WATER RESOURCE AND SMALL RECLAMATION PROJECTS

For Legislative History of Act see Report for P.L. 99-546 in Legislative History Section, post.

An Act to implement the Coordinated Operations Agreement, the Suisun Marsh Preservation Agreement, and to amend the Small Reclamation Projects Act of 1956, as amended, and for other purposes.

Conservation.
California.
Water.

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

TITLE I—COORDINATED OPERATIONS

PROJECT OPERATION POLICY

SEC. 101. Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by—

(a) inserting at the beginning "(a)"; and

(b) inserting the following new subsection:

California.

"(b)(1) Unless the Secretary of the Interior determines that operation of the Central Valley project in conformity with State water quality standards for the San Francisco Bay/Sacramento-San Joaquin Delta and Estuary is not consistent with the congressional directives applicable to the project, the Secretary is authorized and directed to operate the project, in conjunction with the State of California water project, in conformity with such standards. Should the Secretary of the Interior so determine, then the Secretary shall promptly request the Attorney General to bring an action in the court of proper jurisdiction for the purposes of determining the applicability of such standards to the project.

"(2) The Secretary is further directed to operate the Central Valley project, in conjunction with the State water project, so that water supplied at the intake of the Contra Costa Canal is of a quality equal to the water quality standards contained in the Water Right Decision 1485 of the State of California Water Resources Control Board, dated August 16, 1978, except under drought emergency water conditions pursuant to a declaration by the Governor of California. Nothing in the previous sentence shall authorize or require the relocation of the Contra Costa Canal intake.".

REIMBURSABLE COSTS

SEC. 102. Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by inserting the following new subsection:

"(c)(1) The costs associated with providing Central Valley project water supplies for the purpose of salinity control and for complying with State water quality standards identified in exhibit A of the 'Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project' dated May 20, 1985, shall be allocated among the project purposes and shall be reimbursed in accordance with existing Reclamation law and policy. The costs of providing water for salinity

control and for complying with State water quality standards above those standards identified in the previous sentence shall be nonreimbursable.

"(2) The Secretary of the Interior is authorized and directed to undertake a cost allocation study of the Central Valley project, including the provisions of this Act, and to implement such allocations no later than January 1, 1988.".

COORDINATED OPERATIONS AGREEMENT

SEC. 103. Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by inserting the following new subsection:

"(d) The Secretary of the Interior is authorized and directed to execute and implement the 'Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project' dated May 20, 1985: *Provided,* That—

"(1) the contract with the State of California referred to in subarticle 10(h)(1) of the agreement referred to in this subsection for the conveyance and purchase of Central Valley project water shall become final only after an Act of Congress approving the execution of the contract by the Secretary of the Interior; and,

"(2) the termination provisions of the agreement referred to in this subsection may only be exercised if the Secretary of the Interior or the State of California submits a report to Congress and sixty calendar days have elapsed (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date on which said report has been submitted to the Speaker of the House of Representatives and the President of the Senate for reference to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The report must outline the reasons for terminating the agreement and, in the case of the report by the Secretary of the Interior, include the views of the Administrator of the Environmental Protection Agency and the Governor of the State of California on the Secretary's decision.". Reports.

REFUGE WATER SUPPLY INVESTIGATION

SEC. 104. The Secretary of the Interior shall not contract for the delivery of more than 75 percent of the firm annual yield of the Central Valley project not currently committed under long-term contracts until one year after the Secretary has transmitted to the Congress a feasibility report, together with his recommendations, on the "Refuge Water Supply Investigations, Central Valley Basin, California.". Reports. Contracts.

ADJUSTMENT OF RATES AND ABILITY TO PAY

SEC. 105. The Secretary of the Interior shall include in all new or amended contracts for the delivery of water from the Central Valley project a provision providing for the automatic adjustment of rates by the Secretary of the Interior if it is found that the rate in effect Contracts. Securities.

may not be adequate to recover the appropriate share of the existing Federal investment in the project by the year 2030. The contracts shall also include a provision authorizing the Secretary of the Interior to adjust determinations of ability to pay every five years.

OPERATION AND MAINTENANCE DEFICITS

Contracts.

SEC. 106. The Secretary of the Interior shall include in each new or amended contract for the delivery of water from the Central Valley project provisions ensuring that any annual deficit (outstanding or hereafter arising) incurred by a Central Valley project water contractor in the payment of operation and maintenance costs of the Central Valley project is repaid by such contractor under the terms of such new or amended contract, together with interest on any such deficit which arises on or after October 1, 1985, at a rate equal to the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 percent.

TITLE II—SUISUN MARSH PRESERVATION AGREEMENT

AUTHORITY TO ENTER AGREEMENT

SEC. 201. The Secretary of the Interior is authorized to execute and implement the agreement between the Department of the Interior, the State of California and the Suisun Resources Conservation District (dated November 1, 1985).

