FEDERAL RECLAMATION AND RELATED LAWS ANNOTATED
(PRELIMINARY)

UNITED STATES BUREAU OF RECLAMATION

FEDERAL RECLAMATION AND RELATED LAWS ANNOTATED
(PRELIMINARY)

SUPPLEMENT II
1983-1998 SUPPLEMENT TO VOLUMES I-IV
INDEX

UNITED STATES BUREAU OF RECLAMATION
John W. Keys, III, *Commissioner*

Donald L. Walker
Editor

PREFACE

The original three volumes of *Federal Reclamation and Related Laws Annotated*, published by the Department of the Interior in 1972, have proven to be an invaluable reference source for everyone interested in knowing the legal history of the Federal Reclamation program authorized by the Reclamation Act of 1902 and the related hydroelectric power marketing program that was transferred to the Department of Energy in 1977.

In 1988, two additional volumes, Volume IV and Supplement I, brought that legal history up to date through 1982. These two volumes, Volume V and Supplement II, bring the legal history up to date through 1998. These two volumes do not include interpretative annotations concerned with solicitor opinions and court cases. For this reason, these two volumes are viewed as preliminary and, therefore, printed in paperback form, rather than hardback. These two volumes are a compilation of the Federal Reclamation laws and other statutes that directly affect the program responsibilities of the Bureau of Reclamation, power marketing agencies of the Department of Energy, and other selected statutes that relate to these programs.

John W. Keys, III
Commissioner, Bureau of Reclamation

FOREWORD

This Supplement II to Volumes I, II, III, and IV, together with Volume V, updates *Federal Reclamation and Related Laws Annotated* through 1998.

Supplement II contains amendments to laws included in the first four volumes. Accordingly, when reference is made in Volume V to laws contained in the earlier volumes, Supplement II should be consulted to determine whether the referenced statute has been amended during the period of 1983 through 1998. It also contains a consolidated index of all five volumes and the two Supplements. In selected instances, the entire law, as amended, is included in Supplement II to consolidate the current law in one place.

Volume V contains the statutes, enacted or approved from 1983 through 1998, that directly affect the program responsibilities of the Bureau of Reclamation and the Alaska, Bonneville, Southwestern, and Western Area Power Administrations of the Department of Energy, together with other selected laws that relate to their programs.

The pages in Volumes I, II, and III, are numbered sequentially, from page 1 through 2211. The pages in Volume IV begin with 2301 and continue through 3368. Volume V begins with page 3369 and continues on to the end. Supplement I references the page number and date of the amended act at the top of the page and displays its page numbers at the bottom of the page beginning with S1 and continuing through S807. Supplement II begins with page S808 and continues sequentially to the end.

With respect to the other four volumes, Volume V and Supplement II are not complete works. They do not include private laws and interpretive annotations of court decisions and opinions, as the earlier volumes do. The development and inclusion of interpretive annotations covering court decisions, legal opinions, and the identification and inclusion of relevant private laws remain to be done for a subsequent edition. Also, an appendix of related laws has not been included. Whether or not to develop and include an appendix of related laws in the future depends upon comments received. With the relatively easy access to codified statutes on the World Wide Web and other sources, publishing an appendix of related laws may be redundant.

Every effort has been made to make the work as complete and accurate as possible with the available resources. Suggestions for corrections and additions are invited and should be submitted to the Office of Policy, Attention: D-5000, Denver Federal Center, Bldg. 67, P.O. Box 25007, Denver, CO 80225-0007.

URS GREINER WOODWARD CLYDE
Contractor
DONALD L. WALKER
Subcontractor and Editor

October 2001

Secretaries of the Interior, since 1902

Name	Year Appointed	Name	Year Appointed
Ethan A. Hitchcock	1898	Fred A. Seaton	1956
James R. Garfield	1907	Stewart L. Udall	1961
Richard A. Ballinger	1909	Walter J. Hickel	1969
Walter L. Fisher	1911	Rogers C. B. Morton	1971
Franklin K. Lane	1913	Stanley K. Hathaway	1975
John B. Payne	1920	Thomas S. Kleppe	1975
Albert B. Fall	1921	Cecil B. Andrus	1977
Hubert Work	1923	James G. Watt	1981
Roy O. West	1928	William P. Clark	1983
Ray Lyman Wilbur	1929	Donald Paul Hodel	1985
Harold L. Ickes	1933	Manual Lujan, Jr.	1989
Julius A. Krug	1946	Bruce Babbit	1993
Oscar L. Chapman	1949	Gale A. Norton	2001
Douglas McKay	1953		

Solicitors, Department of the Interior, since 1902

Name	Year Appointed	Name	Year Appointed
Willis Van Devanter	1897	Elmer F. Bennett	1957
Frank L. Campbell	1903	George W. Abbott	1958
George W. Woodruff	1907	Theodore F. Stevens	1960
Oscar Lawler	1909	Frank J. Barry	1961
Charles W. Cobb	1911	Edward Weinberg	1968
Preston C. West	1913	Mitchell Melich	1969
Alexander T. Vogelsang	1916	Kent Frizzell	1973
Charles D. Mahaffie	1916	H. Gregory Austin	1975
Edwin S. Booth	1921	Leo M. Krulitz	1977
John N. Edwards	1923	Clyde O. Martz	1980
Ernest O. Patterson	1926	William H. Coldiron	1981
Edward C. Finney	1929	Frank K. Richardson	1984
Nathan R. Margold	1933	Ralph W. Tarr	1985
Warner W. Gardner	1942	Martin L. Allday	1989
Fowler H. Harper	1943	Thomas L. Sansonetti	1990
Mastin G. White	1946	John D. Leshy	1993
Clarence A. Davis	1953	William G. Myers, III	2001
J. Reuel Armstrong	1955		

Commissioners of Reclamation, since 1902

Name	Year Appointed	Name	Year Appointed
Frederick H. Newell	1902	Robert N. Broadbent	1981
Arthur P. Davis	1914	Robert A. Olson (Acting)	1983
David W. Davis	1923	Clifford I. Barrett (Acting)	1985
Elwood Mead	1924	C. Dale Duvall	1985
John C. Page	1937	Joe D. Hall (Acting)	1989
Harry W. Bashore	1943	Dennis B. Underwood	1989
Michael W. Straus	1945	Lawrence F. Hancock (Acting)	1993
Goodrich W. Lineweaver (Acting)	1953	Daniel P. Beard	1993
Wilbur A. Dexheimer	1953	Stephen V. Magnussen (Acting)	1995
Floyd E. Dominy	1959	Eluid L. Martinez	1995
Ellis L. Armstrong	1969	William J. McDonald (Acting)	2001
Gilbert G. Stamm	1973	John W. Keys, III	2001
Donald D. Anderson (Acting)	1977		
R. Keith Higginson	1977		
Clifford I. Barrett	1981		

Secretaries of Energy, 1977-2001

Name	Year Appointed	Name	Year Appointed
James R. Schlesinger	1977	James D. Watkins	1989
Charles W. Duncan, Jr.	1979	Hazel R. O'Leary	1993
James B. Edwards	1981	Federico F. Pena	1997
Donald Paul Hodel	1982	Bill Richardson	1998
John S. Herrington	1985	Spencer Abraham	2001

General Counsels, Department of Energy, 1977-2001

Name	Year Appointed	Name	Year Appointed
Eric J. Fygi (Acting)	1977	Eric J. Fygi (Acting)	1989
Lynn R. Coleman	1978	Stephen A. Wakefield	1989
Eric J. Fygi (Acting)	1980	John J. Easton, Jr.	1991
R. Tenney Johnson	1981	Eric J. Fygi (Acting)	1992
Theodore T. Garrish	1983	Robert Nordhaus	1993
Eric J. Fygi (Acting)	1985	Eric J. Fygi (Acting)	1997
J. Michael Farrell	1985	Mary Anne Sullivan	1998
Eric J. Fygi (Acting)	1987	Eric J. Fygi (Acting)	2001
Francis S. Ruddy (recess appointment)	1988	Lee Lieberman Otis	2001

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SUPPLEMENT II

1983-1998 SUPPLEMENT TO VOLUMES I-IV

MINERAL LEASING ACT

* * * * *

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Sec. 35. [Disposition of moneys received.]-(a) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. § 1701 et seq.), and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 (30 U.S.C. § 1001 et seq.), shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b) of this section, 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any

such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(b)(1) In calculating the amount to be paid to States during any fiscal year under this section or under any other provision of law requiring payment to a State of any revenues derived from the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this chapter or of geothermal steam, 50 percent of the portion of the enacted appropriation of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this chapter or of geothermal steam, and to enforcement of such laws, shall be deducted from the receipts derived under those laws in approximately equal amounts each month (subject to paragraph (4)) prior to the division and distribution of such receipts between the States and the United States.

(2) The proportion of the deduction provided in paragraph (1) allocable to each State shall be determined by dividing the monies disbursed to the State during the preceding fiscal year derived from onshore mineral leasing referred to in paragraph (1) in that State by the total money disbursed to States during the preceding fiscal year from such onshore mineral leasing in all States.

(3) In the event the deduction apportioned to any State under this subsection exceeds 50 percent of the Secretary of the Interior's estimate of the amounts attributable to onshore mineral leasing referred to in paragraph (1) within that State during the preceding fiscal year, the deduction from receipts received from leases in that State shall be limited to such estimated amounts and the total amount to be deducted from such onshore mineral leasing receipts shall be reduced accordingly.

(4) If the amount otherwise deductible under this subsection in any month from the portion of receipts to be distributed to a State exceeds the amount payable to the State during that month, any amount exceeding the amount payable shall be carried forward and deducted from amounts payable to the State in subsequent months. If any amount remains to be carried forward at the end of the fiscal year, such amount shall not be deducted from any disbursements in any subsequent fiscal year.

(5) All deductions to be made pursuant to this subsection shall be made in full during the fiscal year in which such deductions were incurred. (41 Stat. 450; Act of May 27, 1947, 61 Stat. 119; Act of August 3, 1950, 64 Stat. 402; Act of July 10, 1957, 71 Stat. 282; Act of July 7, 1958, 72 Stat. 343; Act of April 21, 1976, 90 Stat. 1090; Act of September 28, 1976, 90 Stat. 1323; Act of October 21, 1976, 90 Stat. 2770; Act of January 12, 1983, 96 Stat. 2456; Act of

December 22, 1987, 101 Stat. 1330-261; Act of September 22, 1987, 102 Stat. 1768; Act of August 10, 1993, 107 Stat. 407; 30 U.S.C. § 191.)

EXPLANATORY NOTES

Codification. "Section 7433(b) of title 10" substituted in subsection (a) for "the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)", which was classified to section 524 of former title 34, Navy, on authority of act Aug. 10, 1956, ch. 1041, Sec. 49(b), 70A Stat. 640, the first section of which enacted title 10, Armed Forces.

Subsequent Amendments. Section 35 has been amended several times since 1958. The text of the section, as so amended, is set forth above as it appears in Chapter 3A, Subchapter I, § 191, of title 30 of the U.S. Code (1994 ed. Supplement II). Provisions of subsection (a) which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1993 Amendment. Act of August 10, 1993 (Public Law 103-66, § 10201, 107 Stat. 407) struck out last sentence, designated remaining provisions as subsection (a), and in first sentence inserted "and, subject to the provisions of subsection (b) of this section," before "50 per centum", and added subsection (b). Prior to amendment, the last sentence read as follows: "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States." The 1993 Act does not appear herein.

1988 Amendment. Act of September 22, 1988 (Public Law 100-443, Sec. 5(b), 102 Stat. 1768) struck out "notwithstanding the provisions of section 20 thereof," before "shall be paid". The 1988 Act does not appear herein.

1987 Amendment. Section 5109 of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, Act of December 22, 1987 (Public Law 100-203, 101 Stat.1330) amended section 35 by inserting at end "In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States." Extracts from the 1987 Act appear in Volume V at page 3564.

1983 Amendments. Sec. 111(g), of the Federal Oil and Gas Royalty Management Act of 1982, Act of January 12, 1983 (Public Law 97-451, 96 Stat. 2451, 2452) inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

Section 104(a) of the Act of January 12, 1983 (Public Law 97-451, 96 Stat. 2451, 2452) amended section 35 by striking out "as soon as practicable after March 31 and September 30 of each year" after "Secretary of the Treasury" and "of those from Alaska", and inserted at end provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

Section 104(c) of the Act of January 12, 1983 (Public Law 97-451, 96 Stat. 2451, 2452) provided that, applicable with respect to payments received by the Secretary after Oct. 1, 1983, unless the Secretary, by rule, prescribes an earlier effective date. The 1983 Act does not appear herein.

October 1976 Amendment. Section 317(a) of Act of October 21, 1976 (Public Law 94-579, title III, 90 Stat. 2770) substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys received from sales, etc., under provisions of this chapter and the

Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds. The October 1975 Act appears in Volume IV at page 2962.

Savings Provision. Amendment by Public Law 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976; see section 701 of Public Law 94-579, set out as a note under section 1701 of title 43, Public Lands.

September 1976 Amendment. Section 301 of the Act of September 28, 1976 (Public Law 94-422, title III, 90 Stat. 1323) inserted proviso that all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by any State for planning, construction, and maintenance of public facilities as legislature of State may direct. The September 1976 Act appears in Volume IV at page 2961.

August, 1976 Amendment. Section 9 of Act of August 4, 1976, (Public Law 94-377, 90 Stat. 1089) substituted "40 per centum thereof shall be paid into, reserved" for "52-1/2 per centum thereof shall be paid into, reserved", inserted "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof" before "shall be paid into the Treasury of the United States", "and the Geothermal Steam Act of 1970" before "from lands within the naval petroleum reserves" and before "not otherwise disposed of by this section", and provisos relating to the payment of an additional 12-1/2 per centum of all money received from lands under provisions of this chapter and the Geothermal Steam Act of 1970 to the State within whose boundaries the lands are located, to be used for construction of public facilities, and relating to the use of funds received by Colorado and Utah under the specified leases. The August 1976 Act does not appear herein.

April 1976 Amendment. Section 6(2) of the Act of April 21, 1976 (Public Law 94-273, 90 Stat. 377) substituted "March" for "December" and "September" for "June". The April 1976 Act does not appear herein.

1958 Amendments. Subsection 6(k) of the Act of July 7, 1958 (Public Law 85-508, 72 Stat. 343, 351), the Alaska Statehood Act, repealed the last sentence of section 35 as amended by the Act of May 27, 1947, which read: "Nothing herein contained shall be construed to affect the disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska as provided for in the Act of March 4, 1915 (38 Stat. 1214, 1215; 48 U.S.C. § 353, as amended)."

Subsection 28 (b) of the Act struck out provisions which related to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska and substituted ", and of those from Alaska 52-1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislators thereof" for ", and of those from Alaska 52-1/2 per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" before proviso.

Note. Effectiveness of amendment by Public Law 85-508 was dependent on admission of Alaska into the Union under sections 6(k) and 8(b) of Public Law 85-508. Admission was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Public Law 85-508. See notes preceding section 21 of title 48, Territories and Insular Possessions. The 1958 Act does not appear herein.

1957 Amendment. Section 2 of the Act of July 10, 1957 (Public Law 85-88, 71 Stat. 282) inserted ", and of those from Alaska 52-1/2 per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" before proviso. The 1957 Act does not appear herein.

1950 Amendment. The Act of August 3, 1950, ch 527, 64 Stat. 402, in providing that payments to States be made bi-annually instead of annually, substituted "as soon as practicable after December 31 and June 30 of each year" for "after the expiration of each fiscal year". The 1950 Act does not appear herein.

1947 Amendment. Act of May 27, 1947 (ch. 83, 61 Stat. 119) extended provisions by allocating 37-1/2 per centum of the money received from sales, bonuses, royalties, and rentals of public lands to the Territory of Alaska, for the construction and maintenance of public schools or other public educational institutions and inserted provisions relating to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska. The 1947 Act appears in Volume II at page 851.

References in Text. The Federal Oil and Gas Royalty Management Act of 1982, referred to in subsection (a), is Public Law 97-451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (Sec. 1701 et seq.) of this title. For complete classification of this Act to the Code, see short title note set out under section 1701 of this title and Tables.

The Geothermal Steam Act of 1970, referred to in subsection (a), is Public Law 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (Sec. 1001 et seq.) of this title. For complete classification of this Act to the Code, see short title note set out under section 1001 of this title and Tables.

The Reclamation Act, referred to in subsection (a), is act June 17, 1902, ch. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (Sec. 371 et seq.) of title 43, Public Lands. For complete classification of this Act to the Code, see short title note set out under section 371 of title 43 and Tables.

FEDERAL WATER POWER ACT

PART I-SEC. 3

* * * * *

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Sec. 3. [Definitions.]-

* * * * *

(22) "electric utility" means any person or State agency (including any municipality) which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.

(23) "transmitting utility" means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.

(24) "wholesale transmission services" means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

(25) "exempt wholesale generator" shall have the meaning provided by section 32 of the Public Utility Holding Company Act of 1935. (41 Stat. 1063; § 201, Act of August 26, 1935, 49 Stat. 838; § 201, Act of November 9, 1978, 92 Stat. 3134; § 643(a)(1), Act of June 30, 1980, 94. 770; § 726, Act of October 24, 1992, 106 Stat. 2921; 16 U.S.C. § 796.)

EXPLANATORY NOTES

1992 Amendments. Section 726 of the Energy Policy Act of 1992, Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2921) amended section 3 of the Federal Water Power Act (a) by adding paragraphs (23) to (25) and (b) by inserting in section 3(22) "(including any municipality)" after "State agency". Section 726 of the 1992 Act appears in Volume V at page 3783.

Reference in the Text. Statutory interpretation of and statutory references to the Public Utility Holding Company Act of 1935 referenced in section 3(25) appear in Volume IV at pages 3268 and 3158, respectively.

Sec. 4. [General powers of Commission.]-

* * * * *

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(e) [Licenses for dams and other facilities.]- To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservations: *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by, the proviso of said subsection. In deciding whether to issue any license under this Part for

any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality. (41 Stat. 1065, 100 Stat. 1243; 16 U.S.C. § 797.)

EXPLANATORY NOTE

1986 Amendment. Section 3(a) of the Electric Consumers Protection Act of 1986, Act of October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended subsection 4(e) by adding a sentence to the end thereof as it appears above. Section 3(a) of the 1986 Act appears in Volume V at page 3486.

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Sec. 7 (a) [Preference to States and municipalities.]- In issuing preliminary permits hereunder or original licenses where no preliminary permit has been issued, the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans. (100 Stat. 1243, 16 U.S.C. § 800.)

EXPLANATORY NOTE

1986 Amendment. Section 2 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended subsection 7(a) by (1) inserting "original" after "hereunder or", (2) striking out "and in issuing licenses to new licensees under section 15 hereof", and substituting a comma following the word "issued" in the first phrase. Section 2 of the 1986 Act appears in Volume V at page 3486.

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(b) [Recommendation for development by United States.]- Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the

Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find, appropriate concerning such development. (41 Stat. 1067; § 205, Act of August 26, 1935, 49 Stat. 842; 16 U.S.C. § 800.)

