

# Committee on Natural Resources

Rob Bishop, Chairman  
Markup Memorandum

January 29, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff  
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: Markup on H.R. 2273 (Rep. Cynthia Lummis, R-WY), To amend the Colorado River Storage Project Act to Authorize the Use of the Active Capacity of the Fontenelle Reservoir.  
February 2-3, 2016 1324 Longworth HOB

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## **H.R. 2273 (Rep. Cynthia Lummis, R-WY), To amend the Colorado River Storage Project Act to Authorize the Use of the Active Capacity of the Fontenelle Reservoir.**

### **Bill Summary:**

H.R. 2273 amends the Colorado River Storage Project Act of 1956 (P.L. 84-485) by authorizing the Secretary of the Interior to enter into a cooperative agreement with the State of Wyoming to provide for the study, design, planning, and construction of modifications that would enable the full use of the Fontenelle Dam and Reservoir's active storage capacity.

### **Cosponsors:**

None

### **Background:**

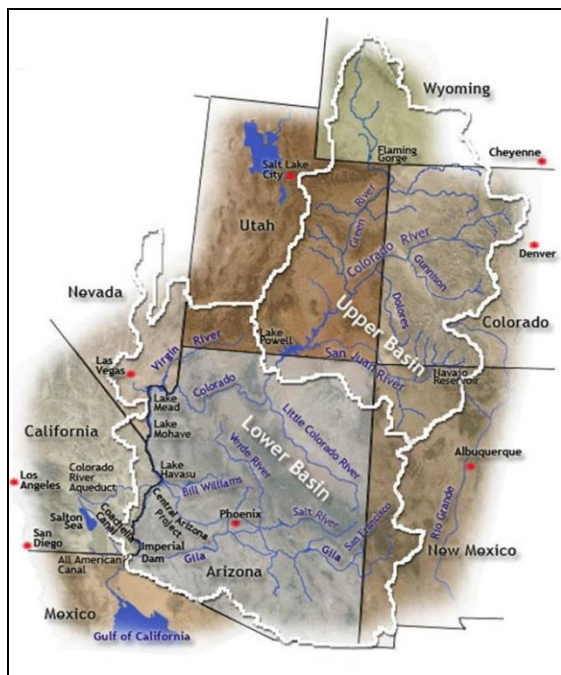
The Colorado River (River) is a major source of water supply for seven western states. The River is governed under the so-called "Law of the River", which is comprised of numerous federal laws, state compacts and agreements.<sup>1</sup> The Colorado River Compact (Compact) of 1922 is the cornerstone of the Law of the River. The seven Colorado River Basin states and the federal government negotiated the Compact, which defined the relationship between the upper basin states, where most of the River's water supply originates, and the lower basin states, which held most of the water demands.

Since the seven states could not agree on how the waters of the Colorado River Basin should be allocated among them, then Secretary of Commerce Herbert Hoover suggested the basin be divided into an upper and lower half (see Map 1 below), with each basin having the right to develop and use 7.5 million acre-feet (maf) of annually of river water. This approach

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<sup>1</sup> Colorado River Compact, 1922. Web, <http://www.usbr.gov/lc/region/g1000/lawofrvr.html>

reserved water for future upper basin development and allowed planning and development in the lower basin to proceed.<sup>2</sup>



Map 1: Upper Colorado and Lower Colorado Basin Divisions. Source: [www.azwater.gov](http://www.azwater.gov)

The Upper Colorado River Basin Compact of 1948 apportioned the upper basin's 7.5 maf among Colorado (51.75 percent), New Mexico (11.25 percent), Utah (23 percent), and Wyoming (14 percent)<sup>3</sup>. Subsequently, the Colorado River Storage Project of 1956 provided a comprehensive upper basin-wide water resource development plan and authorized the construction of Glen Canyon, Flaming Gorge, Navajo and Curecanti dams for river regulation and power production, as well as several projects for irrigation and other uses<sup>4</sup>.

