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Financial Aspects of the Grand Canyon Protection Act - Title XVIII of the Reclamation Projects Authorization and Adjustment Act of 1992

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Title 18 of the Reclamation Projects Authorization and Adjustment Act of 1992 (RCPAA), Pub. L. No. 102-575 (1992), contains the Grand Canyon Protection Act of 1992 (GCPA). The Grand Canyon Protection Act changes some of the current law regarding what costs related to Grand Canyon Dam are to be repaid by Salt Lake City Area-Integrated Projects power customers. It is very explicit about some types of expenses which have been treated as repayable by power but which are now nonreimbursable. It also raises many questions which must be answered through the joint cooperation of Western and the Department of Interior.

Project Purposes and Nonreimbursability/Reimbursability Before the GCPA

Glen Canyon Dam is one feature of the Colorado River Storage Project (CRSP). The Colorado River Storage Project Act authorized Glen Canyon Dam and many other CRSP features. The CRSP Act was passed for the purposes of the regulation of flow of the Colorado River, for municipal and irrigation water use, flood control, and power generation, salinity control, recreation, fish and wildlife mitigation, improvement, and conservation, and to conserve scenery, and archaeologic objects. Under the CRSP Act, costs allocated to power, municipal and irrigation water use, and salinity control, and some environmental costs have been deemed reimbursable. Costs allocated to flood control, water quality studies, irrigation of Indian-owned lands, and to § 8 purposes; i.e., related to facilities for fish and wildlife mitigation, improvement, and conservation, recreation, and the conservation of scenery and archaeologic objects, have been deemed nonreimbursable. The GCPA was enacted to rearrange some of those purposes and cost allocations but only with regard to Glen Canyon Dam.

Section 1802 Purposes and the Reallocation of Glen Canyon Dam Costs

The GCPA is intended to change the relative importance of some of the purposes/benefits of Glen Canyon Dam and, consistent with those changes, the allocation of the costs of those benefits. Senator McCain, one of the authors of the GCPA, stated at 138 Cong. Rec. S17832, "I would reiterate and emphasize that, while the Grand Canyon Protection Act does not change the fundamental purposes of Glen Canyon Dam, the act directs the Secretary to operate the dam to protect downstream resources." The GCPA does this by rephrasing the § 8 purposes of the CRSP and expressing them as project purposes of Glen Canyon Dam - "to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use". See GCPA, § 1802(a).

The Secretary of Interior, in consultation with the Secretary of Energy, is to reallocate the costs of Glen Canyon Dam among the § 1802 purposes and the other project purposes - flood control, irrigation, power, facilities for fish and wildlife, conservation and recreation purposes, water quality studies, salinity control, and municipal water supply. The reason for the reallocation of costs is given in Reclamation Projects Authorization and Adjustment Act of 1992, Report of the Committee on Energy and Natural Resources, United States Senate to Accompany H.R. 429, S.

Rpt. No. 102-267 (March 31, 1992). The report explains:

As a result of the revised operational goals contained in § [1802], the new long-term operating criteria for Glen Canyon Dam are expected to result in significant shifts in benefits among classes of project beneficiaries. For example, any operational changes that reduce the generation of peaking power in favor of baseload operations would greatly reduce the value of the power generation function. As the benefits of the project shift, the costs allocable to the project beneficiaries should shift, as well....The Committee also intends that the reimbursable costs for each purpose will be paid by the beneficiaries of that purpose. Costs allocated to section [1802] purposes will be nonreimbursable.

Nonreimbursable Costs

As noted above, the costs allocated to the § 1802 purposes are nonreimbursable. See GCPA, §1804(e). In addition, all costs of preparing an environmental impact statement (EIS) on Glen Canyon Dam, including supporting studies, and of a long-term monitoring program and activities to assure that Glen Canyon Dam will be operated in a manner consistent with §1802, after the EIS is completed, are nonreimbursable. See §§1805 and 1807.

Some Nonreimbursable (?) Costs May Become Reimbursable

Those costs allocated to the § 1802 purposes and the EIS and long-term monitoring costs will be nonreimbursable if they were incurred before 1993 or after 1997. These nonreimbursable expenses, however, shall remain wholly or partially nonreimbursable in fiscal years (FYs) 1993 through 1997 only if, and to the extent that, the effect of all the provisions of the RCPAA causes an increase in net offsetting receipts. The calculation of net offsetting receipts is made for each of those years based on the net change in revenues and expenses for that same year only, caused by all the provisions of the RCPAA. The § 1802 costs and the EIS and long-term monitoring costs must be compared to the net offsetting receipts in the same year. See §§ 1804 (e) and 1807; and the statement of Sen. Domenici, an author of this provision of the GCPA : "The Secretary must simply determine whether net offsetting receipts generated by the act in those years exceed the cost of the EIS and related activities in the same years.", 138 Cong. Rec. S17658-01, S17661 (1992). Therefore, there can be no carryover of expenses from one fiscal year (FY) to another for the purpose of redetermining whether costs are reimbursable or nonreimbursable, because the Act specifically provides for the determination of whether there is a reduction in net offsetting receipts to be made each year from FY 1993 through FY 1997 and for the determination of reimbursability or lack of it to be made at that time.