EXPLANATORY NOTE

1935 Amendment. Section 205 of the Federal Power Act, Act of August 26, 1935 (ch. 687, 49 Stat. 803) eliminated the words "navigation and" before the words "water resources" wherever they appeared in subsection 7(a) and lettered the paragraphs (a) and (b). Section 205 of the 1935 Act does not appear herein.

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Sec. 8. [Conditions for voluntary transfer of license- Exceptions.]- No voluntary transfer of any license, or of the rights thereunder granted, shall be made without the written approval of the Commission; and any successor or assign of the rights of such licensee, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the license under which such rights are held by such licensee and also subject to all the provisions and conditions of this Act to the same extent as though such successor or assign were the original licensee hereunder: *Provided,* That a mortgage or trust deed or judicial sales made thereunder or under tax sales shall not be deemed voluntary transfers within the meaning of this section. (41 Stat. 1068; 16 U.S.C. § 801.)

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Sec. 9. [Landowner notification.]- (a) Each applicant for a license hereunder shall submit to the Commission-

(1) [Applicant to submit plans, specifications, cost estimates, etc.]- Such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans, and specifications when approved by the Commission shall be made a part of the license; and thereafter no change shall be made in said maps, plans, or specifications until such changes shall have been approved and made a Part of such license by the Commission.

(2) [Applicant to submit evidence of compliance with State law.]- Satisfactory evidence that the applicant has complied with the

requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

(b) [Notification of landowners.]- Upon the filing of any application for a license (other than a license under section 15 (16 U.S.C. § 808.)) the applicant shall make a good faith effort to notify each of the following by certified mail:

(1) Any person who is an owner of record of any interest in the property within the bounds of the project.

(2) Any Federal, State, municipal or other local governmental agency likely to be interested in or affected by such application.

(c) [Additional information.]- Such additional information as the Commission may require. (41 Stat. 1068; 100 Stat. 1257; 16 U.S.C. § 802.)

NOTE OF OPINION

1. Relation to State laws.
The Federal Power Act establishes a dual system of control consisting merely of the division of the common enterprise between cooperating Federal and State agencies of Government, each with final authority in its own jurisdiction. The Act leaves to the States their traditional jurisdiction over proprietary rights to beds and banks of streams and to divert or use water, and over legal rights to engage locally in the business of developing, transmitting, and distributing power, to the extent not superseded by superior Federal powers. Section 27 of the Act expressly "saves" certain State laws relating to proprietary rights as to the use of water, but section 9(b) does not itself require compliance with any State laws. First Iowa Cooperative v. Federal Power Commission, 328 U.S. 152 (1946).

EXPLANATORY NOTE

1986 Amendment. Section 14 of the Electric Consumers Protection Act of 1986, Act of 1986, October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended section 9 by inserting "(a)" after "9", by redesignating existing subsections (a) and (b) as paragraphs (1) and (2), and by adding subsection (b) at the end thereof, as it appears above. Section 14 of the 1986 Act appears in Volume V at page 3503.

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Sec. 10. [Conditions of licenses.]- All licenses issued under this Part shall be on the following conditions:

(a)(1) [Comprehensive plan.]- The project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a

waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e); and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(2) [Adapting projects to the comprehensive plan.]- In order to ensure that the project adopted will be best adapted to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

(A) [Consistency.]- The extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by-

(i) an agency established pursuant to Federal law that has the authority to prepare such a plan; or

(ii) the State in which the facility is or will be located.

(B) [Recommendations of Federal and State agencies and Indian tribes.]- The recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(C) [Electricity consumption efficiency improvement program.]- In the case of a State or municipal applicant, or an applicant which is primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities), the electricity consumption efficiency improvement program of the applicant, including its plans, performance and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant State regulatory authorities applicable to such applicant.

(3) [Solicitation of recommendations required.]- Upon receipt of an application for a license, the Commissions shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license. (41 Stat. 1068, 100 Stat. 1243)

EXPLANATORY NOTE

1986 Amendment. Section 3(b) of the Act of October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended subsection 10(a) by:

(1) After "waterpower development," inserting "for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat),". (16 U.S.C. § 803.)

(2) After "including", inserting "irrigation, flood control, water supply, and".

(3) Striking "purposes; and" and inserting the following after "recreational": "and other purposes referred to in section 4(e)". (16 U.S.C. 797.)

(4) inserting "(1)" after "(a)" and inserting the new paragraph (2) and subparagraphs at the end thereof as they appear above. Section 3(b) of the 1986 Act appears in Volume V at page 3487.

(b) [Substantial alterations.]- Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity in excess of two thousand horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

(c) [Operation of projects- Liability for damages.]- The licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

(d) [Amortization reserves.]- After the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

(e) [Annual charges payable by licensees.]- (1) The licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part, including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That, subject to annual appropriations acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended: *Provided,* That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except, that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that

the amount charged therefor in any license shall be such as determined by the 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.

(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. 14-06100-6418);

(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. In the event an over payment of any charge due under the section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under paragraph (1) for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1 ½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f), such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

(3) The provisions of paragraph (2) shall apply with respect to-

(A) all licenses issued after the date of the enactment of this paragraph; and

(B) all licenses issued before such date which-

(i) did not fix a specific charge for the use of the Government dam or structure involved; and

(ii) did not specify that no charge would be fixed for the use of such dam or structure.

(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon. (41 Stat. 1068, 100 Stat. 3056, 106 Stat. 3008; 100 Stat 1252; 16 U.S.C. § 803(e), § 803 note.)

EXPLANATORY NOTES

1992 Amendments. Section 1701(a)(1) of the Energy Policy Act of 1992, Act of October 24, 1992 (Public Law 102-486, 106 Stat 2921) amended section 10(e)(1) by striking the semicolon after "Part" and inserting the following: ", including any reasonable and necessary costs incurred by Federal and State fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this Part;".

Section 1701(a)(2) of the 1992 Act further amended section 10(e)(1) by inserting the following proviso after "as conditions may require:" "*Provided*, That, subject to annual appropriations acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended:". Section 1701 of the 1992 Act appears in Volume V at page 3784.

1986 Amendment. Section 9 of the Electric Consumers Protection Act of 1986, Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended subsection 10(e) of the Federal Power Act by inserting "(1)" after "(e)" and adding paragraphs (2), (3), and (4) at the end thereof, as they appear above. Section 9 of the 1986 Act appears in Volume V at page 3497.

1986 Amendment. Section 401 of the Act of October 17, 1986 (Public Law 99-546, 100 Stat. 3056) amended section 10(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, . . . unless otherwise provided by subsequent Act of Congress.". Section 401 of the 1986 Act appears in Volume V at page 3518.

(f) [Headwater benefits.]- Whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making

such determination as fixed by the Commission. Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof. Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

(g) [Other conditions.]- Such other conditions not inconsistent with the provisions of this chapter as the Commission may require.

(h) [Monopolistic combinations prohibited.]- (1) Combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service, are hereby prohibited.

(2) That conduct under the license that: (A) results in the contravention of the policies expressed in the antitrust laws; and (B) is not otherwise justified by the public interest considering regulatory policies expressed in other applicable law (including but not limited to those contained in Part II of this Act) shall be prevented or adequately minimized by means of conditions included in the license prior to its issuance. In the event it is impossible to prevent or adequately minimize the contravention, the Commission shall refuse to issue any license to the applicant for the project and, in the case of an existing project, shall take appropriate action to provide thereafter for the operation and maintenance of the affected project and for the issuing of a new license in accordance with section 15 of this Part. (100 Stat. 1257)

EXPLANATORY NOTE

1986 Amendments. Section 13 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended section 10(h) by inserting "(1)" after "(h)" and by adding a new paragraph (2), as it appears above. Section 13 of the 1986 Act appears in Volume V at page 3502.

(i) [Waiver of conditions.]- In issuing licenses for a minor part only of a complete project, or for a complete project of not more than two thousand horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the

circumstances: *Provided,* That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations.

(j) [Fish and wildlife protection, mitigation, and enhancement.]– (1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Subsection (i) shall not apply to the conditions required under this subsection. (41 Stat. 1068; § 206, Act of August 26, 1935, 49 Stat. 842; Act of September 7, 1962, 76 Stat. 447; Act of October 16, 1986, 100 Stat. 1244; Title IV Act of October 27, 1986, 100 Stat. 3056; § 1701, Act of October 24, 1992, 106 Stat. 3008; 16 U.S.C. § 803.)

EXPLANATORY NOTES

1986 Amendments. Section 3(c) of the Act of October 16, 1986 (Public Law 99-495, 100 Stat.1243) amended section 10 by adding subsections (j)(1) and (2) at the end thereof as they appear above. Section 3(c) of the 1986 Act appears in Volume V at page 3487.

Reference in the Text. The Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.) referred to in subsection (j)(1) does not appear herein. Annotations pertaining to the Act appear in Supplement I at pages S167-168.

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Sec. 14. (a) [Right of Government to take over project at expiration of license- Payment to licensee- Determination of value of project- Right of condemnation reserved to Federal, State, and local governments.]-

* * * * *

(b) [Time of applications for new licenses- Relicensing proceedings- Federal agency recommendations of take over by Government- Stay of orders for new licenses- Termination of stay- Notice to Congress.]- In any relicensing proceeding before the Commission any Federal department or agency may timely recommend, pursuant to such rules as the Commission shall prescribe, that the United States exercise its right to take over any project or projects. Thereafter, the Commission, if it does not itself recommend such action pursuant to the provisions of section 7(c) of this Part, shall upon motion of such department or agency stay the effective date of any order issuing a license, except an order issuing an annual license in accordance with the proviso of section 15(a), for two years after the date of issuance of such order, after which period the stay shall terminate, unless terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission shall notify the Congress of any stay granted pursuant to this subsection. (41 Stat. 1071; Act of August 26, 1935, 49 Stat. 844; Act of August 3, 1968, 82 Stat. 617; Act of October 16, 1986, Stat. 1248; 16 U.S.C. § 807.)

EXPLANATORY NOTES

1986 Amendments. Section 4(b)(2) of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended section 14(b) by striking out the first sentence. Section 4(b)(2) of the 1986 Act appears in Volume V at page 3492.

1968 Amendment. Section 2 of the Act of August 3,1968 (Public Law 90-451, 82 Stat. 616) amended section 14 by inserting "(a)" immediately preceding the first sentence thereof, and by adding subsection (b). The 1968 Act does not appear herein. For legislative history of the Act, see H.R. Rept. No. 1643 and S. Rept. No. 1338 on S. 2445.

Pages 277, S62

Sec. 15. (a) [Relicensing procedures.]- (1) [Reissuance of license to existing licensee at expiration of license upon such terms as authorized or required under then existing laws and regulations- Provision for

annual renewal of license until property is taken over by Government or a new license is issued.]- If the United States does not, at the expiration of the existing license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the Commission is authorized to issue a new license to the existing licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the existing license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the existing licensee, upon reasonable terms, then the Commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the existing license until the property is taken over or a new license is issued as aforesaid.

(2) [Relicensing process.]- Any new license issued under this section shall be issued to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest, except that in making this determination the Commission shall ensure that insignificant differences with regard to subparagraphs (A) through (G) of this paragraph between competing applications are not determinative and shall not result in the transfer of a project. In making a determination under this section (whether or not more than one application is submitted for the project), the Commission shall, in addition to the requirements of section 10 of this Part, consider (and explain such consideration in writing) each of the following:

(A) The plans and abilities of the applicant to comply with (i) the articles, terms, and conditions of any license issued to it and (ii) other applicable provisions of this Part.

(B) The plans of the applicant to manage, operate, and maintain the project safely.

(C) The plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service.

(D) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers, including, among other relevant considerations, the reasonable costs and reasonable availability of alternative sources of power, taking into consideration conservation and other relevant factors and taking into

consideration the effect on the provider (including its customers) of the alternative source of power, the effect on the applicant's operating and load characteristics, the effect on communities served or to be served by the project, and in the case of an applicant using power for the applicant's own industrial facility and related operations, the effect on the operation and efficiency of such facility or related operations, its workers, and the related community. In the case of an applicant that is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation may be included.

(E) The existing and planned transmission services of the applicant, taking into consideration system reliability, costs, and other applicable economic and technical factors.

(F) Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner.

(G) Such other factors as the Commission may deem relevant, except that the terms and conditions in the license for the protection, mitigation, or enhancement of fish and wildlife resources affected by the development, operation, and management of the project shall be determined in accordance with section 10, and the plans of an applicant concerning fish and wildlife shall not be subject to a comparative evaluation under this subsection.

(3) [Additional relicensing considerations.]- In the case of an application by the existing licensee, the Commission shall also take into consideration each of the following:

(A) The existing licensee's record of compliance with the terms and conditions of the existing license.

(B) The actions taken by the existing licensee related to the project which affect the public. (41 Stat. 1072, 100 Stat. 1245-1248; 16 U.S.C. § 808.)

EXPLANATORY NOTE

1986 Amendments. Section 4(b)(1) of the Electric Consumers Protection Act of 1986, Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended section 15(a) by striking out "original" each place it appears and substituting "existing". Section 4(b)(1) of the 1986 Act appears in Volume V at page 3491.

(b)(1) [Notification procedures for relicensing.]- Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

(2) [Required public information associated with relicensing.]- At the time notice is provided under paragraph (1), the existing licensee shall make each of the following reasonably available to the public for inspection at the offices of such licensee: current maps, drawings, data, and such other information as the Commission shall, by rule, require regarding the construction and operation of the licensed project. Such information shall include, to the greatest extent practicable pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Copies of the information shall be made available at reasonable costs of reproduction. Within 180 days after the enactment of the Electric Consumers Protection Act of 1986, the Commission shall promulgate regulations regarding the information to be provided under this paragraph.

EXPLANATORY NOTE

Reference in the Text. The Electric Consumers Protection Act of 1986, Act of October 16, 1986, Public Law 99-495 (100 Stat. 1243) appears in Volume V at page 3486.

(3) [Public notice required following receipt of relicensing notice of intent.]- Promptly following receipt of notice under paragraph (1), the Commission shall provide public notice of whether an existing licensee intends to file or not to file an application for a new license. The Commission shall also promptly notify the National Marine Fisheries Service and the United States Fish and Wildlife Service, and the appropriate State fish and wildlife agencies.

(4) [Federal and Indian lands involved must be identified.]- The Commission shall require the applicant to identify any Federal or Indian lands included in the project boundary, together with a statement of the annual fees paid as required by this Part for such lands, and to provide such additional information as the Commission deems appropriate to carry out the Commission's responsibilities under this section.

(c)(1) [When to file application for new license- Consultation required- Notice of procedures.]- Each application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. Each applicant shall consult with the fish and wildlife agencies referred to in subsection(b) and, as appropriate, conduct studies with such agencies. Within 60 days after the statutory deadline for the submission of applications, the Commission shall issue a notice establishing expeditious procedures for relicensing and a deadline for submission of final amendments, if any, to the application.

(2) [Adjustment of time requirements.]- The time periods specified in this subsection and in subsection (b) shall be adjusted, in a manner that achieves the objectives of this section, by the Commission by rule or order with respect to existing licensees who, by reason of the expiration dates of their licenses, are unable to comply with a specified time period.

(d)(1) [Application evaluation.]- In evaluating applications for new licenses pursuant to this section, the Commission shall not consider whether an applicant has adequate transmission facilities with regard to the project.

(2) [Procedures applying to new licensees dependent upon the availability of services from existing licensees.]- When the Commission issues a new license (pursuant to this section) to an applicant which is not the existing licensee of the project and finds that it is not feasible for the new licensee to utilize the energy from such project without provision by the existing licensee of reasonable services, including transmission services, the Commission shall give notice to the existing licensee and the new licensee to immediately enter into negotiations for such services and the costs demonstrated by the existing licensee as being related to the provision of such services. It is the intent of the Congress that such negotiations be carried out in good faith and that a timely agreement be reached between the parties in order to facilitate the transfer of the license by the date established when the Commission issued the new license. If such parties do not notify the Commission that within the time established by the Commission in such notice (and if appropriate, in the judgment of the Commission, one 45-day extension thereof), a mutually satisfactory arrangement for such services that is consistent with the provisions of this Act has been executed, the Commission shall order the existing licensee to file (pursuant to section 205 of this Act (16 U.S.C. § 824d.)) with the Commission a tariff, subject to refund, ensuring such services beginning on the date of transfer of the project and including just and reasonable rates and reasonable terms and conditions. After notice and opportunity for a hearing, the Commission shall issue a final order adopting or modifying such tariff for such services at just and reasonable rates in accordance with section 205 of this Act and in accordance with reasonable terms and conditions. The Commission, in issuing such order, shall ensure the services necessary for the full and efficient utilization and benefits for the license term of the electric energy from the project by the new licensee in accordance with the license and this Part, except that in issuing such order the Commission-

(A) shall not compel the existing licensee to enlarge generating facilities, transmit electric energy other than to the distribution system (providing service to customers) of the new licensee identified as of the date one day preceding the date of license award, or require the acquisition of new

facilities, including the upgrading of existing facilities other than any reasonable enhancement or improvement of existing facilities controlled by the existing licensee (including any acquisition related to such enhancement or improvement) necessary to carry out the purposes of this paragraph;

(B) shall not adversely affect the continuity and reliability of service to the customers of the existing licensee;

(C) shall not adversely affect the operational integrity of the transmission and electric systems of the existing licensee;

(D) shall not cause any reasonably quantifiable increase in the jurisdictional rates of the existing licensee; and

(E) shall not order any entity other than the existing licensee to provide transmission or other services.

Such order shall be for such period as the Commission deems appropriate, not to exceed the term of the license. At any time, the Commission, upon its own motion or upon a petition by the existing or new licensee and after notice and opportunity for a hearing, may modify, extend, or terminate such order.

(e) [License term on relicensing.]- Except for an annual license, any license issued by the Commission under this section shall be for a term which the Commission determines to be in the public interest but not less than 30 years, nor more than 50 years, from the date on which the license is issued.

(f) [Issuance of licenses for nonpower use- Payment and assumption of contracts by a new licensee- Termination of license- Accounting and reporting.]- In issuing any licenses under this section except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder, pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with the provisions of the Act of August 15, 1953 (67 Stat. 587), every licensee for nonpower use shall keep such accounts and file such annual and other periodic or special reports concerning the removal, alteration,

nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate. (41 Stat. 1072; Act of August 3, 1968, 82 Stat. 617; Act of October 16, 1986, 100 Stat. 1245; 16 U.S.C. § 808.)

EXPLANATORY NOTES

1986 Amendments. Section 4 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended section 15 by inserting "(1)" after "(a)", by redesignating subsection (b) as subsection (f), and by adding subsections (a)(2) through (d)(2) at the end of subsection (a) as they appear above. Section 4 of the 1986 Act appears in Volume V at page 3488.

Section 5 of the 1986 Act further amended section 15 by adding subsection (e) after subsection (d) (as added by section 4 of this Act). Section 5 of the 1986 Act appears in Volume V at page 3492.

1968 Amendment. Section 3 of the Act of August 3, 1968 (Public Law 90-451, 82 Stat. 616) amended section 15 by inserting "(a)" immediately preceding the first sentence thereof, and by adding subsection (b). The 1968 Act does not appear herein. For legislative history of the 1968 Act, see H.R. Rept. No 1643 and S. Rept. No 1336 on S. 2445.