COST-SHARING PROVISIONS

SEC. 202. The costs of implementing the agreement provided in section 201 of this title shall be shared by the Bureau of Reclamation and the California Department of Water Resources in strict accordance with article 12 of that agreement: *Provided,* That—

(a) payments made by the Secretary of the Interior shall not exceed 40 percent of the construction costs incurred under articles 6, 7, and 8 of the agreement, or $50,000,000, whichever is less, plus or minus such amounts as are justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein;

(b) the Federal share of continuing annual operation and maintenance costs, including monitoring, shall not exceed 40 percent of the actual operation and maintenance costs; and,

(c) the costs incurred by the United States for construction and for annual operation and maintenance in connection with the implementation of said agreement shall constitute an integral part of the cost of the Central Valley project. The Secretary shall allocate such costs to the reimbursable and nonreimbursable purposes served by the project.

COSTS INCURRED

SEC. 203. Costs incurred both before and after the date of execution of the agreement herein authorized are to be included in the

total for determining the Federal share of construction, operation, and maintenance costs.

AUTHORIZATION OF APPROPRIATIONS

SEC. 204. There are authorized to be appropriated for the implementation of the agreement referred to in Section 201 of this title $50,000,000 plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein and, in addition thereto, in accordance with subsection 201(b) of this title, such sums as may be required for operation and maintenance: *Provided,* That no Federal funds may be expended pursuant to this title in advance of appropriations therefor: *Provided further,* That appropriations pursuant to this title shall remain available until expended without any fiscal year limitation.

TITLE III—SMALL RECLAMATION PROJECTS ACT

REFERENCE TO SMALL PROJECTS ACT

SEC. 301. As used in this title, the term "the Act" means the Small Reclamation Projects Act of 1956, as amended (43 U.S.C. 422a et seq.).

REHABILITATION AND BETTERMENT

SEC. 302. Section 1 of the Act is amended by inserting after the word "laws" ", with emphasis on rehabilitation and betterment of existing projects for purposes of significant conservation of water, energy, and the environment and for purpose of water quality control,". Energy. Environmental protection. 43 USC 422a.

FILING FEE

SEC. 303. The second sentence of section 3 of the Act is amended by striking "$1,000" and inserting in lieu thereof "$5,000". 43 USC 422c.

COST SHARING

SEC. 304. (a) Section 4(b) of the Act is amended by inserting "(1)" after (b) and by striking "by loan and grant under this Act" and inserting in lieu thereof "by loan and grant of Federal funds". Loans. Grants. 43 USC 422d.

(b) Section 4(b) of the Act is amended by adding the following new paragraph at the end thereof: Gifts and property.

"(2) The Secretary shall require each organization to contribute toward the cost of the project (other than by loan and/or grant of Federal funds) an amount equal to 25 percent or more of the allowable estimated cost of the project: *Provided,* That the Secretary, at his discretion, may reduce the amount of such contribution to the extent that he determines that the organization is unable to secure financing from other sources under reasonable terms and conditions, and shall include letters from lenders or other written evidence in support of any funding of an applicant's inability to secure such financing in any project proposal transmitted to the Congress: *Provided further,* That under no circumstances shall the Secretary reduce the amount of such contribution to less than 10 percent of the allowable estimated total project costs. In determining the amount of the contribution as required by this paragraph, the

Secretary shall credit toward that amount the cost of investigations, surveys, engineering, and other services necessary to the preparation of proposals and plans for the project as required by the Secretary, and the costs of lands and rights-of-way required for the project, and the $5,000 fee described in section 3 of this Act. In determining the allowable estimated cost of the project, the Secretary shall not include the amount of grants accorded to the organization under section 5(b).".

Ante, p. 3053.

Infra.

SOIL SURVEY

Agriculture and agricultural commodities. 43 USC 422d.

SEC. 305. Section 4(c) of the Act is amended by inserting the following after the first sentence: "Each project proposal transmitted by the Secretary to the Congress shall include a certification by the Secretary that an adequate soil survey and land classification has been made, or that the successful irrigability of those lands and their susceptibility to sustained production of agricultural crops by means of irrigation has been demonstrated in practice. Such proposal shall also include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows.".

COMPATIBILITY WITH CROPS PROJECTS

Fish and fishing. Wildlife. Flood control. 43 USC 422e.

SEC. 306. Section 5(b) of the Act is amended by striking everything after the words "joint use facilities properly allocable to fish and wildlife enhancement or public recreation;" and substituting the following in lieu thereof:

"(5) that portion of the estimated cost of constructing the project which, if it were constructed as a Federal reclamation project, would be properly allocable to functions, other than recreation and fish and wildlife enhancement and flood control, which are nonreimbursable under general provisions of law applicable to such projects; and (6) that portion of the estimated cost of constructing the project which is allocable to flood control and which would be nonreimbursable under general provisions of law applicable to projects constructed by the Secretary of the Army.".

REPAYMENT AND INTEREST

43 USC 422e.

SEC. 307. (a) Section 5(c)(1) of the Act is amended by striking "fifty" and inserting in lieu thereof "forty".

