Public Law 99-450
99th Congress

An Act

To establish a federally declared Floodway for the Colorado River below Davis Dam.

Oct. 8, 1986
[H.R. 1246]

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

Colorado River Floodway Protection Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Colorado River Floodway Protection Act".

43 USC 1600 note.

FINDINGS AND PURPOSES

SEC. 2. (a) FINDINGS.—The Congress finds that—

43 USC 1600.

(1) there are multiple purposes established by law for the dams and other control structures administered by the Secretary of the Interior on the Colorado River;

(2) the maintenance of the Colorado River Floodway established in this Act is essential to accomplish these multiple purposes;

(3) developments within the Floodway are and will continue to be vulnerable to damaging flows such as the property damage which occurred in 1983 and may occur in the future;

(4) certain Federal programs which subsidize or permit development within the Floodway threaten human life, health, property, and natural resources; and

(5) there is a need for coordinated Federal, State, and local action to limit Floodway development.

(b) PURPOSE.—The Congress declares that the purposes of this Act are to—

(1) establish the Colorado River Floodway, as designated and described further in this Act, so as to provide benefits to river users and to minimize the loss of human life, protect health and safety, and minimize damage to property and natural resources by restricting future Federal expenditures and financial assistance, except public health funds, which have the effect of encouraging development within the Colorado River Floodway; and

(2) establish a task force to advise the Secretary of the Interior and the Congress on establishment of the Floodway and on managing existing and future development within the Floodway, including the appropriateness of compensation in specified cases of extraordinary hardship.

DEFINITIONS

SEC. 3. (a) The term "Committees" refers to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the United States Senate.

43 USC 1600a.

AUTHENTICATED
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INFORMATION
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(b) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than—

(1) general revenue-sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221);

(2) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(3) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(4) assistance for environmental studies, plans, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(5) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age, survivors, or disability insurance program.

Such term also includes flood insurance described in sections 1322 (a) and (b) of the National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572) as amended, on and after the dates on which the provisions of those sections become effective.

Post, p. 1135.

(c) The term "Secretary" means the Secretary of the Interior.

(d) The term "water district" means any public agency providing water service, including water districts, county water districts, public utility districts, and irrigation districts.

(e) The term "Floodway" means the Colorado River Floodway established in section 5 of this Act.

COLORADO RIVER FLOODWAY TASK FORCE

43 USC 1600b.

SEC. 4. (a) To advise the Secretary and the Congress there shall be a Colorado River Floodway Task Force, which shall include one representative of—

(1) each State (appointed by the Governor) and Indian reservation in which the Floodway is located;

(2) each county in which the Floodway is located;

(3) a law enforcement agency from each county in which the Floodway is located;

(4) each water district in which the Floodway is located;

(5) the cities of Needles, Parker, Blythe, Bullhead City, Yuma, Laughlin, Lake Havasu City, Nevada (if and when incorporated), and Mojave County, Arizona Supervisor District No. 2 (chosen by, but not a member of the Board of Supervisors);

(6) the Chamber of Commerce from each county in which the Floodway is located;

(7) the Colorado River Wildlife Council;

(8) the Army Corps of Engineers;

(9) the Federal Emergency Management Agency (FEMA);

(10) the Department of Agriculture;

(11) the Department of the Interior; and

(12) the Department of State.

(b) The task force shall be chartered and operate under the provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I) and shall prepare recommendations concerning the Colorado River Floodway, which recommendations shall deal with:

(1) the means to restore and maintain the Floodway specified in section 5 of this Act, including, but not limited to, specific instances where land transfers or relocations, or other changes in land management, might best effect the purposes of this Act;

(2) the necessity for additional Floodway management legislation at local, tribal, State, and Federal levels; State and local governments. Indians.

(3) the development of specific design criteria for the creation of the Floodway boundaries;

(4) the review of mapping procedures for Floodway boundaries;

(5) whether compensation should be recommended in specific cases of economic hardship resulting from impacts of the 1983 flood on property outside the Floodway which could not reasonably have been foreseen; and

(6) the potential application of the Floodway on Indian lands and recommended legislation or regulations that might be needed to achieve the purposes of the Floodway taking into consideration the special Federal status of Indian lands. Indians.

(c) The task force shall exist for at least one year after the date of enactment of this Act, or until such time as the Secretary has filed with the Committees the maps described in subsection 5(b)(2). The task force shall file its report with the Secretary and the Committees within nine months after the date of enactment of this Act. Reports.

COLORADO RIVER FLOODWAY

SEC. 5. (a) There is established the Colorado River Floodway as identified and generally depicted on maps that are to be submitted by the Secretary. 43 USC 1600c.

(b)(1) Within eighteen months after the date of enactment of this Act, the Secretary, in consultation with the seven Colorado River Basin States, represented by persons designated by the Governors of those States, the Colorado River Floodway Task Force, and any other interested parties shall:

(i) complete a study of the tributary floodflows downstream of Davis Dam; Davis Dam.

(ii) define the specific boundaries of the Colorado River Floodway so that the Floodway can accommodate either a one-in-one hundred year river flow consisting of controlled releases and tributary inflow, or a flow of forty thousand cubic feet per second (cfs), whichever is greater, from below Davis Dam to the Southerly International Boundary between the United States of America and the Republic of Mexico.