Reference in the Text. The Act of August 15 1953 (67 Stat. 587) as amended by Act of July 31, 1959 (73 Stat. 271), exempted projects owned by States and municipalities from the takeover provisions of section 14, the records and accounting requirements of sections 301 and 302 requiring certain accounting procedures, and section 4(b) requiring the preparation and filing of a statement of the actual legitimate original cost of a project. The text of the 1953 Act appears in a note in Volume I at page 276.

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Sec. 21. [Licensee may acquire property through the exercise of the right of eminent domain- Jurisdiction of Federal district court where owner of property claims amount in excess of $3,000- Procedure to conform as nearly as may be with State court procedure.]- When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the Commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall

conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided,* That United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000: *Provided further,* That no licensee may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992, were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law. In the case of lands or other property that are owned by a State or political subdivision and are part of or included within a public park, recreation area or wildlife refuge established under State or local law on or after the date of enactment of such Act, no licensee may use the right of eminent domain under this section to acquire such lands or property unless there has been a public hearing held in the affected community and a finding by the Commission, after due consideration of expressed public views and the recommendations of the State or political subdivision that owns the lands or property, that the license will not interfere or be inconsistent with the purposes for which such lands or property are owned. (41 Stat. 1074; 106 Stat. 3008; 16 U.S.C. § 814.)

EXPLANATORY NOTE

1992 Amendments. Section 1701(d) of the Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2921) amended section 21 by striking the period at the end thereof and adding the following: *"Provided further, . . .*" as it appears above. Section 1701(d) of the 1992 Act appears in Volume V at page 3786.

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Sec. 23. (a) [Existing rights, etc., protected- Holders of existing rights, etc., may apply for license under this Part- Valuation of existing projects.]-

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(b)(1) [Projects on navigable streams for water or power purposes unlawful except under a permit granted prior to June 10, 1920, in accordance with this Act- Projects on waters defined as other than

navigable to be licensed if interests of interstate or foreign commerce are involved.]- It shall be unlawful for any person, State, or municipality, for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the United States, or upon any part of the public lands or reservations of the United States (including the Territories), or utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. Any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction such person, association, corporation, State, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of this Act. If the Commission shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws.

(2) [Unauthorized activities.]- No person may commence any significant modification of any project licensed under, or exempted from, this Act unless such modification is authorized in accordance with terms and conditions of such license or exemption and the applicable requirements of this Part. As used in this paragraph, the term "commence" refers to the beginning of physical on-site activity other than surveys or testing. (41 Stat. 1075; § 210, Act of August 26, 1935, 49 Stat. 846; Act of October 16 1986, 100 Stat. 1248; 16 U.S.C. § 817.)

EXPLANATORY NOTES

1986 Amendment. Section 6 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended section 23(b) by inserting "(1)" after "(b)" and by adding paragraph (2) as it appears above at the end thereof. Section 6 of the 1986 Act appears in Volume V at page 3492.

1935 Amendment. The Federal Power Act, Act of August 26, 1935 (49 Stat. 846) amended section 23 by designating the first paragraph as subsection (a), and the second paragraph as subsection (b). Subsection (a) was amended by substituting the word "Part" for "Act" wherever it appeared and by substituting the last sentence

of subsection (a) for the following: "Such fair value may, in the discretion of the Commission, be determined by mutual agreement between the Commission and the applicant or, in case they cannot agree, jurisdiction is hereby conferred upon the district court of the United States in the district within which such project or projects may be located, upon the application of either party to hear and determine the amount of such fair value."

In addition, the 1935 Act amended subsection (b) by adding the first sentence to the subsection, by substituting the words "with foreign nations" for "between foreign nations", by substituting "shall before such construction" for the words "may in their discretion" before the word "file", and by substituting the words "shall not construct, maintain, or operate such dam or other project works" for the words "shall not proceed with such construction." The 1935 Act appears in Volume I at page 527.

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Sec. 30. [Exemption from licensing requirements authorized for hydroelectric facilities under 15 megawatts on manmade conduits.]- (a) Except as provided in subsection (b) or (c), the Commission may grant an exemption in whole or in part from the requirements of this Part, including any license requirements contained in this Part, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order-

(1) is located on non-Federal lands, and

(2) utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(b) [Exemptions from licensing requirements limited.]- The Commission may not grant any exemption under subsection (a) to any facility the installed capacity of which exceeds 15 megawatts (40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes).

(c) [State and Federal agency consultation required.]- In making the determination under subsection (a) the Commission shall consult with the United States Fish and Wildlife Service, National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. § 661, et seq.), and shall include in any such exemption-

(1) such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State agency each determine are appropriate

to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

(d) [Treatment of violations.]- Any violation of a term or condition of any exemption granted under subsection (a) shall be treated as a violation of a rule or order of the Commission under this Act.

(e) [Fees for studies.]- The Commission, in addition to the requirements of section 10(e), shall establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended. (§ 213, Act of November 9, 1978, 92 Stat. 3148; Act of October 16, 1986, 100 Stat. 1248; 16 U.S.C. § 823a.)

EXPLANATORY NOTES

1986 Amendment. Section 7(a) of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended section 30(b) by inserting after "15 megawatts" the following: "(40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes)".

Section 7(b) of the l986 Act amended section 30(c) by inserting "National Marine Fisheries Service" after "the Fish and Wildlife Service" in both places such term appears.

Section 7(c) of the l986 Act amended section 30 by adding a new subsection (e) at the end thereof as it appears above. Section 7 of the 1986 Act appears in Volume V at page 3492.

1978 Amendment. Section 213 of the Public Utility Regulatory Policies Act of 1978 (Act of November 9, 1978, Public Law 95- 617, 92 Stat. 3117, 3148) amended Part I of the Federal Power Act by adding section 30. Extracts from the 1978 Act, not including section 213, appear in Volume IV at page 3137.

Sec. 31. [Enforcement.]- (a) [Monitoring and investigation.]- The Commission shall monitor and investigate compliance with each license and permit issued under this Part and with each exemption granted from any requirement of this Part. The Commission shall conduct such investigations as may be necessary and proper in accordance with this Act. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part.

(b) [Revocation orders.]- After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this Part or any exemption granted from any requirement of this Part where any licensee or exemptee is found by the Commission:

(1) to have knowingly violated a final order issued under subsection (a) after completion of judicial review (or the opportunity for judicial review); and

(2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding. In any such proceeding, the order issued under subsection (a) shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

(c) [Civil penalty.]- Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this Part, any term, or condition of a license, permit, or exemption under this Part, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

(d)(1) [Assessment.]- Before issuing an order assessing a civil penalty against any person under this section, the Commission shall provide to such person notice of the proposed penalty. Such notice shall, except in the case of a violation of a final order issued under subsection (a), inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) In the case of the violation of a final order issued under subsection (a), or unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Commission shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission

assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct. (5 U.S.C. § 701 et seq.)

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Commission shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Commission.

(4) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation in a timely manner at any time prior to a final decision by the court of appeals under paragraph (2) or by the district court under paragraph (3).

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Commission under paragraph (3), the Commission shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(6)(A) Notwithstanding the provisions of title 28, United States Code, or of this Act, the Commission may be represented by the general counsel of the Commission (or any attorney or attorneys within the Commission designated by the Chairman) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (5)) in a court of the United States or in any other court, except the Supreme Court. However, the Commission or the general counsel shall consult with the Attorney General

concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) The Commission shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph. (100 Stat. 1255)

EXPLANATORY NOTE

1986 Amendment. Section12 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended the Federal Power Act by adding a new section 31 at the end thereof. Section 12 of the 1986 Act appears in Volume V at page 3500.

BOULDER CANYON PROJECT ACT

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Sec. 2. [(a) Colorado River Dam Fund established. (b) Secretary of Treasury to advance amounts necessary for carrying out the provisions of the Act. (c) No expenditures for operation and maintenance except from appropriations. (d) Secretary of Treasury to charge fund for payment of interest. (e) Secretary of Interior to certify to Treasury amount of money in fund in excess of that necessary for construction, etc.]–

* * * * *

(b) The Secretary of the Treasury is authorized to advance to the fund from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act.

* * * * *

(45 Stat. 1057, 98 Stat. 1334; 43 U.S.C. § 617b.)

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Sec. 3. [Appropriation not exceeding $242,000,000 authorized.]– There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate $242,000,000, of which $77,000,000 (October 1983 price levels) shall be adjusted plus or minus such amounts as may be justified by reason of ordinary fluctuations of construction costs as indicated by engineering cost indices applicable to the type of construction involved herein. Said $77,000,000 represents the additional amount required for the uprating program and the visitor facilities program. (45 Stat. 1058, 98 Stat. 1334; 43 U.S.C. § 617b.)

EXPLANATORY NOTE

1984 Amendments. Section 103 of the Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1334; 43 U.S.C. § 617) amended the Boulder Canyon Project Act of 1928 as follows:

(1) In the first sentence of section 2(b), by striking out "except that the aggregate amount

of such advances shall not exceed the sum of $165,000,000" and by replacing the comma after the word "Act" with a period.

(2) In section 3, by deleting "$165,000,000." and inserting in lieu thereof "$242,000,000 . . . visitor facilities program."

Section 103 of the 1984 Act appears in Volume V at page 3404.

August 26, 1935

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FEDERAL POWER ACT

* * * * *

PART II-REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

* * * * *

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Sec. 211 [Certain wheeling authority.]- (a) Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant. Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order meets the requirements of section 212, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order.

* * * * *

(b) [Reliability of electric service.]- No order may be issued under this section or section 210 if, after giving consideration to consistently applied regional or national reliability standards, guidelines, or criteria, the Commission finds that such order would unreasonably impair the continued reliability of electric systems affected by the order.

(c) (1)No order may be issued under subsection (a) or (b) which requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy-

(A) required to be provided to such applicant pursuant to a contract during such period, or

(B) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission:

Provided, That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination of modification of an existing rates schedule: *Provided*, That such order shall not become effective until termination of such rate schedule or the modification becomes effective. (100 Stat. 1257)

EXPLANATORY NOTE

1986 Amendment. Section 15 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1243) amended subsection 211(c)(2)(B) by adding two provisos as they appear above. Subsection 211(c)(2)(B) became 211(c)(1)(B) by subsequent amendment in 1992. See the following explanatory note regarding the 1992 amendment. Section 15 of the 1986 Act appears in Volume V at page 3503.

(d)(1) Any transmitting utility ordered under subsection (a) or (b) to provide transmission services may apply to the Commission for an order permitting such transmitting utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, each affected transmitting utility, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b), if the electric utility providing such transmission services has demonstrated, and the Commission has found, that-

(A) due to changed circumstances, the requirements applicable, under (a) or (b) are no longer met, or

(B) any transmission capacity of the utility providing transmission services under such order which was, at the time such order was issued, in excess of the capacity necessary to serve its own customers is no longer in excess of the capacity necessary for such purposes, or

(C) the ordered transmission services require enlargement of transmission capacity and the transmitting utility subject to the order has failed, after making a good faith effort, to obtain the necessary approvals or property rights under applicable Federal, State, and local laws. (106 Stat. 2915)

No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

(2) Any order issued under this subsection terminating or modifying an order issued under subsection (a) or (b) shall-

(A) provide for any appropriate compensation, and

(B) provide the affected electric utilities adequate opportunity and time to-

(i) make suitable alternative arrangements for any transmission services terminated or modified, and

(ii) insure that the interests of ratepayers of such utilities are adequately protected.

(3) No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) if the order under subsection (a) or (b) includes terms and conditions agreed upon by the parties which-

(A) fix a period during which transmission services are to be provided under the order under subsection (a) or (b), or

(B) otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the transmitting utility subject to such order for transmission capacity).

EXPLANATORY NOTE

1992 Amendment. Section 721 of the Energy Policy Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2915) amended section 211 of the Federal Power Act (16 U.S.C. § 824j.) as follows:

(1) The first sentence of subsection (a) is amended to read as it appears above.

(2) The second sentence of subsection (a) was amended by striking "the Commission may" and all that follows and inserting "the Commission may issue such order if it finds that such order meets the requirements of section 212, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order.".

(3) Subsection (b) was amended to read as it appears above.

(4) Subsection (c) was amended by-

(A) Striking out paragraph (1).

(B) Striking from paragraph (2) "which requires the electric" and inserting "which requires the transmitting".

(C) Striking out paragraphs (3) and (4).

(5) In subsection (d)-

(A) The first sentence of paragraph (1) was amended by striking "electric" and inserting "transmitting" in each place it appears.

(B) The second sentence of paragraph (1) was amended by inserting "each affected transmitting utility," before "and each affected electric utility,".

(C) Paragraph (3) was amended by striking "electric" and inserting "transmitting".

(D) Subparagraph (1)(B) was amended by striking the period and inserting ", or" and by inserting the new subparagraph (C) as it appears above after subparagraph (B). Section 721 of the 1992 Act appears in Volume V at page 3776.

PROVISIONS REGARDING CERTAIN ORDERS REQUIRING INTERCONNECTION OR WHEELING

Sec. 212. (a) [Rates, charges, terms, and conditions for wholesale transmission services.]- An order under section 211 shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 211 shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.

* * * * *

(e) [Savings provisions.]- (1) No provision of section 210, 211, 214, or this section shall be treated as requiring any person to utilize the authority of any such section in lieu of any other authority of law. Except as provided in section 210, 211, 214, or this section, such sections shall not be construed as limiting or impairing any authority of the Commission under any other provision of law.

(2) Sections 210, 211, 213, 214, and this section, shall not be construed to modify, impair, or supersede the antitrust laws. For purposes of this section, the term "antitrust laws" has the meaning given in subsection (a) of the first sentence of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section relates to unfair methods of competition.

* * * * *

(g) [Prohibition on orders inconsistent with retail marketing areas.]- No order may be issued under this Act which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

(h) [Prohibition on mandatory retail wheeling and sham wholesale transactions.]- No order issued under this Act shall be conditioned upon or require the transmission of electric energy:

(1) directly to an ultimate consumer, or

(2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless:

(A) such entity is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and

(B) such entity was providing electric service to such ultimate consumer on the date of enactment of this subsection or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.

EXPLANATORY NOTE

Reference in the Text. The Rural Electrification Act of 1936 does not appear herein.

(i) [Laws applicable to Federal Columbia River Transmission System.]-

(1) The Commission shall have authority pursuant to section 210, section 211, this section, and section 213 to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and (B) establish the terms and conditions of such service. In applying such sections to the Federal Columbia River Transmission System, the Commission shall assure that-

(i) the provisions of otherwise applicable Federal laws shall continue in full force and effect and shall continue to be applicable to the system; and

(ii) the rates for the transmission of electric power on the system shall be governed only by such otherwise applicable provisions of law and not by any provision of section 210, section 211, this section, or section 213, except that no rate for the transmission of power on the system shall be unjust, unreasonable, or unduly discriminatory or preferential, as determined by the Commission.

(2) Notwithstanding any other provision of this Act with respect to the procedures for the determination of terms and conditions for transmission service-

(A) when the Administrator of the Bonneville Power Administration either (i) in response to a written request for specific transmission service terms and conditions does not offer the requested terms and conditions, or (ii) proposes to establish terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System, then the Administrator may provide opportunity for a hearing and, in so doing, shall-

(I) give notice in the Federal Register and state in such notice the written explanation of the reasons why the specific terms and conditions for transmission services are not being offered or are being proposed;

(II) adhere to the procedural requirements of paragraphs (1) through (3) of section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839(i) (1) through (3)), except that the hearing officer shall, unless the hearing officer becomes unavailable to the agency, make a recommended decision to the Administrator that states the hearing officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record; and

(III) make a determination, setting forth the reasons for reaching any findings and conclusions which may differ from those of the hearing officer, based on the hearing record, consideration of the hearing officer's recommended decision, section 211 and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section; and

(B) if application is made to the Commission under section 211 for transmission service under terms and conditions different than those offered by the Administrator, or following the denial of a request for transmission service by the Administrator, and such application is filed within 60 days of the Administrator's final determination and in accordance with Commission procedures, the Commission shall-

(i) in the event the Administrator has conducted a hearing as herein provided for (I) accord parties to the Administrator's hearing the opportunity to offer for the Commission record materials excluded by the Administrator from the hearing record, (II) accord such parties the opportunity to submit for the Commission record comments on appropriate terms and conditions, (III) afford those parties the opportunity for a hearing if and to the extent that the Commission finds the Administrator's hearing record to be inadequate to support a decision by the Commission, and (IV) establish terms and conditions for or deny transmission service based on the Administrator's hearing record, the Commission record, section 211 and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section, or,

(ii) in the event the Administrator has not conducted a hearing as herein provided for, determine whether to issue an order for transmission service in accordance with section 211 and this section, including providing the opportunity for a hearing.

EXPLANATORY NOTE

References in the Text. The Pacific Northwest Electric Power Planning and Conservation Act, Act of December 5, 1980, Public Law 96-501 (94 Stat. 2697) appears in Volume IV at page 3225.

Extracts from the Energy Policy Act of 1992, Act of October 24, 1992, Public Law 102-486 (106 Stat. 2921) appears in Volume V at page 3766.

(3) Notwithstanding those provisions of section 313(b) of this Act (16 U.S.C. § 8251) which designate the court in which review may be obtained, any party to a proceeding concerning transmission service sought to be furnished by the Administrator of the Bonneville Power Administration seeking review of an order issued by the Commission in such proceeding shall obtain a review of such order in the United States Court of Appeals for the Pacific Northwest, as that region is defined by section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839a(14)).

(4) To the extent the Administrator of the Bonneville Power Administration cannot be required under section 211, as a result of the Administrator's other statutory mandates, either to (A) provide transmission service to an applicant which the Commission would otherwise order, or (B) provide such service under rates, terms, and conditions which the Commission would otherwise require, the applicant shall not be required to provide similar transmission services to the Administrator or to provide such services under similar rates, terms, and conditions.

(5) The Commission shall not issue any order under section 210, section 211, this section, or section 213 requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator's ability to provide such transmission service to the Administrator's power and transmission customers in the Pacific Northwest, as that region is defined in section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. § 839a(14)), as is needed to assure adequate and reliable service to loads in that region.

(j) [Equitability within territory restricted electric systems.]– With respect to an electric utility which is prohibited by Federal law from being a source of power supply, either directly or through a distributor of its electric energy, outside an area set forth in such law, no order issued under section 211 may require such electric utility (or a distributor of such electric utility) to provide transmission services to another entity if the electric energy to be transmitted will be consumed within the area set forth in such Federal law, unless the order is in furtherance of a sale of electric energy to that electric utility: *Provided, however,* That the foregoing provision shall not apply to any area served at retail by an electric transmission system which was such a distributor on the date of enactment of this subsection and which before October 1, 1991, gave its notice of termination under its power supply contract with such electric utility.