Loans. Contracts.

(b) Section 5(c)(2) of the Act is amended to read as follows: "interest, as determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the contract is executed, on the basis of the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest one-eighth of 1 percent on the unamortized balance of any portion of the loan—

"(A) which is attributable to furnishing irrigation benefits in each particular year to land held in private ownership by a qualified recipient or by a limited recipient, as such terms are defined in section 202 of the Reclamation Reform Act of 1982, in excess of three hundred and twenty irrigable acres; or,

43 USC 390bb. Energy. Fish and fishing. Wildlife.

"(B) which is allocated to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhance-

ment, or public recreation except that portion of such allocation attributable to furnishing benefits to a facility operated by an agency of the United States, which portion shall bear no interest.".

(c) The remainder of section 5(c) of the Act is stricken in its entirety.

FISH AND WILDLIFE FUNDING

SEC. 308. Section 8 of the Act is amended by adding at the end thereof the following sentence: "The Secretary shall transfer to the Fish and Wildlife Service or to the National Marine Fisheries Service, out of appropriations or other funds made available under this Act, such funds as may be necessary to conduct the investigations required to carry out the purposes of this section.". 43 USC 422h.

AUTHORIZATION AND LIMITATION

SEC. 309. (a) Section 10 of the Act is amended in the first sentence by inserting before ": *Provided*" "and, effective October 1, 1986, not to exceed an additional $600,000,000". Effective date. 43 USC 422j.

(b) Section 10 of the Act is further amended by adding at the end thereof the following: "Not more than 20 percent of the total amount of additional funds authorized to be appropriated effective October 1, 1986, for loans and grants pursuant to this Act shall be for projects in any single State: *Provided*, That beginning five years after the date of enactment of this Act, the Secretary is authorized to waive the 20 percent limitation for loans and grants which meet the purposes set forth in section 1 of this Act: *Provided further*, That the decision of the Secretary to waive the limitation shall be submitted to the Congress together with the project proposal pursuant to section 4(c) of this Act and shall become effective only if the Congress has not, within 60 legislative days, passed a joint resolution of disapproval for such a waiver.". Loans. Grants. *Ante*, p. 3053. *Ante*, p. 3054.

TRANSITION RULES

SEC. 310. The provisions of Sections 303 and 308 of this title shall take effect upon enactment of this title. The provisions of sections 304(a) and 305 of this title shall be applicable to all proposals for which final applications are received by the Secretary after January 1, 1986. The provisions of Sections 302, 304(b), 306, and 307 shall be applicable to all proposals for which draft applications are received by the Secretary after Auguest 15, 1986. Effective date. 43 USC 422a note.

SURPLUS CROPS REPORT

SEC. 311. The Secretary of the Interior and the Secretary of Agriculture shall review the effect of the Small Reclamation Projects Act of 1956, as amended, on the operation and objectives of the programs of the Department of Agriculture dealing with the production of surplus commodities as determined by the Secretary of Agriculture pursuant to the Agriculture Act of 1949, as amended, and shall jointly submit a report of their findings to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Interior and Insular Affairs and the Committee on Agriculture of the House of Representatives no later than 120 days from the date of Reports. 43 USC 422a *et seq.* 7 USC 1421 note.

enactment of this Act together with their recommendations, if any, for any changes to either or both programs to better achieve the objectives of such programs.

TITLE IV—VALIDATION OF CONTRACTS

Dams.

SEC. 401. The Federal Power Act (Act of June 10, 1920, 41 Stat. 1063; 16 U.S.C. 791a et seq., and Acts amendatory thereof and supplementary thereto) is amended in section 10(e) (16 U.S.C. 803(e)) by deleting "Commission." and inserting in lieu thereof: "Commission: *Provided however,* That no charge shall be assessed for the use of any Government dam or structure by any licensee if, before January 1, 1985, the Secretary of the Interior has entered into a contract with such licensee that meets each of the following requirements:

"(A) The contract covers one or more projects for which a license was issued by the Commission before January 1, 1985.

Energy.

"(B) The contract contains provisions specifically providing each of the following:

"(i) A powerplant may be built by the licensee utilizing irrigation facilities constructed by the United States.

"(ii) The powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned.

"(iii) All revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee.

"(C) The contract is an amendatory, supplemental and replacement contract between the United States and: (i) the Quincy-Columbia Basin Irrigation District (Contract No. 14-06-100-6418); (ii) the East Columbia Basin Irrigation District (Contract No. 14-06-100-6419); or, (iii) the South Columbia Basin Irrigation District (Contract No. 14-06-100-6420).

This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress.".

Approved October 27, 1986.

LEGISLATIVE HISTORY—H.R. 3113:

HOUSE REPORTS: No. 99-257 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 99-265 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD:
Vol. 131 (1985): Sept. 9, considered and passed House.
Vol. 132 (1986): July 16, considered and passed Senate, amended.
Oct. 14, House agreed to conference report.
Oct. 15, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):
Oct. 27, Presidential statement.