Fontenelle Dam and Reservoir (Dam or Reservoir), located in southwest Wyoming on the Green River, is a principal feature of the federal Seedskaadee Project.<sup>5</sup> The current active storage capacity of the reservoir is 260,000 acre-feet<sup>6</sup>. Since Wyoming has yet to use its full 14% Colorado River allotment, the State has proposed expanding the active storage capacity of the reservoir to 345,000 acre-feet. This project is part of current Wyoming Governor Matt Mead's "Ten in Ten" plan, which aspires to build ten new water storage facilities in ten years.<sup>7</sup> Increasing active storage capacity at Fontenelle requires the installation of large stones, also known as 'riprap', on parts of the upstream face of the Dam. These stones are intended to keep

<sup>2</sup> Id.

<sup>3</sup> Upper Colorado River Basin Compact, 1948. Web, <http://www.usbr.gov/lc/region/g1000/pdffiles/ucbsnact.pdf>

<sup>4</sup> Colorado River Storage Project, 1956. Web, <http://www.usbr.gov/lc/region/g1000/pdffiles/crspuc.pdf>

<sup>5</sup> [http://www.usbr.gov/projects/Project.jsp?proj\\_Name=Seedskaadee+Project](http://www.usbr.gov/projects/Project.jsp?proj_Name=Seedskaadee+Project)

<sup>6</sup> Presentation of Mr. Harry Labonde, Jr., Director of Wyoming's Water Development Office, for the 2015 Basin Advisory Group Meetings; p. 4

<sup>7</sup> Governor of the State of Wyoming, Matt Mead's "Ten-in-Ten" proposal. Web: [http://trib.com/lifestyles/recreation/mead-s-water-strategy-calls-for-more-reservoirs-river-restoration/article\\_32c1c75d-d8dd-54c5-bfb5-9abd9eca455b.html](http://trib.com/lifestyles/recreation/mead-s-water-strategy-calls-for-more-reservoirs-river-restoration/article_32c1c75d-d8dd-54c5-bfb5-9abd9eca455b.html)

water from eroding parts of the upstream, earthen face of the Dam. Under H.R. 2273, the State of Wyoming would use the authorities under the federal Contributed Funds Act to study and pay for these activities.

### **Major Provisions of H.R. 2273:**

*Section 1* of H.R. 2273 adds a new section to the Colorado River Storage Project Act to allow the Secretary of the Interior, in cooperation with the State of Wyoming, to amend the Definite Plan Report for the Seedskadee Project. In doing so, the Secretary may enter into any contract, grant or cooperative agreement with the State to collaboratively carry out the study, design, planning, and construction activities to allow for the use of the Dam's entire storage capacity. Any costs under this section shall be paid for by the State of Wyoming.

*Section 2* provides a "Savings Provision" that intends to limit the scope of H.R. 2273 from preempting, amending, or affecting a number of enumerated federal statutes and Wyoming water law.

### **Cost:**

The Congressional Budget Office has not completed an official cost estimate of the bill, however, the Bureau of Reclamation testified that it believes it "can be implemented without any request for new (federal) appropriations".<sup>8</sup>

### **Administration Position:**

The Administration testified last June that it did "not oppose" the bill.<sup>9</sup>

### **Anticipated Amendments:**

Rep. Lummis may offer a non-controversial amendment striking any reference to amending the Colorado River Storage Project Act and replacing it with language authorizing the Interior Secretary to amend the Definite Plan Report for the Seedskadee Project.

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<sup>8</sup> Submitted testimony of the Honorable Estevan Lopez, Commissioner of the Bureau of Reclamation, to the Subcommittee on Water, Power and Oceans, 114<sup>th</sup> Cong., Legislative Hearing on H.R. 2237, June 25, 2015, p. 2

<sup>9</sup> *Id.*, p. 2

**Effect on Current Law (Ramseyer)**

**Showing the Colorado River Storage Project Act (Act of April 11, 1956)**

**As amended by HR 2273, as introduced**

[text to be deleted bracketed; new text highlighted in yellow]

**§620o. Definitions**

As used in this chapter-

The terms "Colorado River Basin", "Colorado River Compact", "Colorado River System", "Lee Ferry", "States of the Upper Division", "Upper Basin", and "domestic use" shall have the meaning ascribed to them in article II of the Upper Colorado River Basin Compact;