(k) [ERCOT Utilities.]– (1) [Rates.]– Any order under section 211 requiring provision of transmission services in whole or in part within ERCOT shall provide that any ERCOT utility which is not a public utility and the transmission facilities of which are actually used for such transmission service is entitled to receive compensation based, insofar as practicable and consistent with subsection (a), on the transmission ratemaking methodology used by the Public Utility Commission of Texas.

(2) [Definitions.]– For purposes of this subsection-

(A) the term 'ERCOT' means the Electric Reliability Council of Texas; and

(B) the term 'ERCOT utility' means a transmitting utility which is a member of ERCOT. (106 Stat. 2916)

EXPLANATORY NOTE

1992 Amendment. Section 722 of the Energy Policy Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2916) amended section 212 of the Federal Power Act (16 U.S.C. § 824k.) as follows:

(1) By striking subsections (a) and (b) and inserting subsection (a) as it appears above.

(2) Subsection (e) is amended to read as it appears above.

(3) By adding the new subsections (g), (h), (i), (j), and (k) at the end as they appear above. Section 722 of the 1992 Act appears in Volume V at page 3777.

Sec. 213. [Information requirements.]– **(a) [Requests for wholesale transmission services.]**– Whenever any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale makes a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions, unless the transmitting utility agrees to provide such services at rates, charges, terms and conditions acceptable to such person, the transmitting utility shall, within 60 days of its receipt of the request, or other mutually agreed upon period, provide such person with a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.

(b) [Transmission capacity and constraints.]– Not later than 1 year after the enactment of this section, the Commission shall promulgate a rule requiring that information be submitted annually to the Commission by transmitting utilities which is adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints. (106 Stat. 2919)

EXPLANATORY NOTE

1992 Amendment. Section 723 of the Energy Policy Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2919) amended Part II of the Federal Power Act (16 U.S.C. § 824l.) by adding the new section 213 after section 212 as it appears above. Section 723 of the 1992 Act appears in Volume V at page 3781.

Sec. 214. [Sales by exempt wholesale generators.]– No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 205 if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms 'associate company' and 'affiliate' shall have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935. (106 Stat. 2920)

EXPLANATORY NOTE

1992 Amendment. Section 724 of the Energy Policy Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2920) amended Part II of the Federal Power Act (16 U.S.C. § 824m.) by adding the new section 214 after section 213 as it appears above. Section 724 of the 1992 Act appears in Volume V at page 3782.

Reference in the Text. Statutory interpretation of and statutory references of the Public Utility Holding Company Act of 1935 appear in Volume IV at pages 3268 and 3158, respectively, and in this Supplement at page S813.

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PART III- LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

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Pages 533, S107

EXPLANATORY NOTE

1992 Amendments. Section 725 (a) of the Energy Policy Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2919) amended Sections 315 and 316 of the Federal Power Act (16 U.S.C. § 825n, 825o.) by adding the following at the end thereof: "(c) This subsection shall not apply in the case of any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.". Sections 315 and 316 do not appear in either volume. Section 725(a) of the 1992 Act appears in Volume V at page 3782.

Sec. 316A. [Enforcement of certain provisions.]- (a) [Violations.]- It shall be unlawful for any person to violate any provision of section 211, 212, 213, or 214 or any rule or order issued under any such provision.

(b) [Civil penalties.]- Any person who violates any provision of section 211, 212, 213, or 214 or any provision of any rule or order thereunder shall be subject to a civil penalty of not more than $10,000 for each day that such violation continues. Such penalty shall be assessed by the Commission, after notice and opportunity for public hearing in accordance with the same provisions; as are applicable under section 31(d) in the case of civil penalties assessed under section 31. In determining the amount of a proposed penalty, the Commission shall take into consideration the seriousness of the violation and the efforts of such person to remedy the violation in a timely manner. (106 Stat. 2920)

EXPLANATORY NOTE

1992 Amendment. Section 725(b) of the Energy Policy Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2919) amended Title III of the Federal Power Act (16 U.S.C. § 824o-1.) by adding the new section 316A after section 316 as it appears above. Section 725(b) of the 1992 Act appears in Volume V at page 3764.

PARKER AND GRAND COULEE DAMS AUTHORIZED

* * * * *

[Evaluation of tidal currents for hydropower development.]– The Secretary shall undertake a demonstration project to evaluate the potential for hydropower development, utilizing tidal currents; (106 Stat. 3101)

EXPLANATORY NOTES

1992 Amendment. Sec. 2409 of the Energy Policy Act of 1992, Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2776) amended the Act of August 30, 1935 (Public Law No. 409 of the 74th Congress, 49 Stat. 1028), by inserting a phrase as it appears above after "Document Numbered 15, Seventy-fourth Congress;". Section 2409 of the 1992 Act appears in Volume V at page 3792.

Editor's Note. Section 2 of the 1935 Act appears in Volume I at page 538. However, the phrase "Document Numbered 15, Seventy-fourth Congress;" does not appear therein.

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CENTRAL VALLEY PROJECT, CALIFORNIA, AND COLORADO RIVER PROJECT, TEXAS

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* * * * *

Sec. 2. [Central Valley project reauthorized-$12,000,000 authorization transferred to Secretary of Interior as a nonreimbursable expenditure-Otherwise Reclamation law to govern-Priorities.]- (a) The $12,000,000 recommended for expenditure for a part of the Central Valley project, California, in accordance with the plans set forth in Rivers and Harbors Committee Document Numbered 35, Seventy-third Congress, and adopted and authorized by the provisions of section 1 of the Act of August 30, 1935 (49 Stat. 1028, at 1038), entitled "an Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," shall, when appropriated, be available for expenditure in accordance with the said plans by the Secretary of the Interior instead of the Secretary of War: *Provided*, That the transfer of authority from the Secretary of War to the Secretary of the Interior shall not render the expenditure of this fund reimbursable under the reclamation law: *Provided further*, That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for construction under the provisions of the Federal reclamation laws of such distribution systems as the Secretary of the Interior deems necessary in connection with lands for which said stored waters are to be delivered, for the reclamation of arid and semiarid lands and lands of Indian reservations, and mitigation, protection, and restoration of fish and wildlife and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: *Provided further*, That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment

contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, and may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: *And provided further*, That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and fish and wildlife mitigation, protection and restoration purposes; and, third, for power and fish and wildlife enhancement. The mitigation for fish and wildlife losses incurred as a result of construction, operation, or maintenance of the Central Valley project shall be based on the replacement of ecologically equivalent habitat and shall take place in accordance with the provisions of this title and concurrent with any future actions which adversely affect fish and wildlife populations or their habitat but shall have no priority over them. (50 Stat. 850; § 2, Act of October 17, 1940, 54 Stat. 1199; § 3406, Act of October 30, 1992, Public Law 102-575, 106 Stat. 4714)

(b) [Central Valley project coordinated operation policy.]- (1) **[State of California water quality standards.]**- 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) [State water project.]- 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. (100 Stat. 3050)

EXPLANATORY NOTE

Reference in the Text. The Water Right Decision 1485 of the State of California Water Resources Control Board, dated August 16, 1978, does not appear herein.

The Emergency Relief Appropriations Act of 1935 (49 Stat. 115) does not appear herein.

The First Deficiency Appropriations Act, fiscal year 1936 does not appear herein.

(c) [Reimbursable costs.]- (1) [Water quality and salinity control costs nonreimbursable under certain conditions.]- 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.

EXPLANATORY NOTE

Reference in the Text. 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, does not appear herein.

(2) [Cost allocation study required.]- 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. (100 Stat. 3050)

(d) [Coordinated Operations Agreement.]- 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. (100 Stat. 3051)

(e) Nothing in this title shall affect the State's authority to condition water rights permits for the Central Valley project. (106 Stat. 4714)

EXPLANATORY NOTES

1992 Amendment. Section 3406 of the Act of October 30,1992 (Public Law 102-575, 106 Stat. 4714) amended section 2, as amended, as follows:

(1) in the second proviso of subsection (a), by inserting "and mitigation, protection, and restoration of fish and wildlife" after "Indian reservations,";

(2) in the last proviso of subsection (a), by striking "domestic uses;" and inserting "domestic uses and fish and wildlife mitigation, protection and restoration purposes;" and by striking "power" and inserting "power and fish and wildlife enhancement";

(3) by adding at the end [of subsection (a) is presumed] the following: "The mitigation for fish and wildlife losses incurred as a result of construction, operation, or maintenance of the Central Valley project shall be based on the replacement of ecologically equivalent habitat and shall take place in accordance with the provisions of this title and concurrent with any future actions which adversely affect fish and wildlife populations or their habitat but shall have no priority over them."; and

(4) by adding at the end the following: "(e) Nothing in this title shall affect the State's authority to condition water rights permits for the Central Valley project." Section 3406 of the 1992 Act appears in Volume V at page 3941.

1986 Amendment. Sections 101-103 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3050) amended Section 2 by inserting "(a)" at the beginning and adding new subsections (b), (c), and (d) concerned with coordinated operation of the Central Valley project and the State Water Project. The 1986 Act appears in Volume V at page 3512.

1940 Amendment: Distribution Systems. Section 2 of the Act of October 17, 1940, adds the authority in the second proviso for construction of distribution systems. The Act appears in Volume I at page 711.

Supplementary Provision: Fish and Wildlife Purposes. Section 1 of the Act of August 27, 1954, 68 Stat. 879, adds authority for the use of the waters of the Central Valley project for fish and wildlife purposes, subject to such priorities as are applicable under previous Acts. The 1954 Act appears in Volume II at page 1191.

Supplementary Provisions: Additional Works. The following Acts of Congress relate to additional works authorized for inclusion as a part of, or for integrated operation with, the Central Valley project: (1) American River Basin development, Act of October 14, 1949; (2) Sacramento Valley canals, Act of September 26, 1950; (3) waterfowl management works, Act of August 27, 1954; (4) Trinity River division, Act of August 12, 1955; (5) San Luis unit, Act of June 3, 1960; (6) New Melones project (constructed by the Corps of Engineers), Act of October 23, 1962; (7) Auburn-Folsom South unit, Act of September 2, 1965. Each of these acts appears herein in chronological order.

References in the Text: Earlier Authorizations. Section 1 of the Act of August 30, 1935, 49 Stat. 1028, 1038, by approving the War Department report contained in Rivers and Harbors Committee Document Numbered 35, 73rd Congress, authorized the Secretary of War to make a Federal contribution of $12,000,000 to the cost of Kennett Dam on the upper reaches of the Sacramento River then proposed for construction by the Water Project Authority of the State of California. On September 10, 1935, the President transferred $20,000,000 of funds appropriated under the Emergency Relief Appropriation Act of 1935 to the Secretary of the Interior for construction under the reclamation laws of Friant Dam on the San Joaquin River and related features as part of the Central Valley project. On December 2, 1935, the President approved the finding of feasibility report of the Secretary of the Interior, dated November 26, 1935, thereby authorizing construction of the Central Valley project as a Federal reclamation project under section 4 of the Act of June 25, 1910, and subsection B, section 4, of the Act of December 5, 1924 (Fact Finders' Act). The principal features of the project listed in the report were the Kennett Dam unit (subsequently renamed Shasta Dam), the Contra Costa conduit, San Joaquin pumping system, Friant Dam and Reservoir, Friant-Kern Canal, and Madera Canal. The First Deficiency Appropriation Act, 1936, appropriated $6,900,000 for continuation of construction of the Central Valley project. The 1910 and 1924 Acts appear herein in chronological order.

Reference Source. An exhaustive compilation of material relating to the Central Valley project is contained in the 2-volume work entitled *Central Valley Project Documents*, prepared under the direction of Chairman Engle of the House Committee on Interior and Insular Affairs. The first volume, "Part 1. Authorizing Documents," was printed as H.R. Doc. No. 416, 84th Cong., 2d Sess. (1956), and the second volume, "Part 2. Operating Documents," was printed as H.R. Doc. No. 246, 85th Cong., 1st Sess. (1957).

BOULDER CANYON PROJECT ADJUSTMENT ACT

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Sec. 1. [Secretary to promulgate charges for energy generated–Charges may be subject to revision.]– The Secretary of the Interior is hereby authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Boulder Dam beginning June 1, 1937, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes:

(a) To meet the cost of operation and maintenance, and to provide for replacements, of the project beginning June 1, 1937;

(b) To repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the project made prior to June 1, 1937, within fifty years from that date (excluding advances allocated to flood control by section 2(b) of the Project Act, which shall be repayable as provided in section 7 hereof), and such advances made on and after June 1, 1937, over fifty-year periods;

(c) To provide $600,000 for each of the years and for the purposes specified in section 2(c) hereof;

(d) To provide $500,000 for each of the years and for the purposes specified in section 2(d) hereof; and

(e) To provide, by application of the increments to rates specified in section 403(c)(2) of the Colorado River Basin Project Act of 1968, as amended and supplemented, revenues, from and after June 1, 1987, for application to the purposes there specified. (54 Stat. 774, 98 Stat. 1334; 43 U.S.C. § 618; 43 U.S.C. § 1543.)

EXPLANATORY NOTES

1984 Amendments. Subsections 104(a)(1), (2), and (3) of the Hoover Power Plant Act of 1984, Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1334) amended section 1 above by: (1) In section 1 (43 U.S.C. § 618.) by deleting the phrase "during the period beginning June 1, 1937, and ending May 31, 1987" appearing in the introductory paragraph of section 1 and in section 1(a) and inserting in lieu thereof "beginning June 1, 1937"; (2) In section 1(b), by deleting the phrase "and such portion of such advances made on and after June 1, 1937, as (on the basis of repayment thereof within such fifty-year period or periods as the Secretary may determine) will be repayable prior to June 1, 1987" and inserting in lieu thereof "and such advances made on and after June 1, 1937, over fifty-year periods"; (3) In section 1, by deleting the word "and" at the end of subsection (c); deleting the period at the end of subsection (d) and inserting in lieu thereof "; and", and by adding after subsection (d) the new subsection (e) as it appears above. The 1984 Act appears in Volume V at page 3405.

Reference in the Text. The Colorado River Basin Project Act of 1968, Act of September 30, 1968, Public Law 90-537 (82 Stat. 885) appears in Volume IV at page 2395.

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Sec. 2. [Receipts to be paid into Colorado River Dam Fund- To be available for (a) operation and maintenance and replacements, (b) repayment to Treasury, (c) payments to Arizona and Nevada and if taxes are levied by Arizona or Nevada payments to them to be reduced an equivalent amount, and (d) transfer of funds to the Colorado River Development Fund for studies, investigations, and construction.]- All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:

(a) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriations acts;

* * * * *

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(e) Transfer to the Lower Colorado River Basin Development Fund established by title IV of the Colorado River Basin Project Act of 1968, as amended and supplemented (43 U.S.C. § 1541.), of the revenues referred to in section 1(e) of this Act. (54 Stat. 774; Act of May 14, 1946, 62 Stat. 235; Act of June 1, 1948, 62 Stat. 284; Act of August 17, 1984, 98 Stat. 1334-1335; 43 U.S.C. § 618a.)

EXPLANATORY NOTE

1984 Amendments. Subsection 104(a)(4) of the Hoover Power Plant Act of 1984, Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1334) amended section 2 above by: (i) deleting the first sentence and subsection (a) and inserting in lieu thereof new language as it appears above; (ii) amending subsection (e) to read as it appears above. The 1984 Act appears in Volume V at page 3405.

* * * * *

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Sec. 6. [Interest to be computed a 3 per centum.]- Whenever by the terms of the Project Act or this Act payment of interest is provided for, and whenever interest shall enter into any computation thereunder, such interest shall be

computed at the rate of 3 per centum per annum, compounded annually: *Provided*, That the respective rates of interest on appropriated funds advanced for the visitor facilities program, as described in section 101(a) of the Hoover Power Plant Act of 1984, 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 of the program during the month preceding the fiscal year in which the costs of the program are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish for repayment purposes an interest rate at a weighted average of the rates so determined. (54 Stat. 777, 98 Stat. 1225; 43 U.S.C. § 618e.)

EXPLANATORY NOTE

1984 Amendments. Subsection 104(a)(5) of the Hoover Power Plant Act of 1984, Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1335) amended section 6 above by deleting the final period at the end of section 6 and inserting in lieu thereof the proviso and the following sentence as they appear above. The 1984 Act appears in Volume V at page 3406.

* * * * *

Page 703

Sec. 12. [Definitions of terminology employed.]– The following terms wherever used in this Act shall have the following respective meanings:

* * * * *

"Replacements" shall mean such replacements as may be necessary to keep the project in good operating condition beginning June 1, 1937, but shall not include (except where used in conjunction with word "emergency" or the words "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe; and

* * * * *

(54 Stat. 778, 98 Stat. 1335; 43 U.S.C. § 618k.)

EXPLANATORY NOTE

1984 Amendments. Subsection 104(a)(6) of the Hoover Power Plant Act of 1984, Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1335) amended section 12 in the paragraph beginning with "Replacements", by deleting "during the period from June 1, 1937, to May 31, 1987, inclusive" and inserting in lieu thereof "beginning June 1, 1937". The 1984 Act appears in Volume V at page 3406.

FLOOD CONTROL ACT OF 1944

* * * * *

Pages 805-806

Sec. 8. [Utilization of Army dam and reservoir projects for irrigation pursuant to reclamation laws-Existing projects excepted.]– Hereafter, whenever the Secretary of War determines, upon recommendation by the Secretary of the Interior that any dam and reservoir project operated under the direction of the Secretary of War may be utilized for irrigation purposes, the Secretary of the Interior is authorized to construct, operate, and maintain, under the provisions of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), such additional works in connection therewith as he may deem necessary for irrigation purposes. Such irrigation works may be undertaken only after a report and finding thereon have been made by the Secretary of the Interior as provided in said Federal reclamation laws and after subsequent specific authorization of the Congress by an authorization Act; and, within the limits of the water users' repayment ability such report may be predicated on the allocation to irrigation of an appropriate portion of the cost of structures and facilities used for irrigation and other purposes. Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this section, but the foregoing requirement shall not prejudice lawful uses now existing: *Provided*, That this section shall not apply to any dam or reservoir heretofore constructed in whole or in part by the Army engineers, which provides conservation storage of water for irrigation purposes. In the case of any reservoir project constructed and operated by the Corps of Engineers, the Secretary of the Army is authorized to allocate water which was allocated in the project purpose for municipal and industrial water supply and which is not under contract for delivery, for such periods as he may deem reasonable, for the interim use for irrigation purposes of such storage until such storage is required for municipal and industrial water supply. No contracts for the interim use of such storage shall be entered into which would significantly affect then-existing uses of such storage. (58 Stat. 891; 100 Stat. 4196; 43 U.S.C. § 390.)

EXPLANATORY NOTE

1986 Amendment. Section 931 of the Water Resources Development Act of 1986, Act of November 17, 1986 (Public Law 99-662, 100 Stat. 4082; 33 U.S.C. § 2201 note.) amended section 8 of the Act of December 22, 1944 (58 Stat. 891; 43 U.S.C. 390) by adding two sentences at the end, as they appear above. Section 931 of the 1986 Act appears in Volume V at page 3537.

NOTES OF OPINIONS

1. Existing uses

The restrictive clause in section 8 that "the foregoing requirement shall not prejudice lawful uses now existing," refers to existing uses to which War Department projects were being devoted at the time the Act was passed and was intended to relieve these arrangements for use, which antedates the Act, from the new requirement that "Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this section." The clause does not apply to the Pine Flat project, because it had not then been built. *Turner v. Kings River Conservation Dist.*, 360 F. 2d 184, 193 (9th Cir. 1966).

