1948, the five States with territory in the Upper Basin entered into the Upper Colorado River Basin Compact, which apportions to the State of Arizona the beneficial consumptive use of 50,000 acre-feet per year of the Upper Basin's 7,500,000-acre-foot apportionment. The annual beneficial consumptive use apportionment remaining after deducting the Arizona share is distributed among the other four States as follows: 51.75 percent to the State of Colorado, 11.25 percent to the State of New Mexico, 23.00 percent to the State of Utah, and 14.00 percent to the State of Wyoming. This compact also establishes the Upper Colorado River Commission.

The Upper Colorado River Basin Compact is discussed in [Chapter II of *The Hoover Dam Documents 1948*](#) and in [Chapter IV of *Updating the Hoover Dam Documents 1978*](#).

Arizona v. California Litigation

The Lower Division States were unsuccessful in their efforts to divide the Lower Basin apportionment by compact. In 1928, Congress passed the Boulder Canyon Project Act of 1928, Public Law (Pub. L.) No. 70-642, 45 Stat. 1057 (1928) (BCPA), which authorized the States of Arizona, California, and Nevada to enter into an agreement that would divide the Lower Basin's 7,500,000 acre-foot annual consumptive use apportionment as follows: 2,800,000 acre-feet to the State of Arizona; 300,000 acre-feet to the State of Nevada; and 4,400,000 acre-feet to the State of California. The agreement was never consummated. In later years, under the authority of the BCPA, the Secretary entered into contracts with

the States of Arizona and Nevada and with water users in all three Lower Division States reflecting the BCPA apportionments.

In its 1963 opinion in *Arizona v. California*, 373 U.S. 546 (1963), the United States Supreme Court held that in the absence of an interstate agreement the Secretary's water delivery contracts accomplished the division of water provided for in the BCPA. The decree entered in *Arizona v. California*, 376 U.S. 340 (1964) (1964 Decree) sets forth the basic legal framework under which the Secretary manages the lower Colorado River. The 1964 Decree was amended in 1966, and supplemented in 1979 and thereafter by decrees addressing rights established as of June 25, 1929, the effective date of the BCPA, including rights for the Indian reservations along the lower Colorado River. The 1964 Decree and the subsequent supplemental decrees were later incorporated into the Consolidated Decree, 547 U.S. 150 (2006).

The *Arizona v. California* litigation from its inception through 1979 is discussed in [Chapters VIII, IX, and X](#) of [Updating the Hoover Dam Documents 1978](#), which set forth the text of relevant documents in [Appendices VIII through X](#) of that volume. Issues involving Indian reservation lands left unresolved by the 1979 supplemental decree are discussed in [Chapter XI](#) of that volume, with the text of relevant documents set forth in [Appendix XI](#) of that volume.

Boulder Canyon Project Act

The BCPA, discussed above under *Arizona v. California*, authorizes the Secretary to construct Hoover Dam for the purpose of controlling floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters, and providing for the generation of electrical energy. The BCPA further authorizes the Secretary to enter into contracts for the water stored in Lake Mead, the reservoir created by Hoover Dam, and to enter into contracts for sale of the electrical energy generated at the dam. The BCPA also authorized the Secretary to construct the All-American Canal.

Colorado River Storage Project Act

The Colorado River Storage Project Act, Pub. L. No. 84-485, 70 Stat. 105 (1956) (CRSPA) provides authority for the Secretary to construct, operate, and maintain numerous water storage projects, including powerplants, in the Upper Basin and to further investigate and prepare planning reports for additional projects, making it possible for the States in the Upper Basin to utilize the apportionments to which they are entitled under the Upper Colorado River Basin Compact, consistent with the provisions of the Colorado River Compact.