The term "States of the Upper Colorado River Basin" shall mean the States of Arizona, Colorado, New Mexico, Utah, and Wyoming;

The term "Upper Colorado River Basin" shall have the same meaning as the term "Upper Basin";

The term "Upper Colorado River Basin Compact" shall mean that certain compact executed on October 11, 1948 by commissioners representing the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, and consented to by the Congress of the United States of America by Act of April 6, 1949 (63 Stat. 31);

The term "Rio Grande Compact" shall mean that certain compact executed on March 18, 1938, by commissioners representing the States of Colorado, New Mexico, and Texas and consented to by the Congress of the United States of America by Act of May 31, 1939 (53 Stat. 785);

The term "Treaty with the United Mexican States" shall mean that certain treaty between the United States of America and the United Mexican States, signed at Washington, District of Columbia, February 3, 1944, relating to the utilization of the waters of the Colorado River and other rivers, as amended and supplemented by the protocol dated November 14, 1944, and the understandings recited in the Senate resolution of April 18, 1945, advising and consenting to ratification thereof.

(Apr. 11, 1956, ch. 203, §18 [17], formerly §16, 70 Stat. 111 ; temporarily renumbered §17, Pub. L. 111-11, title X, §10401(b)(1), Mar. 30, 2009, 123 Stat. 1371 .)

**SEC. 17. AUTHORITY TO MAKE ENTIRE ACTIVE CAPACITY OF FONTENELLE RESERVOIR AVAILABLE FOR USE.**

(a) In General- The Secretary of the Interior, in cooperation with the State of Wyoming, may amend the Definite Plan Report for the Seedskaadee Project authorized under the first section to provide for the study, design, planning, and construction activities that will enable the use of all active storage capacity (as may be defined or limited by legal, hydrologic, structural, engineering, economic, and environmental considerations) of Fontenelle Dam and Reservoir, including the placement of sufficient riprap on the upstream face of Fontenelle Dam to allow the active storage capacity of Fontenelle Reservoir to be used for those purposes for which the Seedskaadee Project was authorized.

(b) Cooperative Agreements-

(1) IN GENERAL- The Secretary of the Interior may enter into any contract, grant, cooperative agreement, or other agreement that is necessary to carry out subsection (a).

(2) STATE OF WYOMING-

(A) IN GENERAL- The Secretary of the Interior shall enter into a cooperative agreement with the State of Wyoming to work in cooperation and collaboratively with the State of Wyoming for planning, design, related preconstruction activities, and construction of any modification of the Fontenelle Dam under subsection (a).

(B) REQUIREMENTS- The cooperative agreement under subparagraph (A) shall, at a minimum, specify the responsibilities of the Secretary of the Interior and the State of Wyoming with respect to--

(i) completing the planning and final design of the modification of the Fontenelle Dam under subsection (a);

(ii) any environmental and cultural resource compliance activities required for the modification of the Fontenelle Dam under subsection (a) including compliance with--

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(II) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(III) subdivision 2 of division A of subtitle III of title 54, United States Code; and

(iii) the construction of the modification of the Fontenelle Dam under subsection (a).

(c) Funding by State of Wyoming- Pursuant to the Act of March 4, 1921 (41 Stat. 1404, chapter 161; 43 U.S.C. 395), and as a condition of providing any additional storage under subsection (a), the State of Wyoming shall provide to the Secretary of the Interior funds for any work carried out under subsection (a).

(d) Other Contracting Authority-

(1) IN GENERAL- The Secretary of the Interior may enter into contracts with the State of Wyoming, on such terms and conditions as the Secretary of the Interior and the State of Wyoming may agree, for division of any additional active capacity made available under subsection (a).

(2) TERMS AND CONDITIONS- Unless otherwise agreed to by the Secretary of the Interior and the State of Wyoming, a contract entered into under paragraph (1) shall be subject to the terms and conditions of Bureau of Reclamation Contract No. 14-06-400-2474 and Bureau of Reclamation Contract No. 14-06-400-6193.