2. Judicial proceedings

A suit against officials of the Bureau of Reclamation for injunctive relief in connection with the operation of a project is not barred on the grounds that it is a suit against the United States without its consent if, in fact, the actions of the officials sought to be enjoined are prohibited by statute or by the Constitution. *Turner v. Kings River Conservation Dist.*, 360 F. 2d 184, 90 (9th Cir. 1966).

The action by holders of private water rights in the Kings River for an injunction against officials of the Bureau of Reclamation and the Corps of Engineers, restraining them from operating Pine Flat Dam in a manner that interferes with their water rights, is dismissed on the grounds that it is an action against the United States without its consent, because the officials are acting within their statutory authority. The proper remedy of the plaintiffs is an action in the Court of Claims for damages for the taking of property rights. *Turner v. Kings River Conservation Dist.*, 360 F. 2d 184 (9th Cir. 1966).

3. Reclamation laws

Section 46 of the Omnibus Adjustment Act of 1926 is a part of reclamation law made applicable by section 8 of the Flood Control Act of 1944 to flood control projects of the Department of the Army. Solicitor Bennett Opinion, 64 I.D. 273, 274 (1957) in re proposed contract with Kings River Conservation District.

The Secretary of the Interior is charged with the responsibility, under section 8 of the Flood Control Act of 1944, for the negotiation of appropriate repayment contracts with water users under reclamation law for the repayment of allocations to irrigation functions of dam and reservoir projects operated under the direction of the Secretary of the Army. This responsibility exists whether or not additional facilities are required for irrigation functions at such projects. Solicitor Bennett Opinion, 65 I.D. 525 (1957).

In order to give effect to the intent of Congress, section 8 of the Flood Control Act of 1944 requires that the reclamation laws apply to any contract for the disposition of irrigation benefits from the Isabella reservoir on the Kern River and the Pine Flat reservoir on the Kings River, California, both of which are projects of the Department of the Army, even though no additional works need to be constructed to make irrigation benefits available from the projects, and notwithstanding any contrary implication that might be drawn from section 10. 41 Op. Atty. Gen. 377, 65 I.D. 549 (1958).

Excess land provisions are a part of reclamation law made applicable by this section to Kings and Kern River project repayment contracts. Solicitor Barry Opinion, 68 I.D. 372, 375 n. 2 (1961), in re proposed repayment contracts for Kings and Kern River projects.

4. Studies

Section 8 of the Flood Control Act of 1944 authorizes the Secretary of the Interior to investigate reclamation development in connection with proposed Department of the Army reservoir projects outside of the 17 reclamation states. Opinion of Chief Counsel Fisher, September 12, 1952, in re authority of Bureau of Reclamation to perform work in Arkansas and Louisiana in connection with the Arkansas-Red-White River investigations, and Opinion of Associate Solicitor Hogan, December 6, 1963, in re authority to make studies in Louisiana; both reprinted in *Hearings on Public Works Appropriations Bill, 1965, Before a Subcommittee of the House Committee on Appropriations*, 88th Cong., 2d Sess., pt. 2, at 134- 38 (1964).

The Bureau of Reclamation is authorized under reclamation law to expend appropriations made from the general funds of the Treasury under the heading "General Investigations-general engineering and research" for atmospheric water resources research that is of primary benefit to States other than the 17 Western States. Although expenditures from the Reclamation Fund may be made only for the benefit of the 17 Western States, expenditures from general fund appropriations are not so limited because section 2 of the Reclamation Act and section 8 of the Flood Control Act of 1944 evidence a congressional intent to make the benefits of reclamation law available to all parts of the Nation notwithstanding the limitations on the use of the Reclamation Fund. Memorandum of Associate Solicitor Hogan, July 13,1966.

5. Revenues

An appropriate share of revenues received in connection with contracts for irrigation service from Pine Flat Dam and other Department of the Army developments from which the Secretary of the Interior disposes of irrigation benefits pursuant to section 8 of the Flood Control Act of 1944, should be deposited in the general fund of the Treasury as miscellaneous receipts. Letter of Administrative Assistant Secretary Beasley to Mr. A. T. Samuelson, General Accounting Office, April 22, 1957, reprinted in *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works*, 85th Cong., 1st Sess., pt. 1, at 364-66 (1957).

REHABILITATION AND BETTERMENT ACT

Pages 969, S189

Sec. 1. [Rehabilitation and betterment of Federal Reclamation projects, including small reclamation projects-Return of costs as determined by Secretary-Interest-Determination not effective until 60 days after submission to Congressional Committees-Definitions-Performance of work by contract or force account.]- Expenditures of funds hereafter specifically appropriated for rehabilitation and betterment of any project constructed under authority of the Small Reclamation Projects Act (Act of August 6, 1956, 70 Stat. 1044, and Acts amendatory thereof and supplementary thereto) and of irrigation systems on projects governed by the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), shall be made only after the organizations concerned shall have obligated themselves for the return thereof, in installments fixed in accordance with their ability to pay, as determined by the Secretary of the Interior in the light of their outstanding repayment obligations, and which shall, to the fullest practicable extent, be scheduled for return with their construction charge installments or otherwise scheduled as he shall determine: *Provided*, That repayment of such loans made for small reclamation projects shall include interest in accordance with the provisions of said Small Reclamation Projects Act. No such determination of the Secretary of the Interior shall become effective until the expiration of sixty days after it has been submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives; except that, any such determination may become effective prior to the expiration of such sixty days in any case in which each such committee approves an earlier date and notifies the Secretary, in writing, of such approval: *Provided*, That when Congress is not in session the Secretary's determination, if accompanied by a finding by the Secretary that substantial hardship to the water users concerned or substantial further injury to the project works will result, shall become effective when the chairman and ranking minority member of each such committee shall file with the Secretary their written approval of said findings. The term "rehabilitation and betterment", as used in this section, shall mean maintenance, including replacements, which cannot be financed currently, as otherwise contemplated by the Federal reclamation laws in the case of operation and maintenance costs, but shall not include construction, the costs of which are returnable, in whole or in part, through "construction charges" as that term is defined in section 2(d) of the Reclamation Project Act of 1939 (53 Stat. 1187). Such rehabilitation and betterment

work may be performed by contract, by force-account, or, notwithstanding any other law and subject to such reasonable terms and conditions as the Secretary of the Interior shall deem appropriate for the protection of the United States, by contract entered into with the organization concerned whereby such organization shall perform such work. (63 Stat. 724; Act of March 3, 1950, 64 Stat. 11; Act of October 3, 1975, 89 Stat. 485; Act of November 2, 1994, 108 Stat. 4594; 43 U.S.C. § 504.)

EXPLANATORY NOTES

1994 Amendment. Section 16(c) of the Act to make Technical Improvements in U.S. Code, Act of November 2, 1994 (Public Law 103-437, 108 Stat. 437) amended section 1 by striking "Committee on Interior and Insular Affairs of the Senate and the Committee on Public Lands of the House" and substituting "Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House". Section 16 of the 1994 Act appears in Volume V at page 4061.

1975 Amendment. The Act of October 3, 1975 (Public Law 94-102, 89 Stat. 485) amended the Rehabilitation and Betterment Act of 1949 by providing for coverage of projects constructed under the authority of the Small Reclamation Projects Act and by providing that repayment of loans made for such projects shall include interest in accordance with the provisions of that Act. The 1975 Act appears in Volume IV at page 2927.

Supplementary Provision: Nonreimbursable Costs. The Act of October 29, 1971 (Public Law 92-149, 85 Stat. 416) provides that the costs of studies for rehabilitation and betterment of existing projects relating to work for which repayment contracts have not been executed prior to October 29, 1971, shall be nonreimbursable. The 1971 Act appears in Volume IV at page 2639.

Reference in the Text. The Small Reclamation Project Act, Act of August 6, 1956, 70 Stat. 1044 appears in Volume II at page 1331. See the index for reference to amendments and annotations.

* * * * *

SACRAMENTO VALLEY CANALS

Pages 1032, S202

Sec. 1. [Central Valley project reauthorized.]–

* * * * *

EXPLANATORY NOTE

Error in the Text of Volume II. In the second line of section 1, "October 26, 1937" should read "August 26, 1937".

Pages 1032-1033

Sec. 2. [Features included.]– The features herein authorized shall include an irrigation canal, generally known as the Tehama-Colusa Conduit, to be located on the west side of the Sacramento River and equipped with all necessary pumping plants and appurtenant works, beginning at the Sacramento River near Red Bluff, California, and extending southerly through Tehama, Glenn, and Colusa Counties so as to permit the most effective irrigation of the irrigable lands lying in the vicinity of said canal and supply water for industrial, domestic, and other beneficial uses for these lands in Tehama, Glenn, Colusa, Solano, and Napa Counties, those portions of Yolo County within the boundaries of Colusa County Water District, Dunnigan Water District, Yolo-Zamora Water District, and Yolo County Flood Control and Water Conservation District, or such alternate canals and pumping plants as the Commissioner of Reclamation and Secretary of the Interior may deem necessary to accomplish the aforesaid purposes. Notwithstanding the provisions of section 5 of this Act, the Secretary of the Interior is authorized to provide sufficient extra capacity and elevation in the Tehama-Colusa Canal to enable future water service to Yolo, Solano, Lake, and Napa Counties for irrigation and other purposes, and to treat the cost of providing such extra capacity as a deferred obligation. The deferred obligation is to be paid under arrangements to be made at such time as the works to serve the additional areas may be authorized as an extension of the Central Valley project. In the event such works are not authorized, the deferred obligation is to be paid from other revenues of the Central Valley project.

The features herein authorized shall also include an irrigation canal, generally known as the Chico Canal, to be located on the east side of the Sacramento River and equipped with all necessary pumping plants and other appurtenant

works, beginning at the Sacramento River near Vina, California, and extending through Tehama and Butte Counties to a point near Durham, California, so as to permit the most effective irrigation of the lands lying in the vicinity of said canal and supply water for industrial, domestic, and other beneficial uses for these lands lying within Tehama and Butte Counties or such alternate canals and pumping plants as the Commissioner of Reclamation and the Secretary of the Interior may deem necessary to accomplish the aforesaid purposes. (64 Stat. 1036; Act of August 19, 1967, 81 Stat. 167; § 2, Act of December 22, 1980, Public Law 96-570, 94 Stat. 3339; § 3412, Act of October 30, 1992, 106 Stat. 4731)

EXPLANATORY NOTES

1992 Amendment. Sec. 3412 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4731) further amended the first paragraph of section 2 of the Act of September 26, 1950 (64 Stat. 1036), as amended by the Act of August 19, 1967 (81 Stat. 167) and the Act of December 22, 1980 (94 Stat. 3339), authorizing the Sacramento Valley Irrigation Canals, Central Valley Project, California, by striking "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora water districts or" and inserting "Tehama, Glenn, Colusa, Solano, and Napa Counties, those portions of Yolo County within the boundaries of Colusa County Water District, Dunnigan Water District, Yolo-Zamora Water District, and Yolo County Flood Control and Water Conservation District, or". Section 3412 of the 1992 Act appears in Volume V at page 3961.

1980 Amendment. Section 2 of the Act of December 22, 1980 (Public Law 96-570, 94 Stat. 3339) further amended section 2 by striking the phrase "Tehama, Glenn, and Colusa Counties or" and inserting in lieu thereof the phrase "Tehama, Glenn, and Colusa Counties, and those portions of Yolo County within the boundaries of the Colusa County, Dunnigan, and Yolo-Zamora Water districts or". The 1980 Act appears in Volume IV at page 3317.

1967 Amendment. The Act of August 19, 1967 (Public Law 90-65, 81 Stat. 167) amended section 2 by adding the last three sentences in the first paragraph. The 1967 Act appears in Volume IV at page 2332.

Page S203

NOTE OF OPINION

1. Tehama-Colusa Canal, authorized service area

The authorized service area of the Tehama-Colusa Canal is not limited to the 147,000 acres of irrigable land identified in the feasibility report required by section 5, which was submitted to Congress in 1953, as that section governs only the expenditure of funds and not the overall project authorization. It is evident from the legislative history that Congress contemplated service to up to 250,000 acres so long as irrigation of such land was feasible and the land was located in the vicinity of the conduit in Tehama, Glenn and Colusa Counties. Memorandum of Associate Solicitor Leshy and Acting Regional Solicitor Dauber to Commissioner, Water and Power Resources Service, June 20, 1980.

Because the express language of the Act only authorizes the Tehama-Colusa Canal to service irrigable lands in "Tehama, Glenn and Colusa Counties," lands in Dunnigan Water District in

Yolo County are not within the authorized service area even though the District executed a water service contract in 1963 and a distribution system repayment contract in 1975 for the delivery of canal water and notwithstanding the fact that the maps in the feasibility report show the canal's service area extending 5-1/2 miles into Yolo County. Memorandum of Associate Solicitor Leshy and Acting Regional Solicitor Dauber to Commissioner, Water and Power Resources Service, June 20, 1980.

INTERIOR DEPARTMENT APPROPRIATION ACT, 1954

Page 1115

[Soil survey and land classification required.]—*Repealed.* (67 Stat. 266; 100 Stat. 426; 112 Stat. 3289; 43 U.S.C. § 390a.)

EXPLANATORY NOTES

1998 Amendment. Section 901(e)(2) of the Federal Reports Elimination Act of 1998, Act of November 10, 1998 (Public Law 105-362, 112 Stat. 3289) amended the 1953 Act as follows:

(A) in the matter under the heading "CONSTRUCTION AND REHABILITATION" under the heading "BUREAU OF RECLAMATION", by striking *": Provided further,* That no part of this or any other appropriation" and all that follows through "demonstrated in practice"; and

(B) by striking "Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows." (as added by section 10 of the Garrison Diversion Unit Reformulation Act of 1986 (100 Stat. 426)).

Prior to amendment, proviso read as follows:

"*Provided further,* That no part of this or any other appropriation shall be available for the initiation of construction under the terms of reclamation law of any dam or reservoir or water supply, or any tunnel, canal or conduit for water, or water distribution system related to such dam or reservoir until the Secretary shall certify to the Congress that an adequate soil survey and land classification has been made and that the lands to be irrigated are susceptible to the production of agricultural crops by means of irrigation or what 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 surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows."

Section 901(e)(1) of the 1998 Act repealed a similar provision in section 1 of the Interior Department Appropriation Act, 1953, Act of July 9, 1952 (ch. 597, 66 Stat. 445).

Extracts from that Act, absent section 1, appear on pages 1092-1093. Section 901(e)(1) reads as follows:

"(1) 1953 Act.-The first section of title I of the Interior Department Appropriation Act, 1953, is amended in the matter under the heading "BUREAU OF RECLAMATION" (66 Stat. 451) by striking ": *Provided further,* That no part of this or any other appropriation" and all that follows through "means of irrigation."

Section 901(e)(1) and (e)(2) of the 1998 Act appear in Volume V at page 4134.

1986 Amendment. Section 10 of the Act of May 12, 1986 (Public Law 99-294, 100 Stat. 418) amended Section 1 of the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. § 390a) by inserting this sentence at the end thereof: "Such surveys shall include an investigation of soil characteristics which might result in toxic or hazardous irrigation return flows."

The 1986 Act appears in Volume V at page 3474.

SABINE RIVER COMPACT

Page 1174

[Sec. 1. Sabine River Compact-Consent of Congress.]- The consent of the Congress is hereby given to the interstate compact relating to the waters of the Sabine River and its tributaries authorized by the Act of November 1, 1951 (Public Law Numbered 252, Eighty-second Congress, first session), which was signed by the representatives for the States of Louisiana and Texas and approved by the representative of the United States, at Logansport, Louisiana, on January 26, 1953, and thereafter ratified, and approved by the Legislatures of the States of Louisiana and Texas, which compact reads as follows:

SABINE RIVER COMPACT

The State of Texas and the State of Louisiana, parties signatory to this Compact (hereinafter referred to as "Texas" and "Louisiana", respectively, or individually as a "State", or collectively as the "States"), having resolved to conclude a compact with respect to the waters of the Sabine River, and having appointed representatives as follows:

For Texas: HENRY L. WOODWORTH, Interstate Compact Commissioner for Texas; and JOHN W. SIMMONS, President of the Sabine River Authority of Texas;

For Louisiana: ROY T. SESSUMS, Director of the Department of Public Works of the State of Louisiana;

and consent to negotiate and enter into the said Compact having been granted by Act of Congress of the United States approved November 1, 1951 (Public Law No. 252; 82nd Congress, First Session), and pursuant thereto the President having designated Louis W. Prentiss as the representative of the United States, the said representatives for Texas and Louisiana, after negotiations participated in by the representative of the United States, have for such Compact agreed upon Articles as hereinafter set forth. The major purposes of this Compact are to provide for an equitable apportionment between the States of Louisiana and Texas of the waters of the Sabine River and its tributaries, thereby removing the causes of present and future controversy between the States over the conservation and utilization of said waters; to encourage the development, conservation and utilization of the water resources of the Sabine River and its tributaries; and to establish a basis for cooperative planning and action by the States for the construction, operation and maintenance of projects for water

conservation and utilization purposes on that reach of the Sabine River touching both States, and for apportionment of the benefits therefrom.

EXPLANATORY NOTE

Reference in the Text. The "Consent to Negotiate Sabine River Compact," Act of November 1, 1951, Public Law 82-252 (65 Stat. 736) appears in Volume II at page 1071.

ARTICLE I

As used in this Compact:

* * * * *

EXPLANATORY NOTE

1977 Amendment. Section 1 of the Act of July 23, 1977 (Public Law 95-71, 91 Stat. 281) amended the preamble by deleting its last paragraph, which stated: "It is recognized that pollution abatement and salt water intrusion are problems which are of concern to the States of Louisiana and Texas, but inasmuch as this Compact is limited to the equitable apportionment of the waters of the Sabine River and its tributaries between the States of Louisiana and Texas, this Compact does not undertake the solution of these problems." Section 2 of the Act reserved the right to amend or repeal section 1 of the Act. The 1977 Act does not appear herein. For legislative history of the 1977 Act, see H.R. Rept. No. 277 on H.R. 1551 and S. Rept. No. 3190.

* * * * *

Page 1178

ARTICLE VII

(a) There is hereby created an interstate administrative agency to be designated as the "Sabine River Compact Administration" herein referred to as "the Administration".

(b) The Administration shall consist of two members from each State and of one member as representative of the United States, chosen by the President of the United States, who is hereby requested to appoint such a representative. The United States member shall be ex-officio chairman of the Administration without vote and shall not be a domiciliary of or reside in either State. The appointed members for Texas and Louisiana shall be designated within thirty days after the effective date of this Compact.

(c) The Texas members shall be appointed by the Governor for a term of six years; *Provided,* That one of the original Texas members shall be appointed for a term to establish a half-term interval between the expiration dates of the terms of such members, and thereafter one such member shall be appointed each three years for the regular term. The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor.