(2) As soon as practicable after the determination of the Floodway boundary pursuant to this subsection, the Secretary shall prepare and file with the Committees maps depicting the Colorado River Floodway, and each such map shall be considered a standard map to be adhered to by all agencies and shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map may be made. Each such map shall be on file and available for public inspection in the Office of the Commissioner of the Bureau of Reclamation, Department of the Interior, and in other appropriate offices of the Department.

(3) The Secretary shall provide copies of the Colorado River Floodway maps to (A) the chief executive officer of each State, county, municipality, water district, Indian tribe, or equivalent jurisdiction in which the Floodway is located, (B) each appropriate State and local governments. Indians. Banks and banking.

Federal agency, including agencies which regulate Federal financial institutions, and (C) each federally insured financial institution which serves the geographic area as one of its primary markets.

(c)(1) The Secretary shall conduct, at least once every five years, a review of the Colorado River Floodway and make, after notice to and in consultation with the appropriate officers referred to in paragraph (3) of subsection (b), and others, such minor and technical modifications to the boundaries of the Floodway as are necessary solely to reflect changes that have occurred in the size or location of any portion of the floodplain as a result of natural forces, and as necessary pursuant to subsection (c) of section (7) of this Act.

State and local governments. Indians.

(2) If, in the case of any minor and technical modification to the boundaries of the Floodway made under the authority of this subsection, an appropriate chief executive officer of a State, county, municipality, water district, Indian tribe, or equivalent jurisdiction, to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, the Secretary shall submit to the chief executive officer a written justification for his failure to make modifications consistent with such comments or proposals.

LIMITATIONS ON FEDERAL EXPENDITURES AFFECTING THE FLOODWAY

43 USC 1600d.

SEC. 6. (a) Except as provided in section 7, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Floodway established under section 5 of this Act.

(b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if—

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date of enactment.

EXCEPTIONS

Grants. Loans. 43 USC 1600e.

SEC. 7. Notwithstanding section 6, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Colorado River Floodway for—

(a) any dam, channel or levee construction, operation or maintenance for the purpose of flood control, water conservation, power or water quality;

(b) other remedial or corrective actions, including but not limited to drainage facilities essential to assist in controlling adjacent high ground water conditions caused by flood flows;

(c) the maintenance, replacement, reconstruction, repair, and expansion, of publicly or tribally owned or operated roads, structures (including bridges), or facilities: *Provided,* That, no such expansion shall be permitted unless—

(1) the expansion is designed and built in accordance with the procedures and standards established in section 650.101 of title 23, Code of Federal Regulations, and the following as they may be amended from time to time; and

(2) the boundaries of the Floodway are adjusted to ac-

count for changes in flows caused, directly or indirectly, by the expansion;

(d) military activities essential to national security;

(e) any of the following actions or projects, but only if the Secretary finds that the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(1) projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects;

(2) the establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto;

(3) projects eligible for funding under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11);

(4) scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and are limited to actions that are necessary to alleviate the emergency. Disaster assistance under other provisions of the Disaster Relief Act of 1974 (Public Law 93-288, as amended) may also be provided with respect to persons residing within the Floodway, or structures or public infrastructure in existence or substantially under construction therein, on the date ninety days after the date of enactment of this Act: *Provided,* That, such persons, or with respect to public infrastructure the State or local political entity which owns or controls such infrastructure, had purchased flood insurance for structures or infrastructure under the National Flood Insurance Program, if eligible, and had taken prudent and reasonable steps, as determined by the Director of the Federal Emergency Management Agency, to minimize damage from future floods or operations of the Floodway established in the Act;

42 USC 5121 note.

(6) other assistance for public health purposes, such as mosquito abatement programs;

(7) nonstructural projects for riverbank stabilization that are designed to enhance or restore natural stabilization systems;

(8) publicly or tribally financed, owned and operated compatible recreational developments such as regional parks, golf courses, docks, boat launching ramps (including steamboat and ferry landings), including compatible recreation uses and accompanying utility or interpretive improvements which are essential or closely related to the purpose of restoring the accuracy of a National Historical Landmark and which meet best engineering practices considering the nature of Floodway conditions; and

(9) compatible agricultural uses that do not involve permanent crops and include only a minimal amount of permanent facilities in the Floodway.

CERTIFICATION OF COMPLIANCE

43 USC 1600f.

SEC. 8. The Secretary of the Interior shall, on behalf of each Federal agency concerned, make written certification that each agency has complied with the provisions of this Act during each fiscal year beginning after September 30, 1985. Such certification shall be submitted on an annual basis to the United States House of Representatives and the United States Senate on or before January 15 of each fiscal year.

PRIORITY OF LAWS

State and local governments.
Indians.
43 USC 1600g.

