

Public Law 98-569
98th Congress

An Act

To amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes.

Oct. 30, 1984
[H.R. 2790]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 201(b) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1591(b)), hereinafter referred to as the "Act", is amended by adding at the end thereof the following new sentence: "In determining the relative priority of implementing additional units or new self-contained portions of units authorized by section 202, the Secretary or the Secretary of Agriculture, as the case may be, shall give preference to those additional units or new self-contained portions of units which reduce salinity of the Colorado River at the least cost per unit of salinity reduction."

SEC. 2. (a) Section 202 of the Act (43 U.S.C. 1592) is amended by inserting "(a)" after "SEC. 202."

(b) Section 202(a) of such Act, as amended by subsection (a), is amended—

(1) in paragraph (1) by inserting before the period at the end thereof the following: ", and consisting of measures to replace incidental fish and wildlife values foregone";

(2) in the second sentence of paragraph (2) by inserting "replacing canals and laterals with pipe," after "canals and laterals," and by inserting "implementing other measures to reduce salt contributions from the Grand Valley to the Colorado River, and implementing measures to replace incidental fish and wildlife values foregone," after "efficient facilities";

(3) in the third sentence of paragraph (2) by inserting ", or portion thereof," after "Grand Valley unit", by striking out "agencies" and inserting in lieu thereof "non-Federal entities", by inserting ", or portions thereof," after "water distribution systems", and by striking out "all obligations" and inserting in lieu thereof "the obligations specified in subsection (b)(2)";

(4) in paragraph (2) by striking out the fourth, fifth, and sixth sentences;

(5) by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3);

(6) in paragraph (3) (as redesignated) by deleting the period at the end thereof and inserting ", and consisting of measures to replace incidental fish and wildlife values foregone."; and

(7) by adding at the end thereof the following new paragraphs:

"(4) Stage I of the Lower Gunnison Basin unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce seepage from canals and laterals in the Uncompahgre Valley, and consisting of measures to replace incidental fish and wildlife values foregone, essentially as described in the feasibility report and final environmental statement dated February 10, 1984. Prior to initiation of construction

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of stage I of the Lower Gunnison Basin unit, or of a portion of stage I, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Uncompahgre Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) relating to the continued operation and maintenance of the unit's facilities.

"(5) Portions of the McElmo Creek unit, Colorado, as components of the Dolores participating project, Colorado River Storage project, authorized by Public Law 90-537 and Public Law 84-485, consisting of all measures and all necessary appurtenant and associated works to reduce seepage only from the Towaoc-Highline combined canal, Rocky Ford laterals, Lone Pine lateral, and Upper Hermana lateral, and consisting of measures to replace incidental fish and wildlife values foregone. The Dolores participating project shall have salinity control as a project purpose insofar as these specific facilities are concerned: *Provided*, That the costs of construction and replacement of these specific facilities shall be allocated by the Secretary to salinity control and irrigation only after consultation with the State of Colorado, the Montezuma Valley Irrigation District, Colorado, and the Dolores Water Conservancy District, Colorado: *And provided further*, That such allocation of costs to salinity control will include only the separable and specific costs of these specific facilities and will not include any joint costs of any other facilities of the Dolores participating project. Repayment of costs allocated to salinity control shall be subject to this Act. Repayment of costs allocated to irrigation shall be subject to the Acts which authorized the Dolores participating project, the Reclamation Act of 1902, and Acts amendatory and supplementary thereto. Prior to initiation of construction of these specific facilities, or a portion thereof, the Secretary shall enter into contracts through which the non-Federal entities owning, operating, and maintaining the water distribution systems, or portions thereof, in the Montezuma Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) relating to the continued operation and maintenance of the unit's facilities."

(c) Section 202 of such Act is further amended by inserting at the end thereof the following new subsections:

"(b) In implementing the units authorized to be constructed pursuant to subsection (a), the Secretary shall carry out the following directions:

"(1) As reports are completed describing final implementation plans for the unit, or any portion thereof, authorized by paragraph (5) of subsection (a), and prior to expenditure of funds for related construction activities, the Secretary shall submit such reports to the appropriate committees of the Congress and to the governors of the Colorado River Basin States.