EXPLANATORY NOTE

1992 Amendment. Title XII of the Reclamation Projects Authorization and Adjustment Act of 1992, Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4661-4662) amended Article VII(c) by striking "One of the Louisiana members shall be ex officio the Director of the Louisiana Department of Public Works; the other Louisiana member shall be a resident of the Sabine Watershed and shall be appointed by the Governor of Louisiana for a term of four years: *Provided,* That the first member so appointed shall serve until June 30, 1958." and inserting "The Louisiana members shall be residents of the Sabine Watershed and shall be appointed by the Governor for a term of four years, which shall run concurrent with the term of the Governor.". Title XII of the 1992 Act appears in Volume V at page 3873.

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COLORADO RIVER STORAGE PROJECT

Pages 1252, S254

Sec. 5. (a) [Basin fund.]-

* * * * *

(b) [Appropriations to be credited to fund.]-

* * * * *

(c) [Availability of revenues.]-

* * * * *

(d) [Returns to Treasury.]- Revenues in the Basin Fund in excess of operating needs shall be paid annually to the general fund of the Treasury to return-

* * * * *

Page S254

(5) the costs of each salinity control unit or separable feature thereof, the costs of measures to replace incidental fish and wildlife values foregone, and the costs of the on-farm measures payable from the Upper Colorado River Basin Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(c) of the Colorado River [Basin] Salinity Control Act. [sic]

(e) [Apportionment of revenues.]-

* * * * *

(f) [Interest rate.]-

EXPLANATORY NOTES

1984 Amendment. Subsection 4(h) of the Act of October 30, 1984 (Public Law 98-569, 98 Stat. 2933) further amended subsection 5(d)(5) of the Colorado River Storage Project Act (Act of April 11, 1956, ch. 203, 70 Stat. 105; 43 U.S.C. § 620d(d)(5)) by inserting ", the costs of measures to replace incidental fish and wildlife values foregone, and the costs of the on-farm measures" before "payable". Subsection 4(h) of the 1984 Act appears in Volume V at page 3454.

1974 Amendment. Section 205(d) of the Colorado River Basin Salinity Control Act of June 24, 1974 (Public Law 93-320, 88 Stat. 223) amended subsection (d) of the Colorado River Storage Project Act (Act of April 11, 1956, ch, 203, 70 Stat. 105) by adding paragraph (5) as it appears in Supplement I at page S254. The 1974 act appears in Volume IV at page 2857.

Reference in the Text. The Colorado River Basin Salinity Control Act, Act of June 24, 1974, Public Law 93-320 (88 Stat. 266) appears in Volume IV at page 2857.

SMALL RECLAMATION PROJECTS ACT

Page 1331

[Sec. 1. Small Reclamation Projects Act of 1956.]- The purpose of this Act is to encourage State and local participation in the development of projects under the Federal reclamation 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, and to provide for Federal assistance in the development of similar projects in the seventeen western reclamation States by non-Federal organizations. (70 Stat. 1044; 100 Stat. 3053; 43 U.S.C. § 422a.)

EXPLANATORY NOTE

1986 Amendment. Section 302 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3053) amended section 1 of the Act of August 6, 1956, 70 Stat. 1044, as amended, by inserting the following phrase after the word "laws": ", with emphasis on . . . for purpose of water quality control,". Section 302 of the 1986 Act appears in Volume V at page 3515.

* * * * *

Pages 1332, S271

Sec. 3. [Proposals.]- Any organization desiring to avail itself of the benefits provided in this Act shall submit a proposal therefor to the Secretary in such form and manner as he shall prescribe. Each such proposal shall be accompanied by a payment of $5,000 to defray, in part, the cost of examining the proposal. (70 Stat. 1044; 100 Stat. 3053; 43 U.S.C. § 422c.)

EXPLANATORY NOTE

1986 Amendment. Section 303 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3053) amended section 3 of the Act of August 6, 1956, 70 Stat. 1044, as amended, by striking "$1,000" and inserting in lieu thereof "$5,000". Section 303 of the 1986 Act appears in Volume V at page 3515.

Sec. 4. (a) [Proposals to include plan and estimated cost- Fish and wildlife protection costs.]-

* * * * *

Pages 1332, S271

(**b)(1) [Organization submitting proposal shall hold lands necessary for the project or show that it can acquire such lands.]-** Every such proposal shall include a showing that the organization already holds or can acquire all lands and interests in land (except public and other lands and interests in land owned by the United States which are within the administrative jurisdiction of the Secretary and subject to disposition by him) and rights, pursuant to applicable State law, to the use of water necessary for the successful construction, operation, and maintenance of the project and that it is ready, able, and willing to finance otherwise than by loan and grant of Federal funds such portion of the costs of the project (which portion shall include all costs of acquiring lands, interests in land, and rights to the use of water) except as provided in subsection 5(b)(2) hereof, as the Secretary shall have advised is proper in the circumstances.

(2) [Gifts and property.]- 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). (100 Stat. 3053, 43 U.S.C. § 422d.)

EXPLANATORY NOTE

1986 Amendment. Section 304 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3053) amended section 4(b) of the Act of August 6, 1956, 70 Stat. 1044, as amended, by (a) inserting "(1)" after (b) and striking "by loan and grant under this Act" and inserting in lieu thereof "by loan and grant of Federal funds" and (b) by adding the new paragraph (2)regarding gifts and property at the end thereof. Section 304 of the 1986 Act appears in Volume V at page 3516.

NOTE OF OPINION

1. Cost of land acquisition

The cost of the acquisition of land associated with flood control benefits may be included in the grant portion of the small reclamation project proposal as a nonreimbursable function under section 5(b) (5) notwithstanding the provision in section 4(b) that the applicant must be willing to finance otherwise than by loan or grant the cost of acquiring lands or interests in lands. Memorandum of Acting Associate Solicitor Davis to Commissioner of Reclamation, January 20, 1971, in reapplication by Yolo County Water Users.

(c) [Project proposals found feasible to be transmitted to Congress.]- At such time as a project is found by the Secretary and the Governor of the State in which it is located (or an appropriate State agency designated by him) to be financially feasible, is determined by the Secretary to constitute a reasonable risk under the provisions of this Act, and is approved by the Secretary, such findings and approval shall be transmitted to the Congress. 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. The Secretary, at the time of submitting the project proposal to Congress or at the time of his provisions of this Act, may reserve from use or disposition inimical to the project administrative jurisdiction and subject to disposition by him and which are required for use by the contract provided for in section 5 of this Act shall have been executed. Act of August 6, 1956, 70 Stat. 1044, as amended; 100 Stat. 3054; 43 U.S.C. § 422d.)

EXPLANATORY NOTE

1986 Amendment. Section 305 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3054) amended section 4(c) of the Act of August 6, 1956, 70 Stat. 1044, as amended, by inserting, following the first sentence, the following two sentences: "Each project proposal transmitted . . . demonstrated in practice." "Such proposal shall . . . or hazardous irrigation return flows." Section 305 of the 1986 Act appears in Volume V at page 3516.

(d) [Secretary authorized to increase loan and/or grant amount.]- At the time of his submitting the project proposal to the Congress, or at any subsequent time prior to completion of construction of the project, including projects heretofore approved, the Secretary may increase the amount of the requested loan and/or grant to an amount within the maximum allowed by subsection (a) of section 5 as amended, to compensate for increases in construction costs due to price escalation. (Added by Act of December 27, 1975, 89 Stat. 1049; 43 U.S.C. § 422d)

EXPLANATORY NOTE

1975 Amendment. Section 1(c) of the Act of December 27, 1975 (Public Law 94-181,89 Stat. 1049) amended section 4 by adding new subsection (d) and redesignating former subsections (d) and (e) as "(e)" and "(f)", respectively. The 1975 Act appears in Volume IV at page 2932.

NOTE OF OPINION

1. **Amendatory or supplemental contract required**

Basic contract law, section 5 of the Act, and sound business practice require that an amendatory or supplemental contract be entered into in order to increase the amount of a loan pursuant to the loan escalation provisions of section 4(d). Memorandum from Assistant Solicitor Mauro to Regional Solicitor, Sacramento, December 4, 1979.

(e) [Waiting period for project appropriations.]- No appropriation shall be made for financial participation in any such project prior to sixty calendar days (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 calendar days to a day certain) from the date on which the Secretary's findings and approval are submitted to the Congress and then only if, within said sixty days, neither the Committee on Natural Resources of the House of Representatives nor the Committee on Energy and Natural Resources of the Senate disapproves the project proposal by committee resolution. The provisions of this subsection (d) shall not be applicable to proposals made under section 6 of this Act. (80 Stat. 386, 108 Stat. 4594; 43 U.S.C. § 422d)

EXPLANATORY NOTES

1994 Amendment. Section 16(b) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4594) amended section 4(e) by striking "House nor the Senate Interior and Insular

Affairs Committee" and substituting "Committee on Natural Resources of the House of Representatives nor the Committee on Energy and Natural Resources of the Senate". The 1994 Act appears in Volume V at page 4061.

1975 Amendment. Section 1(d) of the Act of December 27, 1975 (Public Law 94-181, 89 Stat. 1050) amended subsection (d) by redesignating it subsection "(e)". The 1975 Act appears in Volume IV at page 2932.

Pages 1335-1336, S272

(f) [Consideration of need, etc.]- The Secretary shall give due consideration to financial feasibility, emergency, or urgent need for the project. All project works and facilities constructed under this Act shall remain under the jurisdiction and control of the local contracting organization subject to the terms of the repayment contract. (70 Stat. 1044; Act of June 5, 1957, 71 Stat. 48; Act of November 24, 1971, 85 Stat. 488; Act of December 27, 1975, 89 Stat. 1050; 43 U.S.C. § 422d)

EXPLANATORY NOTES

1975 Amendment. Section 1(e) of the Act of December 27, 1975 (Public Law 94-181, 89 Stat. 1050) amended subsection (e) by redesignating it subsection "(f)". The 1975 Act appears in Volume IV at page 2932.

1971 Amendment. Section 1(2) of the Act of November 24, 1971 (Public Law 92-167, 85 Stat. 488) amended the first sentence of subsection (f) (formerly subsection (e)) by deleting ", whether the proposal involves furnishing supplemental irrigation water for an existing irrigation project, whether the proposal involves rehabilitation of existing irrigation project works, and whether the proposed project is primarily for irrigation", which appeared after the word "project". The 1971 Act appears in Volume IV at page 2641.

NOTE OF OPINION

1. Projects, eligibility of

The language in section 4(e) of the Small Reclamation Projects Act of 1956 requiring the Secretary to consider "whether the proposed project is primarily for irrigation" clearly evidences that Congress did not intend the term "project", as defined by section 2(e) (prior to the 1971 amendment) to be restricted only to complete undertakings used exclusively for irrigation purposes. If such an undertaking is to be "primarily" for irrigation then it is acceptable to have the undertaking also serve a secondary compatible purpose. Thus the Act does not prevent the Board of Land and Natural Resources of Hawaii from entering into a contract providing for the rental and use by the Kaiuakoi Corporation of water facilities and space within the pipelines of the Molokai Irrigation System to convey the corporation's well water to its proposed resort

complex, even though the irrigation system is financed, in part, under the Act. *Molokai Homesteaders Cooperative Association v. Morton,* 506 F.2d 572 (9th Cir. 1974).

Pages 1336, S273

Sec. 5. [Contract requirements.]- Upon approval of any project proposal by the Secretary under the provisions of section 4 of this Act, he may negotiate a contract which shall set out, among other things-

(a) the maximum amount of any loan to be made to the organization and the time and method of making the same available to the organization. Said loan shall not exceed the lesser of (1) two-thirds of the maximum allowable estimated total project cost as determined by section 2(f) of this Act, or (2) the estimated total cost of the project minus the contribution of the local organization as provided in section 4(b) of this Act and the amount of the grant approved;

(b) the maximum amount of any grant to be accorded the organization. Said grant shall not exceed the sum of the following: (1) the costs of investigations, surveys, and engineering and other services necessary to the preparation of proposals and plans for the project allocable to fish and wildlife enhancement or public recreation; (2) one-half the costs of acquiring lands or interests therein to serve exclusively the purposes of fish and wildlife enhancement or public recreation, plus the costs of acquiring joint use lands and interests therein properly allocable to fish and wildlife enhancement and public recreation; (3) one-half the costs of basic public outdoor recreation facilities or facilities serving fish and wildlife enhancement purposes exclusively; (4) one-half the costs of construction of joint use facilities properly allocable to fish and wildlife enhancement or public recreation; (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. (Act of August 6, 1956, 70 Stat. 1046; 100 Stat. 3054, 43 U.S.C. § 422e.)

EXPLANATORY NOTE

1986 Amendment. Section 306 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3054) amended section 5(b) of the Act of August 5, 1956, as amended, by striking everything after the words "joint use facilities properly allocable to fish and wildlife enhancement or public recreation;" and substituting new phrases (5) and (6). Section 306 of the 1986 Act appears in Volume V at page 3516.

(c) a plan of repayment by the organization of (1) the sums lent to it in not more than forty years from the date when the principal benefits of the project first become available; (2) 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 (43 U.S.C. § 390bb.) in excess of three hundred and twenty irrigable acres; or,

(B) which is allocated to domestic, industrial, or municipal water supply, commercial power, fish and wildlife enhancement, 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. (Act of August 6, 1956, 70 Stat. 1046; 100 Stat. 3054, 43 U.S.C. § 422e.)

EXPLANATORY NOTES

1986 Amendment. Section 307 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3054) amended section 5(c)(1) of the Act of August 6, 1956, 70 Stat. 1046, as amended, by striking "fifty" and inserting in lieu thereof "forty". Further, section 307 amended section 5(c)(2) of the 1956 Act by providing new language for 5(c)(2) and striking the language remaining in 5(c). Section 307 of the 1986 Act appears in Volume V at page 3517.

Reference in the Text. The Reclamation Reform Act of 1982, Act of October 12, 1982, Public Law 97-293 (96 Stat. 1261) appears in Volume IV at page 3334 and as amended in this Supplement II at page S1092.

* * * * *

Page 1339

Sec. 8. [Fish and wildlife factors of projects.]- The planning and construction of projects undertaken pursuant to this Act shall be subject to all procedural requirements and other provisions of the Fish and Wildlife Coordination Act (48 Stat. 401) as amended (16 U.S.C. § 661 et seq.). 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. (70 Stat. 1047; Act of September 2, 1966, 80 Stat. 377; Act of October 27, 1986, 100 Stat. 3055; 43 U.S.C. § 422h.)

EXPLANATORY NOTES

1986 Amendment. Section 308 of the Act of October 27,1986 (Public Law 99-546, 100 Stat. 3055) amended section 8 of the Act of August 6, 1956, 70 Stat. 1047, as amended, by adding to the end thereof, "The Secretary shall transfer to . . . the purposes of this section." Section 308 of the 1986 Act appears in Volume V at page 3517.

Reference in the Text. The Fish and Wildlife Coordination Act, Act of August 14, 1946, Public Law 79-732 (60 Stat. 1080) appears in Volume II at page 839 and in Supplement I at page S166.

* * * * *

Pages 1339, S277

Sec. 10 [Appropriation.]– There are hereby authorized to be appropriated, such sums as may be necessary, but not to exceed $600,000,000 to carry out the provisions of this Act and , effective October 1, 1986, not exceed an additional $600,000,000: *Provided,* That the Secretary shall advise the Congress promptly on the receipt of each proposal referred to in section 3, and no contract shall become effective until appropriated funds are available to initiate the specific proposal covered by each contract. All such appropriations shall remain available until expended and shall, insofar as they are used to finance loans made under this Act, be reimbursable in the manner herein above provided. 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. (70 Stat. 1047; Act of September 2, 1966, 80 Stat. 376 § 1 (7); Act of November 24, 1971, 85 Stat. 488; Act of December 27, 1975, 89 Stat. 1050; Act of September 4, 1980, 94 Stat. 1065; Act of October 27, 1986, 100 Stat. 3055, 43 U.S.C. § 422j.)

EXPLANATORY NOTE

1986 Amendment. Section 309 of the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3055) amended the first sentence of section 10 of the Act of August 6, 1956, 70 Stat. 1047, as amended, by inserting before ": Provided" "and, effective October 1, 1986, not to exceed an additional $600,000,000". Further, section 309 amended section 10 of the 1956 Act by adding at the end thereof the following: "Not more than 20 percent . . . for such a waiver." Section 309 of the 1986 Act appears in Volume V at page 3517.

SAN ANGELO PROJECT

Page 1354

[Sec. 1. San Angelo Federal reclamation project, Tex.]– The Secretary of the Interior is authorized to construct, operate, and maintain the San Angelo Federal reclamation project, Texas, for the principal purposes of furnishing water for the irrigation of approximately fifteen thousand acres of land in Tom Green County and municipal domestic, and industrial use, controlling floods, providing recreation and fish and wildlife benefits, and controlling silt. The principal engineering features of said project shall be a dam and reservoir at or near the Twin Buttes site, outlet works at the existing Nasworthy Dam, and necessary canals, drains, and related works. (71 Stat. 372, 108 Stat. 4538; 43 U.S.C. § 615o.)

EXPLANATORY NOTE

1994 Amendment. Subsection 501(a) of the Act of October 31, 1994, Public Law 103-434 (108 Stat. 4538) amended the first section of the San Angelo Federal reclamation project Act by striking "ten thousand acres" and inserting "fifteen thousand acres". Further, subsection 501(b) authorizes the Secretary to amend contract numbered 14-06-500-369 to reflect the amendment made by subsection (a), except that such amendment shall not be construed to require a change in the proportionate amount of all remaining payments due and payable to the United States by Tom Green County Water Control Improvement District No. 1. Title V of the 1994 Act appears in Volume V at page 4025.

* * * * *

WATER SUPPLY ACT OF 1958

Page 1426

Sec. 301. (a) [Congressional policy.]–

* * * * *

(b) [Storage.]– In carrying out the policy set forth in this section, it is hereby provided that storage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps of Engineers or the Bureau of Reclamation to impound water for present or anticipated future demand or need for municipal or industrial water, and the reasonable value thereof may be taken into account in estimating the economic value of the entire project: *Provided,* That the cost of any construction or modification authorized under the provisions of this section shall be determined on the basis that all authorized purposes served by the project shall share equitably in the benefits of multiple purpose construction, as determined by the Secretary of the Army or the Secretary of the Interior, as the case may be: *Provided further,* That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section: *And provided further,* That (1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects, not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where State or local interests give reasonable assurances, and there is reasonable evidence, that such demands for the use of such storage will be made within a period of time which will permit paying out the costs allocated to water supply within the life of the project: *And provided further,* That for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects, the entire amount of the construction costs, including interest during construction, allocated to water supply shall be repaid within the life of the project but in no event to exceed fifty years after the project

is first used for the storage of water for water supply purposes, except that (1) no payment need be made with respect to storage for future water supply until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the 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 fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs. For Bureau of Reclamation projects, the interest rate used for purposes of computing interest during construction and interest on the unpaid balance shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. The provisions of this subsection insofar as they relate to the Bureau of Reclamation and the Secretary of the Interior shall be alternative to and not a substitute for the provisions of the Reclamation Project Act of 1939 (53 Stat. 1187) relating to the same subject.