SEC. 9. Nothing contained in this Act shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 944, 59 Stat. 1219), the Flood Control Act of 1944 (58 Stat. 887), the decree entered by the Supreme Court of the United States in Arizona v. California, and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501). Furthermore, nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, tribe, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State, tribal, or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State or tribe, so that the two cannot be reconciled or consistently stand together. Inconsistencies shall be reviewed by the task force, and the task force shall make recommendations concerning such local laws. This Act shall in no way be interpreted to interfere with a State's or tribe's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

SEPARABILITY

43 USC 1600h.

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

REPORTS TO CONGRESS

Indians.
43 USC 1600i.

SEC. 11. Within one year after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committees a report regarding the Colorado River Floodway, the task force's report, and the Secretary's recommendations with respect to the objectives outlined in section 4(b) of this Act. In making his report, the Secretary shall analyze the effects of this Act on the economic development of the Indian tribes whose lands are located within the Floodway.

AMENDMENTS REGARDING FLOOD INSURANCE

SEC. 12. (a) The National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572), as amended, is amended by adding the following section:

42 USC 4029. 42 USC 4001 note.

"SEC. 1322. (a) Owners of existing National Flood Insurance Act policies with respect to structures located within the Floodway established under section 5 of the Colorado River Floodway Protection Act shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act and to renew and transfer such policies.

"(b) No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the Colorado River Floodway Protection Act for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act. New construction includes all structures that are not insurable prior to that date.

"(c) The Secretary of the Interior may by rule after notice and comment pursuant to 5 U.S.C. 553 establish temporary Floodway boundaries to be in effect until the maps required by section 5(b)(2) of the Colorado River Floodway Protection Act are filed, for the purpose of enforcing subsections (b) and (d) of this section.

"(d) A federally supervised, approved, regulated or insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section: *Provided,* That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway.".

Banks and banking. Loans.

FEDERAL LEASES

SEC. 13. (a) No lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be granted after the date of enactment of this Act unless the Secretary determines that such lease would be consistent with the operation and maintenance of the Colorado River Floodway.

Public lands. 43 USC 1600j.

(b) No existing lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be extended beyond the date of enactment of this Act or the stated expiration date of its current term, whichever is later, unless the lessee agrees to take reasonable and prudent steps determined to be necessary by the Secretary to minimize the inconsistency of operation under such lease with the operation and maintenance of the Colorado River Floodway.

(c) No lease of lands owned in whole or part by the United States between Hoover Dam and Davis Dam below elevation 655.0 feet on Lake Mohave shall be granted unless the Secretary determines that such lease would be consistent with the operation of Lake Mohave.

(d) The provisions of subsections (a) and (b) of this section shall not apply to lease operations on Indian lands pursuant to a lease providing for activities which are exempted under section 7 of this Act.

Indians.

Public lands.
Indians.
Insurance.
Securities.

(e) Subsections (a) and (b) of this section shall not apply to lands held in trust by the United States for the benefit of any Indian tribe or individual with respect to any lease where capital improvements, and operation and maintenance costs are not provided for by Federal financial assistance if the lessee, tribe, or individual has provided insurance or other security for the benefit of the Secretary sufficient to insure against all reasonably forseeable, direct, and consequential damages to the property of the tribe, private persons, and the United States, which may result from the proposed lease.

NOTICES AND EXISTING LAWS

43 USC 1600k.
Public lands.

SEC. 14. (a)(1) Nothing in this Act shall alter or affect in any way the provisions of section 702c of title 33, United States Code.

(2) The Secretary shall provide notice of the provisions of section 702c of title 33, United States Code, and this Act to all existing and prospective lessees of lands leased by the United States and within the Colorado River Floodway.

42 USC 4001 note.

(b) Except as otherwise specifically provided in this Act, all provisions of the National Flood Insurance Act of 1968, as amended, and requirements of the National Flood Insurance Program ("NFIP") shall continue in full force and effect within areas wholly or partially within the Colorado River Floodway. Any maps or other information required to be prepared by this Act shall be used to the maximum extent practicable to support implementation of the NFIP.

(c) The Secretary shall publish notice on three successive occasions in newspapers of general circulation in communities affected by the provisions of section 1322 of Public Law 90-448 (82 Stat. 572), as amended by this Act.

Ante, p. 1135.

AUTHORIZATION OF APPROPRIATIONS

Contracts.
Indians.
43 USC 1600*l*.

SEC. 15. There is authorized to be appropriated to the Department of the Interior $600,000, through the end of fiscal year 1990, in addition to any other funds now available to the Department to discharge its duties to implement sections 4 through 14 of this Act: *Provided*, That by mutual agreement, such funds shall be made

available to the Federal Emergency Management Agency to discharge its duties under section 12 of this Act: *Provided further,* That the provisions of sections 6 and 7 of this Act shall not be affected by this section: *And provided further,* in addition, Indian tribes may be eligible under Public Law 93-638 to contract for studies of Indian lands required under the provisions of this Act.

25 USC 450 note.

Approved October 8, 1986.

LEGISLATIVE HISTORY—H.R. 1246 (S. 1696):

HOUSE REPORTS: No. 99-261 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 99-410 accompanying S. 1696 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD:
Vol. 131 (1985): Sept. 24, considered and passed House.
Vol. 132 (1986): Sept. 15, considered and passed Senate, amended, in lieu of S. 1696.
Sept. 23, House concurred in Senate amendment.