"(2) Non-Federal entities shall be required by the Secretary to contract for the long-term operation and maintenance of canal and lateral systems constructed pursuant to activities provided for in subsection (a): *Provided*, That the Secretary shall reimburse such non-Federal entities for the costs of such operation and maintenance to the extent the costs exceed the expenses that would have been incurred by them in the thorough and timely operation and maintenance of their canal and lateral

43 USC 1501
note.
43 USC 620 note.

43 USC 371 note.
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Reports.

systems absent the construction of a unit, said expenses to be determined by the Secretary after consultation with the involved non-Federal entities. The operation and maintenance for which non-Federal entities shall be responsible shall include such repairing and replacing of a unit's facilities as are associated with normal annual maintenance activities in order to keep such facilities in a condition which will assure maximum reduction of salinity inflow to the Colorado River. These non-Federal entities shall not be responsible, nor incur any costs, for the replacement of a unit's facilities, including measures to replace incidental fish and wildlife values foregone. The term replacement shall be defined for the purposes of this title as a major modification or reconstruction of a completed unit, or portion thereof, which is necessitated, through no fault of the non-Federal entity or entities operating and maintaining a unit, by design or construction inadequacies or by normal limits on the useful life of a facility. The Secretary is authorized to provide continuing technical assistance to non-Federal entities to assure the effective and efficient operation and maintenance of a unit's facilities.

"(3) The Secretary may, under authority of this title, and limited to the purposes of this Act, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to organize private canal and lateral owners into formal organizations with which the Secretary may enter into a grant or contract to construct, operate, and maintain a unit's facilities.

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"(4) In implementing the units authorized to be constructed pursuant to paragraphs (1), (2), (3), (4), and (5) of subsection (a), the Secretary shall comply with procedural and substantive State water laws.

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"(5) The Secretary may, under authority of this title and limited to the purposes of this Act, fund through a grant or contract, for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts, a non-Federal entity to operate and maintain measures to replace incidental fish and wildlife values foregone.

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"(6) In implementing the units authorized to be constructed pursuant to subsection (a), the Secretary shall implement measures to replace incidental fish and wildlife values foregone concurrently with the implementation of a unit's, or a portion of a unit's, related features.

"(c)(1) The Secretary of Agriculture may establish a voluntary cooperative salinity control program with landowners to improve on-farm water management and reduce watershed erosion on non-Federal lands and on lands under the control of the Department of Agriculture for the purpose of assisting in meeting the objectives of this title.

"(2) In carrying out such program, the Secretary of Agriculture shall—

"(A) identify salt-source areas and determine the salt load resulting from irrigation and watershed management practices;

"(B) develop, in consultation with the public and affected governmental interests, plans for implementing measures that will reduce the salt load of the Colorado River by improving on-farm irrigation water management including improvement of

related laterals and by improving watershed erosion management practices, such measures to include voluntary replacement of incidental fish and wildlife values foregone;

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"(C) provide technical and cost-sharing assistance for the voluntary implementation of plans through contracts and agreements with individuals or groups of owners and operators of farms, ranches, and other lands as well as with local governmental and nongovernmental entities such as irrigation districts and canal companies, except that a portion of the costs of implementing such plans shall be shared by the participants on the basis of benefits received and other appropriate factors, as determined by the Secretary of Agriculture, and except that such contracts and agreements shall provide for continuing operation and maintenance of measures installed under this subsection, including measures to replace incidental fish and wildlife values foregone, without additional cost-sharing assistance;

"(D) provide continuing technical assistance for irrigation water management as well as monitoring and evaluation of changes in salt contributions to the Colorado River to determine program effectiveness;

"(E) carry out related research, demonstration, and education activities; and

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"(F) in entering into contracts or agreements pursuant to section 202(c)(2)(C), require a minimum of 30 per centum cost-sharing contribution from individuals or groups of owners and operators of farms, ranches, and other lands as well as from local governmental and nongovernmental entities such as irrigation districts and canal companies, unless the Secretary finds in his discretion that such cost-sharing requirement would result in a failure to proceed with needed on-farm measures.

Reports.

"(3) The measures to be implemented in any particular salt source area shall be described in reports issued by the Secretary of Agriculture. Copies of the reports are to be submitted to—

"(A) the committees on Agriculture and Appropriations of the House of Representatives and the committees on Agriculture, Nutrition and Forestry and Appropriations of the Senate;

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"(B) members of the advisory council established by section 204(a) of this title; and

"(C) the Governor of any State where measures are to be implemented.