EXPLANATORY NOTES

1986 Amendment. Section 932 of the Act of November 17, 1986 (Public Law 99-662, 100 Stat. 4082) amended Section 301(b) of the Water Supply Act of 1958 (72 Stat. 319; 43 U.S.C. § 390b(b)), by:

(1) in the third proviso, after "That", inserting the following: "(1) for Corps of Engineers projects, not to exceed 30 percent of the total estimated cost of any project may be allocated to anticipated future demands, and, (2) for Bureau of Reclamation projects,";

(2) in the fourth proviso, after "That", insert the following: "for Corps of Engineers projects, the Secretary of the Army may permit the full non-Federal contribution to be made, without interest, during construction of the project, or, with interest, over a period of not more than thirty years from the date of completion, with repayment contracts providing for recalculation of the interest rate at, five-year intervals, and for Bureau of Reclamation projects,";

(3) after the first sentence, inserting the following: "For Corps of Engineers projects, all annual operation, maintenance, and replacement costs for municipal and industrial water supply storage under the provisions of this section shall be reimbursed from State or local interests on an annual basis. For Corps of Engineers projects, any repayment by a State or local interest shall be made with interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the 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 fiscal year in which costs for the construction of the project are first incurred (or, when a recalculation is made), plus a premium of one-eighth of one percentage point for transaction costs.", and

(4) striking out "The interest rate used" and insert in lieu thereof: "For Bureau of Reclamation projects, the interest rate used".

Section 932 of the 1986 Act appears in Volume V at page 3538.

Reference in the Text. The Reclamation Project Act of 1939 appears in Volume I at page 634 and Supplement I at page S124.

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(c) [Sections of other acts not modified.]– The provisions of this section shall not be construed to modify the provisions of section 1 and section 8 of the Flood Control Act of 1944 (58 Stat. 887), as amended and extended, or the provisions of section 8 of the Reclamation Act of 1902 (32 Stat. 390).

(d) [Approval of Congress.]– Modifications of a reservoir project heretofore authorized, surveyed, planned, or constructed to include storage as provided in subsection (b), which would seriously affect the purposes for which the project was authorized, surveyed, planned, or constructed, or which would involve major structural or operational changes shall be made only upon the approval of Congress as now provided by law. (72 Stat. 319; Act of July 20, 1961, 75 Stat. 210; 43 U.S.C. § 390b.)

EXPLANATORY NOTES

1961 Amendment. Section 10 of the Act of July 20, 1961, 75 Stat. 210, substituted three provisos for the first two provisos originally included in subsection 301(b). The purpose of the amendment was to require only reasonable assurances and reasonable evidence that supply allocated to future demands will be used and the costs repaid, rather than requiring a contractual commitment for repayment. The first two provisos of subsection 301 (b) as originally enacted read as follows:

"Provided, That before construction or modification of any project including water supply provisions is initiated, State or local interests shall agree to pay for the cost of such provisions on the basis that all authorized purposes served by the project shall share equitably in the benefits of multiple purpose construction as determined by the Secretary of the Army or the Secretary of the Interior as the case may be: *Provided further,* That not to exceed 30 per centum of the total estimated cost of any project may be allocated to anticipated future demands where States or local interests give reasonable assurances that they will contract for the use of storage for anticipated future demands within a period of time which will permit paying out the costs allocated to water supply within the life of the project."

For legislative history of the 1961 Act see H.R. 6441, Public Law 87-88 in the 87th Congress. S. Rept. No. 353 on S. 120, H.R. Rept. No. 306. Conference Report H.R. Rept. No. 675.

Reference in the Text. Extracts from the Flood Control Act of 1944, Act of December 22, 1944, Public Law 78-534 (58 Stat. 887) appear in Volume II at page 796 and in Supplement I at page S147, and Supplement II at page S861.

NOTE OF OPINION

1. Future capacity

The 1961 amendment authorizes the constructing agency to include capacity in a reservoir for anticipated future demand for municipal and industrial water supply on the basis of reasonable assurances and reasonable evidence, but without first having to obtain a definite contractual commitment from state or local interests. Repayment for costs associated with the anticipated future demand would be within a period of 50 years from the date water is first used as such anticipated future demand; and total repayment must be within the life of the project. Memorandum of Associate Solicitor Hogan to Commissioner, March 29, 1965.

Sec. 302. [Short title.]– Title III of this Act may be cited as the "Water Supply Act of 1958." (72 Stat. 320; 43 U.S.C. § 390b, note)

EXPLANATORY NOTES

Not Codified. Sections 113, 203, 207, and 209 are not codified in the U.S. Code.

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to activities of the Bureau of Reclamation under this statute.

Legislative History. S. 3910, Public Law 85-500 in the 85th Congress. S. Rept. No. 1710. H.R. Rept. No. 1894 (on H.R 12955). H.R. Rept. No. 1982 (conference report).

FLOOD CONTROL ACT OF 1962

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Page 1701

TITLE II-FLOOD CONTROL

* * * * *

Sec. 203. [Authorization of projects.]-

* * * * *

SAN JOAQUIN RIVER BASIN

[New Melones.]- The New Melones project, Stanislaus River, California, authorized by the Flood Control Act approved December 22, 1944 (58 Stat. 887), is hereby modified substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 453, Eighty-seventh Congress, at an estimated cost of $113,717,000: *Provided*, That upon completion of construction of the dam and powerplant by the Corps of Engineers, the project shall become an integral part of the Central Valley project and be operated and maintained by the Secretary of the Interior pursuant to the Federal reclamation laws, except that the flood control operation of the project shall be in accordance with the rules and regulations prescribed by the Secretary of the Army: *Provided further*, That the Stanislaus River Channel, from Goodwin Dam to the San Joaquin River, shall be maintained by the Secretary of the Army to a capacity of at least eight thousand cubic feet per second subject to the condition that responsible local interests agree to maintain private levees and to prevent encroachment on the existing channel and floodway between the levees: *Provided further*, That before initiating any diversions of water from the Stanislaus River Basin in connection with the operation of the Central Valley project, the Secretary of the Interior shall determine the quantity of water required to satisfy all existing and anticipated future needs within that basin and the diversions shall at all times be subordinate to the quantities so determined: *Provided further*, That the Secretary of the Army adopt appropriate measures to insure the preservation and propagation of fish and wildlife in the New Melones project and shall allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the cost of

constructing the Stanislaus River diversion and of operating and maintaining the same: *Provided further,* That the Secretary of the Army, in connection with the New Melones project, construct basic public recreation facilities, acquire land necessary for that purpose, the cost of constructing such facilities and acquiring such lands to be nonreimbursable and nonreturnable: *Provided further,* That contracts for the sale and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws except that a first preference, to the extent as needed and as fixed by the Secretary of the Interior, but not to exceed 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Tuolumne and Calaveras Counties, California, for use in that county, who are ready, able, and willing, within twelve months after notice of availability by the Secretary of the Interior, to enter into contracts for the energy and that Tuolumne and Calaveras County preference customers may exercise their option in the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than eighteen months prior to said dates: *And provided further,* That the Secretary of the Army give consideration during the preconstruction planning for the New Melones project to the advisability of including storage for the regulation of streamflow for the purpose of downstream water quality control: *And Provided further,* That the Secretary of the Interior is authorized to make available to the Oakdale and South San Joaquin irrigation districts, at the current contract rate, unallocated storage of such districts carried over from the previous year. (76 Stat. 1191, 102 Stat. 959)

[Hidden Reservoir.]- The Hidden Reservoir, Fresno River, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 37, Eighty-seventh Congress, at an estimated cost of $14,338,000. (76 Stat. 1192)

[Buchanan Reservoir.]- The Buchanan Reservoir, Chowchilla River, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 98, Eighty-seventh Congress, at an estimated cost of $13,585,000. (76 Stat. 1192)

EXPLANATORY NOTES

1988 Amendment. Section 417 of the Act of August 11, 1988 (Public Law 100-387, 102 Stat. 959) amended section 203 by inserting before the last period the proviso regarding Oakdale and South San Joaquin irrigation districts, as it appears above. Section 417 of the 1988 Act appears in Volume V at page 3571.

Reference in the Text. The Fish and Wildlife Coordination Act of August 14, 1946, Public Law 79-732 (60 Stat. 1080) appears in Volume II at page 839 and in Supplement I at page S166.

EXPLANATORY NOTES

Cross Reference, Central Valley project, California. The Central Valley project, referred to in the text, was authorized by a finding of feasibility by the Secretary of the Interior, approved by the President on December 2, 1935. The project was reauthorized by section 2 of the Act of August 26, 1937, 50 Stat. 850. The 1937 Act appears herein in chronological order. For references to other authorizations in the Central Valley project, California, see the explanatory notes following section 2 of the 1937 Act.

Reference in the Text. Extracts from the Flood Control Act approved December 22, 1944 (58 Stat. 887), referred to in the text, appear herein at page 796.

Reference in the Text. The Act of August 14, 1946 (60 Stat. 1080), referred to in the text, as amended, is the Fish and Wildlife Coordination Act. The Act appears herein at page 839 and Supplement I at page 5166.

Background: Hidden Dam and Reservoir. Both House and Senate committee reports note in part: *"Local* cooperation.- (a) Hidden Dam and Reservoir: (1) Prior to construction of the dam and reservoir for irrigation, Secretary of the Interior [will] make necessary arrangements for repayment of that part of the construction cost and annual operation and maintenance cost allocated to irrigation, presently estimated at $3,698,000 and $17,000, respectively, such repayment to be financially integrated into the Central Valley project of the Bureau of Reclamation." H.R. Rept. No. 2504 on H.R. 13273, at 215, and S. Rept. No. 2258 on S. 3773, at 290, 87th Cong., 2d Sess. (1962).

Background: Buchanan Dam and Reservoir. Both House and Senate committee reports note in part: *"Local cooperation.-* (a) Buchanan Dam and Reservoir: (1) Prior to construction of the dam and reservoir, the Secretary of the Interior [will] make necessary arrangements for repayment, under the provisions of reclamation law, of that part of the construction cost and annual operation and maintenance cost allocated to irrigation, presently estimated at $6,341,000 and $43,000, respectively, the final cost allocation to be made by the Secretary of the Army, with the assistance of the Secretary of the Interior; such payment to be financially integrated into the Central Valley project of the Bureau of Reclamation." H.R. Rept. No. 2504 on H.R. 13273, at 217, and S. Rept. No. 2258 on S. 3773, at 292, 87th Cong., 2nd Sess. (1962).

LAND AND WATER CONSERVATION FUND ACT OF 1965

* * * * *

Pages 1785, S359

Sec. 2. [Establishment of fund-Designation of specified revenues to fund-Proceeds from disposal of surplus property-Revenues from motorboat fuels taxes-Annual appropriations]- During the period ending September 30, 2015, there shall be covered into the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the "fund", the following revenues and collections:

(a) All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in (section 485(b)-(e), title 40, United States Code, or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation Act) hereafter received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this Act shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

(b) The amounts provided for in section 201 of this Act.

(c)(1) In addition to the sum of the revenues and collections estimated by the Secretary of the Interior to be covered into the fund pursuant to this section, as amended, there are authorized to be appropriated annually to the fund out of any money in the Treasury not otherwise appropriated such amounts as are necessary to make the income of the fund not less than $300,000,000 for fiscal year 1977, and $900,000,000 for fiscal year 1978 and for each fiscal year thereafter through September 30, 2015.

(2) To the extent that any such sums so appropriated are not sufficient to make the total annual income of the fund equivalent to the amounts provided in clause (1), an amount sufficient to cover the remainder thereof shall be credited to the fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. § 1331 et seq.): *Provided*, That notwithstanding the provisions of section 3 of this Act, moneys covered into the fund under this paragraph shall remain in the fund until appropriated by the Congress to carry out the purpose of this Act. (78 Stat. 897; § 11, Act of

July 9, 1965, 79 Stat. 218; § 1(a), 2, Act of July 15, 1968, 82 Stat. 354, 355; § 2, Act of July 7, 1970, 84 Stat. 410; § 1, Act of October 22, 1970, 84 Stat. 1084; § 2(7), Act of April 21, 1976, 90 Stat. 375; § 101(l), Act of September 28, 1976, 90 Stat. 1313; § 1(1), Act of June 10, 1977, 91 Stat. 210; 101 Stat. 1330-267; Act of December 22, 1987, Public Law 100-203, 101 Stat. 1330-267; 16 U.S.C. § 460*l*-5)

EXPLANATORY NOTES

1987 Amendment. Section 5201(f)(1) of the Act of December 22, 1987 (Public Law 100-203, 101 Stat. 1330) amended section 2 as follows:

(A) In the matter preceding subsection (a), strike "1989" and substitute "2015".

(B) In subsection (c)(1), strike "1989" and substitute "2015".

Section 5201(f)(1) of the 1987 Act appears in Volume V at page 3570.

1977 Amendment. Section 1(1) of the Act of June 10, 1977 (Public Law 95-42, 91 Stat. 210) amended paragraph (c)(1) by substituting "and $900,000,000 for fiscal year 1978" for "$600,000,000 for fiscal year 1978, $750,000,000 for fiscal year 1979, and $900,000,000 for fiscal year 1980". The 1977 Act does not appear herein.

1976 Amendment. Section 101(l) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 2 by: deleting from the first sentence "and during such additional period as may be required to repay any advances made pursuant to section 4(b) of this Act," after "September 30, 1989"; deleting from paragraph (c)(1) "$1200,000,000 for each of the fiscal years 1968, 1969, and 1970, and not less than" following "income of the fund not less than" and inserting provisions for appropriations authorization for fiscal years 1977 through 1989; and substituting, in paragraph (c)(2), "equivalent to the amounts" for "amount to $200,000,000 or $300,000,000 for each of such fiscal years as". The 1976 Act does not appear herein.

1976 Amendment. Section 2(7) of the Act of April 21, 1976 (Public Law 94-273, 90 Stat. 375), amended section 2 by substituting "September" for "June" in each place that it appeared. The 1976 Act does not appear herein.

1970 Amendment. Section 1 of the Act of October 22, 1970 (Public Law 91-485, 84 Stat. 1084) amended paragraph (2)(c)(1) by substituting "fiscal years 1968, 1969, and 1970, and not less than $300,000,000 for each fiscal year thereafter through June 30, 1989" for "five fiscal years beginning July 1, 1968, and ending June 30, 1973", and amended paragraph (2)(c)(2) by inserting "or $300,000,000" following "$200,000,000" and "as provided in clause (1)" following "for each of such fiscal years". The 1970 Act does not appear herein.

1970 Amendment. Section 2 of the Act of July 7, 1970 (Public Law 91-308, 84 Stat. 410) amended clause (a)(i) by substituting "not more than $10" for "not more than $7". This amendment was effective only until December 31, 1971, the date on which section I of the 1970 Act directed that section 2(a) be repealed in pertinent part. The 1970 Act does not appear herein.

1968 Amendment. Section 1(a) of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) repealed all of subsection (2)(a) except the fourth paragraph, redesignated that paragraph as section 10 of the Land and Water Conservation Fund Act, and redesignated former subsections (2)(b) and (2)(c) as (2)(a) and (2)(b), respectively. Section 1(d) of the 1968 Act, as amended by section 1 of the Act of July 7, 1970, 84 Stat. 410, made the provisions amending section 2 effective December 31, 1971, and stated that until that date, "revenues derived from the subsection (a) that is repealed by [Section 1(a) of the 1968 Act] shall continue to be covered into the fund." Section 2 of the

1968 Act inserted a new subsection (2)(c). Section 5 of the 1968 Act contained an uncodified provision that allowed proceeds from certain types of conveyances entered into by the Secretary of the Interior to be credited to the Land and Water Conservation Fund. The 1968 Act does not appear herein.

Supplementary Provision: Recreation Fees Paid Into Fund Regardless of Source. Section 1 of the Act of December 12, 1980 (Public Law 96-514, Stat. 2960) provides in part that, "Notwithstanding the provisions of Public Law 90-40 1, revenues from recreation fee collections by Federal agencies shall hereafter be paid into the Land and Water Conservation Fund, to be available for any and all purposes authorized by the Land and Water Conservation Fund Act of 1965, as amended, without regard to the source of such revenues." This provision is codified at 16 U.S.C. § 460*l*-5a. Public Law 90-401 is the Act of July 15, 1968, which amended the Land and Water Conservation Fund Act as stated in the preceding Explanatory Note. The 1980 Act does not appear herein.

Supplementary Provision: Use of Royalty Fees for "Golden Eagle Insignia:" Section 3 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 461) provided that any use of royalty fees collected for manufacture, reproduction, or use of the "Golden Eagle Insignia," the official symbol of Federal recreation areas designated for recreation fee collection, shall be covered into the Land and Water Conservation Fund. The 1972 Act does not appear herein.

Reference in the Text. The Independent Offices Appropriation Act of 1963 (Act of October 3, 1962, Public Law 87-741, 76 Stat. 716) referred to in subsection (a) of the text, provides for operating expenses, not otherwise provided for, incident to the utilization and disposal of excess and surplus property. The 1962 Act does not appear herein.

Reference in the Text. The Federal Property and Administrative Services Act of 1949 (Act of June 30, 1949, 63 Stat. 377), referred to in subsection (a) of the text, provides in section 203 for the disposition of surplus property. Extracts from section 203 appear in Volume II at page 958.

Reference in the Text. Subsections (b) through (e) of section 485 of title 40 of the U.S. Code, referred to in subsection (a) of the text, are parts of section 204 of the Federal Property and Administrative Services Act of 1949 (Act of June 30, 1949, 63 Stat. 377). They outline procedures to follow when disposing of or transferring federal surplus property. These provisions appear in Volume II at page 960.

Reference in the Text. The Outer Continental Shelf Lands Act (Act of August 7, 1953, 67 Stat. 462) referred to in subsection (c) of the text, outlines the methods for using and protecting the resources of the United States' off-shore landholdings. The 1953 Act does not appear herein.

