

§ 414.2

43 CFR, Subtitle B, Ch. I (10-1-10 Edition)

(3) Change or expand existing authorities under the body of law known as the "Law of the River";

(4) Change the apportionments made for use within individual States;

(5) Address intrastate storage or intrastate distribution of water;

(6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law; or

(7) Authorize any specific activities; the rule provides a framework only.

§ 414.2 Definitions of terms used in this part.

Authorized entity means:

(1) An entity in a Storing State which is expressly authorized pursuant to the laws of that State to enter into Storage and Interstate Release Agreements and develop ICUA ("storing entity"); or

(2) An entity in a Consuming State which has authority under the laws of that State to enter into Storage and Interstate Release Agreements and acquire the right to use ICUA ("consuming entity").

Basic apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary of the Interior, to satisfy 7.5 million acre-feet (maf) of annual consumptive use in the Lower Division States. The United States Supreme Court, in *Arizona v. California*, confirmed that the annual basic apportionment for the Lower Division States is 2.8 maf of consumptive use in the State of Arizona, 4.4 maf of consumptive use in the State of California, and 0.3 maf of consumptive use in the State of Nevada.

BCPA means the Boulder Canyon Project Act, authorized by the Act of Congress of December 21, 1928 (45 Stat. 1057).

Colorado River Basin means all of the drainage area of the Colorado River System and all other territory within the United States to which the waters of the Colorado River System shall be beneficially applied.

Colorado River System means that portion of the Colorado River and its tributaries within the United States.

Colorado River water means water in or withdrawn from the mainstream.

Consuming entity means an authorized entity in a Consuming State.

Consuming State means a Lower Division State where ICUA will be used.

Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.

(1) Consumptive use from the mainstream within the Lower Division States includes water drawn from the mainstream by underground pumping.

(2) The Mexican treaty obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

Decree means the decree entered March 9, 1964, by the Supreme Court in *Arizona v. California*, 373 U.S. 546 (1963), as supplemented or amended.

Entitlement means an authorization to beneficially use Colorado River water pursuant to:

(1) The Decree;

(2) A water delivery contract with the United States through the Secretary; or

(3) A reservation of water from the Secretary.

Intentionally created unused apportionment or ICUA means unused apportionment that is developed:

(1) Consistent with the laws of the Storing State;

(2) Solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.

Lower Division States means the States of Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs behind dams on the main channel, and Senator Wash Reservoir off the main channel.

Offstream storage means storage in a surface reservoir off of the mainstream or in a ground water aquifer. Offstream storage includes indirect recharge

when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;

(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;

(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;

(4) Release of ICUA by the Secretary to the consuming entity; and

(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Storage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B—Storage and Interstate Release Agreements

§ 414.3 Storage and Interstate Release Agreements.

(a) *Basic requirements for Storage and Interstate Release Agreements.* Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.

(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.

(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.

(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.