Prohibition.

No funds for implementation of proposed measures undertaken pursuant to this subsection may be expended until the expiration of sixty days after submission of the report of the Secretary of Agriculture.

"(4) The Secretary of Agriculture may use existing agencies as well as the services and facilities of the Commodity Credit Corporation to carry out the provisions of this subsection. The Secretary of Agriculture, in addition, may authorize participating agencies to utilize grants or cooperative agreements with conservation districts, local governmental agencies, colleges and universities, or others as appropriate to carry out the activities identified in this subsection. There is hereby authorized to be appropriated annually, to be available until expended, such funds as may be necessary to carry out the provisions of this subsection: *Provided*, That no disbursement shall be made by the Commodity Credit Corporation unless it

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has received funds to cover the amount thereof from appropriations available for the purpose of carrying out this Act.

"(5) The Secretary of Agriculture shall submit a report to Congress by January 1, 1988, and at each five-year interval thereafter, concerning the operation of the program authorized by this subsection. Such report shall contain an evaluation of the operation of such program and may include recommendations for such additional legislation as may be necessary to solve identified salinity problems in areas designated by the Secretary of Agriculture and may include recommendations to utilize new technology and research related to such problems."

Report.

SEC. 3. Section 203(b) of the Act (43 U.S.C. 1593(b)) is amended by—

(1) striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(2) inserting at the end thereof the following new paragraphs:

"(3) to develop a comprehensive program for minimizing salt contributions to the Colorado River from lands administered by the Bureau of Land Management and submit a report which describes the program and recommended implementation actions to the Congress and to the members of the advisory council established by section 204(a) of this title by July 1, 1987;

43 USC 1594.

"(4) to undertake feasibility investigations of saline water use and disposal opportunities, including measures and all necessary appurtenant and associated works, to demonstrate saline water use technology and to beneficially use and dispose of saline and brackish waters of the Colorado River Basin in joint ventures with current and future industrial water users, using, but not limited to, the concepts generally described in the Bureau of Reclamation Special Report of September 1981, entitled "Saline water use and disposal opportunities"; and

"(5) to undertake advance planning activities on the Sinbad Valley Unit, Colorado, as described in the Bureau of Land Management Salinity Status Report, covering the period 1978-1979 and dated February 1980."

SEC. 4. (a) Section 205(a) of the Act (43 U.S.C. 1595(a)) is amended by inserting "(a)" after "section 202" and by inserting after "total costs" the following: "(excluding costs borne by non-Federal participants pursuant to section 202(c)(2)(C)) of the on-farm measures authorized by section 202(c), of all measures to replace incidental fish and wildlife values foregone, and".

(b) Section 205(a)(1) of such Act is amended by inserting before "shall be nonreimbursable." the words "authorized by section 202(a) (1), (2), and (3), including 75 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, 70 per centum of the total costs of construction, operation, maintenance, and replacement of each unit, or separable feature thereof authorized by section 202(a) (4) and (5), including 70 per centum of the total costs of construction, operation, and maintenance of the associated measures to replace incidental fish and wildlife values foregone, and 70 per centum of the total costs of implementation of the on-farm measures authorized by section 202(c), including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone,". Section 205(a)(1) of such Act is further amended by adding at the end thereof "The total costs remain-

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ing after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5), of section 205(a)".

43 USC 1595.

(c) Section 205(a)(2) of such Act is amended by striking "Twenty-five per centum" and inserting in lieu thereof "The reimbursable portion".

(d) Section 205(a)(3) of such Act is amended to read as follows:

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"(3) Costs of construction and replacement of each unit or separable feature thereof authorized by sections 202(a) (1), (2), and (3) and costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the units authorized by sections 202(a) (1), (2), and (3), allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid within a fifty-year period or within a period equal to the estimated life of the unit, separable feature thereof, or replacement, whichever is less, without interest from the date such unit, separable feature, or replacement is determined by the Secretary to be in operation."

(e) Section 205(a) of such Act is amended by inserting at the end thereof the following new paragraphs:

"(4)(i) Costs of construction and replacement of each unit or separable feature thereof authorized by sections 202(a) (4) and (5), costs of construction of measures to replace incidental fish and wildlife values foregone, when such measures are a part of the on-farm measures authorized by section 202(c) or of the units authorized by sections 202(a) (4) and (5), and costs of implementation of the on-farm measures authorized by section 202(c) allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid as provided in subparagraphs (ii) and (iii), respectively, of this paragraph.