Who Should Repay The Reimbursable Portion Of The Nonreimbursable Costs

It is not clear who is to repay the nonreimbursable § 1802 costs and costs of the EIS and the long-term monitoring, to the extent that they are reimbursable in FYs 1993 through 1997. As the Senate Report above states, the beneficiaries of project purposes are to repay the reimbursable costs of those purposes. Therefore, the § 1802 costs must, to the extent they are reimbursable in FYs 1993 through 1997, be repaid by the beneficiaries of the §1802 purposes. The same is true for the costs of the EIS and the long-term monitoring program. The only costs traditionally repaid by power revenues are those properly allocated to power and those allocated to irrigation but deemed to be beyond the ability of the irrigators to repay. The § 1802 costs are not costs incurred for the benefit of power or irrigation and should not be repaid by those project beneficiaries.

Likewise the EIS and long-term monitoring costs, to the extent they are reimbursable, should be studied to determine the beneficiaries of those costs, for the purpose of allocating those costs to

be repaid. Since the act specifically requires a reallocation of Glen Canyon Dam costs, it appears that assigning all those costs to the power purpose, as was the case in the past, is no longer reasonable. Since the purpose of the long-term monitoring programs and activities is to ensure the operation of Glen Canyon Dam consistent with §1802, it seems reasonable to assume they would be costs allocated to § 1802 purposes. It likewise seems reasonable to assume that all or a large part of the EIS costs, including the supporting studies costs, should be allocated to the § 1802 purposes, and to the extent reimbursable, should be reimbursed by the § 1802 beneficiaries.

Under §1804(b), the Comptroller General is to audit the costs and benefits to water, and power, and natural, cultural, and recreational resources resulting from policies and dam operations identified pursuant to the EIS. One would expect this to have some influence on the final allocation of costs of the dam among the various project purposes, including the § 1802 purposes.

Related Reimbursability/ Nonreimbursability Issues

The question also arises about whether or not the Glen Canyon Environmental Studies costs are reimbursable under the GCPA. The legislative history of the GCPA suggests that costs of the Glen Canyon Environmental Studies (GCES) are to be reimbursable. S. Rpt. 102-267, 102nd Congress, 2d Sess.(March 26, 1992), at 139. Section 1807 of the GCPA, however, states that costs of both the EIS and supporting studies of the EIS are to be nonreimbursable, except to the extent they are reimbursable in FYs 1993 through 1997. Western and Reclamation agree that the GCES costs, both Phase I and Phase II costs, are costs of supporting studies of the EIS. The GCES costs, therefore, are nonreimbursable (or reimbursable in FYs 1993 - 1997) to the same extent as the EIS costs.

The same is true of the costs of replacement energy necessitated by research flows for supporting studies of the EIS, including the increase in purchased power costs caused by the interim flows which have been in effect since August, 1991, during which additional studies have been and are being conducted, and the increase in purchased power costs necessitated by special releases and test flows made for research and EIS study and monitoring purposes. In addition, once the long-term monitoring program goes into effect, the purchased power costs incurred by Western for firming purposes will ordinarily be considered a cost to be repaid by power purchasers. If the program from time to time requires test flows which then increase Western's purchase power expenses, those increased expenses may be considered costs of the long-term monitoring program, and then shall be nonreimbursable (or reimbursable in FYs 1993 - 1997) to the same extent as the other long-term monitoring costs.

Initial Funding of Some Nonreimbursable Costs

The nonreimbursable costs of the Glen Canyon EIS, including costs of supporting studies, and the long-term monitoring program costs could be initially funded using appropriations, but may also be initially paid out of power revenues and shown as a repayment of power costs. See § 1807. A question arises about how the § 1802 costs may be initially paid. To the extent that the § 1802 costs are costs of the EIS, supporting studies of the EIS, or costs of the long-term monitoring program and studies, § 1807 of the GCPA permits the use of power revenues to initially fund the expenses.

Appropriations could also be used to fund the costs of the § 1802 (and § 1807 and any other CRSP) purposes, but there is a question about whether power or other project revenues could be used to initially fund § 1802 costs other than the EIS and long-term monitoring costs. The GCPA did not specifically state that power revenues could be used to initially fund all § 1802 purposes. The CRSP Act does not clearly authorize it either. Section 5 of the CRSP Act, 43 U.S.C. § 620d,

states that revenues in the Basin Fund can be used to carry out all "the provisions of the CRSP Act", except for construction and for activities authorized and carried out under §8 of the CRSP Act. The GCPA is not written as an amendment to the CRSP Act, so it is not clear that the § 1802 purposes constitute "provisions of the CRSP Act" for which revenues in the Basin Fund may be used. On the other hand, the § 1802 purposes are not new project purposes, but a rephrasing and shifting of emphasis of previous project purposes. The revenues in the Basin Fund may be used as provided in 43 U.S.C. § 620d - for the initial payment of costs of activities authorized under the CRSP Act, except for construction costs and § 8 costs. I conclude, therefore, that costs of § 1802 purposes which are for purposes authorized in the CRSP Act, but not for construction or for § 8 activities, may be initially funded using revenues in the Basin Fund, provided that they are then shown as a credit to the repayment of power costs. This does not mean that power rates must be set high enough to assure sufficient revenues in the Basin Fund to cover these costs. The power rates must be set in accordance with § 5 of the Flood Control Act of 1944, DOE Order RA 6120.2, and the obligations of power to repay project costs set out in the CRSP Act.

Other Types of Costs

The GCPA addresses only costs of Glen Canyon Dam. It does not address the costs of the Endangered Fish Recovery Implementation Program or costs of other features of the CRSP, such as the Aspinall Unit.

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