"(ii) Costs allocated to the upper basin shall be repaid with interest within a fifty-year period, or within a period equal to the estimated life of the unit, separable feature thereof, replacement, or on-farm measure, whichever is less, from the date such unit, separable feature thereof, replacement, or on-farm measure is determined by the Secretary or the Secretary of Agriculture to be in operation.

"(iii) Costs allocated to the lower basin shall be repaid without interest as such costs are incurred to the extent that money is available from the Lower Colorado River Basin development fund to repay costs allocated to the lower basin. If in any fiscal year the money available from the Lower Colorado River Basin development fund for such repayment is insufficient to repay the costs allocated to the lower basin, as provided in the preceding sentence, the deficiency shall be repaid with interest as soon as money becomes available in the fund for repayment of those costs.

"(iv) The interest rates used pursuant to this Act shall be determined by the Secretary of the Treasury, taking into consideration average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period during the month preceding the date of enactment of the Act entitled "An Act to amend the Colorado River Basin Salinity Control Act to authorize certain additional measures to assure accomplishment of the objectives of title II of such Act, and for other purposes" for costs outstanding at that date, or, in the case of costs incurred subsequent to enactment of such Act, during the month preceding the fiscal year in which the costs are incurred.

"(5) Costs of operation and maintenance of each unit or separable feature thereof authorized by section 202(a) and of measures to

replace incidental fish and wildlife values foregone allocated to the upper basin and to the lower basin under section 205(a)(2) of this title shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such costs are incurred. In the event that revenues are not available to repay the portion of operation and maintenance costs allocated to the Upper Colorado River Basin fund and to the Lower Colorado River Basin development fund in the year next succeeding the fiscal year in which such costs are incurred, the deficiency shall be repaid with interest calculated in the same manner as provided in section 205(a)(4)(iv). Any reimbursement due non-Federal entities pursuant to section 202(b)(2) shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such operation and maintenance costs are incurred."

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(f)(1) Section 205(b)(1) of such Act is amended by inserting "authorized by section 202(a), costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c)," before "allocated for repayment".

43 USC 1595.

(2) Section 403(g)(2) of the Lower Colorado River Basin Project Act (43 U.S.C. 1543(g)) is amended by inserting "the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures" before "payable from".

(g) Section 205(c) of the Act is amended by inserting "authorized by section 202(a), costs of construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and costs of implementation of the on-farm measures authorized by section 202(c)" before "allocated for".

(h) Section 5(d)(5) of the Colorado River Storage Project Act (43 U.S.C. 620d(d)(5)) is amended by inserting ", the costs of measures to replace incidental fish and wildlife values foregone, and the costs of the on-farm measures" before "payable".

(i) Section 205(e) of the Act is amended by—

(1) striking out "of construction, operation, maintenance, and replacement of units";

(2) inserting "to the Upper Colorado River Basin Fund" after "allocated";

(3) inserting ", section 205(a)(4) and section 205(a)(5)" after "section 205(a)(3)"; and

(4) inserting ", for the construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and for the implementation of on-farm measures" after "salinity control units".

SEC. 5. (a) Section 208(a) of the Act (43 U.S.C. 1598) is amended by striking out "and not then if disapproved by said committees,".

(b)(1) The second sentence of section 208(b) of the Act is amended by inserting "(a) or (b)" after "section 202".

(2) Section 208(b) of the Act is amended by inserting after the second sentence thereof the following new sentence: "The funds authorized to be appropriated by this section may be used for construction of any or all of the works or portions thereof and for other purposes authorized in subsection (a), including measures as provided for in subsection (b) of section 202 of this title."

SEC. 6. The amendments made by this Act shall take effect upon enactment of this Act.

Effective date.
43 USC 1591
note.

2 USC 651.

SEC. 7. For purposes of complying with section 401 of the Congressional Budget Act of 1974, the authorization provided under this Act is subject to the availability of appropriations.

Approved October 30, 1984.

LEGISLATIVE HISTORY—H.R. 2790:

HOUSE REPORT No. 98-1018 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 130 (1984):

- Oct. 2, considered and passed House.
- Oct. 5, considered and passed Senate, amended.
- Oct. 9, House concurred in Senate amendments.