NOTE OF OPINION

1. Disposition of recreation revenues

The clear import and intent of section 2(a) of the Land and Water Conservation Fund Act is that gross, and not net, revenues from recreation user fees are to be covered into the Land and Water Conservation Fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

With regard to revenues derived from the entrance, admission and other recreation user fees and charges collected by the Forest Service at areas administered by it for recreation, the Act of March 4, 1907 (34 Stat. 1295), which provides that Forest Service and national forest revenues shall be covered into miscellaneous receipts in the Treasury, was rendered ineffective by section 2(a) of the Land and Water Conservation Fund Act and remains ineffective after the amendment provided by section 11 of the Federal Water Project Recreation Act. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

The Act of May 23, 1908, 16 U.S.C. § 500, which mandates that twenty five percent of all revenues from each national forest be returned to the State in which the forest is situated for the benefit of public schools and public roads, is not affected by section 2(a) of the Land and Water Conservation Fund Act of 1965 when Reclamation land is transferred to the Forest Service for administration pursuant to section 7(c) of the Federal Water Project Recreation Act. It is clear from the language and the legislative history of the Land and Water Conservation Fund Act that section 2(a) of that Act was expressly intended to exempt revenues, including recreation revenues, already allocated under the 1908 Act from being diverted into the conservation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

Where Reclamation project grazing and farm land has been transferred to the administration of the Forest Service for recreation purposes pursuant to section 7(c) of the Federal Water Project Recreation Act, whether revenues generated by recreation use should be credited to the project by subsection I of the Fact Finders' Act or diverted to the Land and Water Conservation Fund depends upon whether a liberal or restricted interpretation is given to the preservation of existing contract rights in section 2(a) of the Land and Water Conservation Fund Act. However, even under the liberal interpretation, the amount of revenue which should be set aside for meeting the contractual commitment should be equivalent to what had been available when the land was under grazing or farm lease, because to apply to the contract additional revenue generated by recreational development undertaken with appropriated funds would constitute, in our opinion, an unauthorized gift of Federal property. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

When Reclamation land has been transferred to the Forest Service for administration pursuant to section 7(c) of the Federal Water Project Recreation Act, the Act of July 19, 1919 (41 Stat. 202), is superseded by section 2(a) of the Land and Water Conservation Fund Act so that all proceeds from entrance and recreation user fees or charges collected and received shall be covered into the Land and Water Conservation Fund and not allocated to the reclamation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

The legislative history of section 2(a) of the Land and Water Conservation Fund Act specifically states that revenues from the sale of auto stickers or similar devices good for admission to recreation areas generally are to be covered into the Land and Water Conservation Fund and are not subject to the two exceptions contained in section 2(a). Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

Revenues from the sale or rental of surplus water under the Warren Act continue to be credited to the project or division of the project to which the construction cost has been charged, as provided by subsection J of the Fact Finders' Act, and are not diverted to the Land and Water Conservation Fund by section 2(a) of the Land and Water Conservation Fund Act even though project lands have been transferred to the administration of the Forest Service for recreation purposes pursuant to section 7(c) of the Federal Water Project Recreation Act. Revenues under subsection J from the sale or rental of surplus water, and revenues from entrance, admission and recreation user fees under section 2(a) are derived from totally different uses of different forms of property. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

Sec. 3. [Appropriations.]- Moneys covered into the fund shall be available for expenditure for the purposes of this Act only when appropriated therefor. Such appropriations may be made without fiscal-year limitation. Moneys made available for obligation or expenditure from the fund or from the special account established under section 4(i)(1) may be obligated or expended only as provided in this Act. (78 Stat. 899; 101 Stat. 1330-267; Act of December 22, 1987, 101 Stat. 1330-267; 16 U.S.C. § 460*l*-6)

EXPLANATORY NOTE

1987 Amendment. Section 5201(f)(2) of the Act of December 22, 1987 (Public Law 100-203, 101 Stat. 1330) amended the last sentence of section 3 to read as it appears above. Section 5201(f)(2) of the 1987 Act appears in Volume V on page 3570.

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Sec. 4. (a) [Admission fees at designated areas- "Golden Eagle Passport" annual admission permit- Single visit fees- Fee-free travel areas- "Golden Age Passport" annual entrance permit- Lifetime admission permit.]- Entrance or admission fees shall be charged only at designated units of the National Park System administered by the Department of the Interior and National Recreation Areas administered by the Department of Agriculture. No admission fees of any kind shall be charged or imposed for entrance into any other federally owned areas which are operated and maintained by a Federal agency and used for outdoor recreation purposes.

(1)(A) For admission into any such designated area, an annual admission permit (to be known as the Golden Eagle Passport) shall be available, for a fee of not more than $25. The permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle, shall be entitled to general admission into any area designated pursuant to this subsection. The annual permit shall be valid during the calendar year for which the annual fee is paid. The annual permit shall not authorize any uses for which additional fees are charged pursuant to subsections (b) and (c) of this section. The annual permit shall be nontransferable and the unlawful use thereof shall be punishable in accordance with regulations established pursuant to subsection (e) of this section. The annual permit shall be available for purchase at any such designated area.

(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Secretary is authorized to make available an annual admission permit for a reasonable fee. The fee shall not exceed $15 regardless of how many units of the park system are covered. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the National Park System indicated at the time of purchase.

(2) Reasonable admission fees for a single visit at any designated area shall be established by the administering Secretary for persons who choose not to purchase the annual permit. A "single visit" means a more or less continuous stay within a designated area. Payment of a single visit admission fee shall authorize exits from and reentries to a single designated area for a period of from one to fifteen days, such period to be defined for each designated area by the administering Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit. The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than $5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than $3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas.

(3) No admission fee shall be charged for travel by private, non-commercial vehicle over any national parkway or any road or highway established as a part of the National Federal Aid System, as defined in section 101, title 23, United States Code, which is commonly used by the public as a means of travel between two places either or both of which are outside the area. Nor shall any fee be charged for travel by private, noncommercial vehicle over any road or highway to any land in which such person has any property right if such land is within any such designated area. In the Smoky Mountains National Park, unless fees are charged for entrance into said park on main highways and thoroughfares, fees shall not be charged for entrance on other routes into said park or any part thereof. Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System which provides significant outdoor recreation opportunities in an urban environment and to which access is publicly available at multiple locations.

(4) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit

(to be known as the "Golden Age Passport") to any citizen of, or person domiciled in, the United States sixty-two years of age or older applying for such permit. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection. No other free permits shall be issued to any person: *Provided*, That no fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official Federal, State, or local Government business and *Provided further*, That for no more than three years after the date of enactment of this Act, visitors to the United States will be granted entrance, without charge, to any designated admission fee area upon presentation of a valid passport.

(5) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, if such citizen or person applies for such permit, and is blind or permanently disabled. Such procedures shall assure that such permit shall be issued only to persons who have been medically determined to be blind or permanently disabled for purposes of receiving benefits under Federal law as a result of said blindness or permanent disability as determined by the Secretaries. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection.

(6)(A) No later than 60 days after the date of enactment of this paragraph, the Secretary of the Interior shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report on the entrance fees proposed to be charged at units of the National Park System. The report shall include a list of units of the National Park System and the entrance fee proposed to be charged at each unit. The Secretary of the Interior shall include in the report an explanation of the guidelines used in applying the criteria in subsection (d).

(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition

or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees.

(7) No admission fee may be charged at any unit of the National Park System for admission of any person 16 years of age or less.

(8) No admission fee may be charged at any unit of the National Park System for admission of organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

(9) No admission fee may be charged at the following units of the National Park System: U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, Arlington House Robert E. Lee National Memorial, San Juan National Historic Site, and Canaveral National Seashore.

(10) For each unit of the National Park System where an admission fee is collected, the Director shall annually designate at least one day during periods of high visitation as a 'Fee-Free Day' when no admission fee shall be charged.

(11) In the case of the following parks, the fee for a single visit permit applicable to those persons entering by private, noncommercial vehicle (the permittee and all persons accompanying him in a single vehicle) shall be no more than $10 per vehicle and the fee for a single-visit permit applicable to persons entering by any means other than a private noncommercial vehicle shall be no more than $5 per person: Yellowstone National Park and Grand Teton National Park and after the end of fiscal year 1990, Grand Canyon National Park. In the case of Yellowstone and Grand Teton, a single-visit fee collected at one unit shall also admit the vehicle or person who paid such fee for a single-visit to the other unit.

(12) Notwithstanding section 203 of the Alaska National Interest Lands Conservation Act, the Secretary may charge an admission fee under this section at Denali National Park and Preserve in Alaska.

(b) [Collection of recreation use fees- Campgrounds under jurisdiction of Corps of Engineers- Reduced fee for Golden Age Passport holders.]- Each Federal agency developing, administering, providing or furnishing at Federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: *Provided,* That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, toilet facilities, picnic tables, or boat ramps: *Provided, however,* That a fee shall be charged for boat launching facilities only where specialized facilities or services such as mechanical or hydraulic boat lifts or

facilities are provided: *And provided further*, That in no event shall there be a charge for the use of any campground not having the following- tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). At each lake or reservoir under the jurisdiction of the Corps of Engineers, United States Army, where camping is permitted, such agency shall provide at least one primitive campground, containing designated campsites, sanitary facilities, and vehicular access, where no charge shall be imposed. Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

(c) [Special recreation permits.]- Special recreation permits for uses such as group activities, recreation events, motorized recreation vehicles, and other specialized recreation uses may be issued in accordance with procedures and at fees established by the agency involved.

(d) [Agencies to set fees- Criteria.]- All fees established pursuant to this section shall be fair and equitable, taking into consideration the direct and indirect cost to the government, the benefits to the recipient, the public policy or interest served, the comparable recreation fees charged by non-Federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors.

Clear notice that a fee has been established pursuant to this section shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. It is the intent of this part that comparable fees should be charged by the several Federal agencies for comparable services and facilities.

(e) [Agencies may prescribe rules and regulations- Enforcement powers- Penalties for violations.]- In accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. Persons authorized by the heads of such Federal agencies to enforce any such rules or regulations issued under this subsection may, within areas under the administration or authority of such agency head and with or, if the offense is committed in his presence, without a warrant, arrest any person who violates such rules and regulations. Any person so arrested may be tried and sentenced by the United States magistrate specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in title 18, United States Code, section 3401, subsections (b), (c), (d), and (e), as

amended. Any violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than $100.

(f) [Contracts with public or private entities for visitor reservation services.]- The head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services. Any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the public for providing such services and to remit the net proceeds therefrom to the contracting agency.

(g) [Federal hunting or fishing licenses or fees not authorized- State rights, authorities and permits with respect to fish and wildlife and revenue sharing unaffected.]- Nothing in this Act shall authorize Federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, nor shall it affect any rights or authority of the States with respect to fish and wildlife, nor shall it repeal or modify any provision of law that permits States or political subdivisions to share in the revenues from Federal lands or any provision of law that provides that any fees or charges collected at particular Federal areas shall be used for or credited to specific purposes or special funds as authorized by that provision of law.

(h) [Annual reports to Congress.]- *Repealed.*

EXPLANATORY NOTE

1995 Amendment. Subsection 1081(f) of the Act of December 21, 1995 (Public Law 104-66, 109 Stat. 721) repealed section 4(h).

Prior to repeal, section 4(h) read as follows: "Periodic reports indicating the number and location of fee collection areas, the number and location of potential fee collection areas, capacity and visitation information, the fees collected, and other pertinent data, shall be coordinated and compiled by the Bureau of Outdoor Recreation and transmitted to the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate. Such reports, which shall be transmitted no later than March 31 annually, shall include any recommendations which the Bureau may have with respect to improving this aspect of the land and water conservation fund program." Subsection 1081(f) of the 1995 Act appears in Volume V at page 4072.

(i)(1) [Fees covered into a special account.]- Except in the case of fees collected by the United States Fish and Wildlife Service or the Tennessee Valley Authority, all receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. Fees collected by the Secretary of Agriculture pursuant to this subsection shall continue to be available for the purposes of distribution to States and counties in accordance with applicable law.

(2) Amounts covered into the special account for each agency during each fiscal year shall, after the end of such fiscal year, be available for appropriation solely for the purposes and in the manner provided in this subsection. No funds shall be transferred from fee receipts made available under this Act to each unit of the national park system: *Provided, however,* That in making appropriations, funds derived from such fees may be used for any purpose authorized therein. Funds credited to the special account shall remain available until expended.

(3) For agencies other than the National Park Service, such funds shall be made available for resource protection, research, interpretation, and maintenance activities related to resource protection in areas managed by that agency at which outdoor recreation is available. To the extent feasible, such funds should be used for purposes (as provided for in this paragraph) which are directly related to the activities which generated the funds, including but not limited to water-based recreational activities and camping.

(4) Amounts covered into the special account for the National Park Service shall be allocated among park system units in accordance with subsection (j) for obligation or expenditure by the Director of the National Park Service for the following purposes:

(A) In the case of receipts from the collection of admission fees: for resource protection, research, and interpretation at units of the National Park System.

(B) In the case of receipts from the collection of user fees: for resource protection, research, interpretation, and maintenance activities related to resource protection at units of the National Park System.

(C) [Units at which entrance fees or admissions fees cannot be collected.]–

(i) [Withholding of amounts.]– Notwithstanding subparagraph (A), section 315(c) of section 101(c) of the Omnibus Consolidated Recessions and Appropriations Act of 1996 (16 U.S.C. § 460*l*-6a note; Public Law 104-134), or section 107 of the Department of the Interior and Related Agencies Appropriations Act, 1998 (16 U.S.C. § 460*l*-6a note; Public Law 105-83), the Secretary of the Interior shall withhold from the special account under subparagraph (A) 100 percent of the fees and charges collected in connection with any unit of the National Park System at which entrance fees or admission fees cannot be collected by reason of deed restrictions.

(ii) [Use of amounts.]– Amounts withheld under clause (i) shall be retained by the Secretary and shall be available, without further Act of appropriation, for expenditure by the Secretary for the unit with respect to which the amounts were collected for the purposes of enhancing the

quality of the visitor experience, protection of resources, repair and maintenance, interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement.

(j)(1) [Allocation of funds available under subsection i.]- 10 percent of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the National Park System on the basis of need in a manner to be determined by the Director.

(2) 40 percent of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the National Park System in accordance with paragraph (3) of this subsection and 50 percent shall be allocated in accordance with paragraph (4) of this subsection.

(3) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the operating expenses at that unit during the prior fiscal year by the total operating expenses at all units during the prior fiscal year.

(4) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the user fees and admission fees collected under this section at that unit during the prior fiscal year by the total of user fees and admission fees collected under this section at all units during the prior fiscal year.

(5) Amounts allocated under this subsection to any unit for any fiscal year and not expended in that fiscal year shall remain available for expenditure at that unit until expended.

(k) [Volunteers may sell permits and collect fees.]- When authorized by the head of the collecting agency, volunteers at designated areas may sell permits and collect fees authorized or established pursuant to this section. The head of such agency shall ensure that such volunteers have adequate training regarding-

(1) the sale of permits and the collection of fees,

(2) the purposes and resources of the areas in which they are assigned, and

(3) the provision of assistance and information to visitors to the designated area.

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission

permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

(l)(1) [Service fee for transportation.]– Where the National Park Service provides transportation to view all or a portion of any unit of the National Park System, the Director may impose a charge for such service in lieu of an admission fee under this section. The charge imposed under this paragraph shall not exceed the maximum admission fee under subsection (a).

(2) Notwithstanding any other provision of law, half of the charges imposed under paragraph (1) shall be retained by the unit of the National Park System at which the service was provided. The remainder shall be covered into the special account referred to in subsection (i) in the same manner as receipts from fees collected pursuant to this section. Fifty percent of the amount retained shall be expended only for maintenance of transportation systems at the unit where the charge was imposed. The remaining 50 percent of the retained amount shall be expended only for activities related to resource protection at such units.

(m) [Public access provided by concessioner].– Where the primary public access to a unit of the National Park System is provided by a concessioner, the Secretary may charge an admission fee at such units only to the extent that the total of the fee charged by the concessioner for access to the unit and the admission fee does not exceed the maximum amount of the admission fee which could otherwise be imposed under subsection (a). (As added by § 2, Act of July 11, 1972, 86 Stat. 459; amended, §§ 1, 2, Act of August 1, 1973, 87 Stat. 178, 179; § 1(b)-(j) Act of June 7, 1974, 88 Stat 192-194; § 9, Act of September 8, 1980, 94 Stat. 1135; Act of December 22, 1987, 101 Stat. 1330-263; Act of October 30, 1998, 112 Stat. 3055; 16 U.S.C. § 460*l*-6a.)

EXPLANATORY NOTES

1998 Amendment. The Act of October 30, 1998 (Public Law 105-327, 112 Stat. 3055) amended section 4(i)(1)[sic] above by adding to the end thereof subsections (C)(i) and (C)(ii) as they appear in 4(i)(4) above.

Editor's note. The citation "section 4(i)(1)" appears to be erroneous and should read "section 4(i)(4)". Section 4(i)(4) of the 1998 Act appears in Volume V at page 4125.

1987 Amendment. Section 5201(a) of the Act of December 22, 1987 (Public Law 100-203, 101 Stat. 1330) amended section 4(a) as follows:

(1) Paragraph (1) is amended by striking out "$10" and inserting in lieu thereof "$25" in the first sentence.

(2) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the new subparagraph "(B)" as it appears above at the end thereof.

(3) Paragraph (2) is amended by adding the sentences at the end thereof beginning with the words "The fee for a single-visit permit at any designated area . . . ." as they appear above.

(4) Paragraph (3) is amended by adding the new sentence at the end thereof

beginning with the words "Notwithstanding any other provision of this Act, . . ." as it appears above.

(5) Adding new paragraphs (6)(A) through 12 as they appear above.

Section 5201(b) of the Act of December 22, 1987 (Public Law 100-203, 101 Stat. 1330) amended section 4(f) to read as it appears above. Section 5201(b) of the 1987 Act appears in Volume V at page 3566.

Section 5201(c) further amends section 4 by adding at the end thereof new subsections (i)(1) through (m) as they appear above. Section 5201(c) of the 1987 Act appears in Volume V at page 3562.

1980 Amendment. Section 9 of the Act of September 8, 1980 (Public Law 96-344, 94 Stat. 1133) amended section 4 by substituting the present text of the second sentence of subsection (a)(2) for the former text; adding paragraph (5) to subsection (a) and inserting in the last sentence of subsection (b) ", or permittee under paragraph (5) of subsection (a) of this section," after "Golden Age Passport permittee". The 1980 Act does not appear herein.

1974 Amendments. Section 1 (a) of the Act of June 7, 1974 (Public Law 93-303, 88 Stat. 192) amended the heading of section 4 by deleting "SPECIAL RECREATION". Section 1(b) of the Act amended subsection (a) by inserting into the second sentence "which are operated and maintained by a Federal agency" following "Federally owned areas". Section 1(c) of the Act amended paragraph (a)(1)) by: in the second sentence substituting "The permittee" for "Any person purchasing the annual permit"; inserting "or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle" following "single, private, noncommercial vehicle"; and deleting all that follows "pursuant to this subsection". Section 1(c) of the 1974 Act also: inserted immediately thereafter two sentences reading "the annual permit shall be valid during the calendar year for which the annual fee is paid. The annual permit shall not authorize any uses for which additional fees are charged pursuant to subsections (b) and (c) of this section."; in the former third sentence, substituted "(e)" for "(d)"; in the former fourth sentence, deleted all that follows "purchase" and substituted therefor "at any such designated area"; and deleted the former fifth sentence, which read "The Secretary of the Interior shall transfer to the Postal Service from the receipts thereof such funds as are adequate for the reimbursement of the cost of the service so provided." Section I (d) amended subsection (a)(2) by deleting, in the first sentence, "or who enter such an area by means other than by private, noncommercial vehicle.".

Section 1(e) of the 1974 Act: amended the first sentence of subsection (a)(4) by substituting "a lifetime admission" for "an annual entrance" and "citizen of, or person domiciled in, the United States" for "person"; amended the second sentence of paragraph (a)(4) by substituting "permittee and any person accompanying him" for "bearer and any person accompanying the bearer"; inserted ", or, alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any manner other than by private, noncommercial vehicle" following "in a single, noncommercial vehicle"; substituted "general admission" for "entry"; and deleted "admission fee" preceding "area".

Section 1(f) of the 1974 Act amended the first sentence of subsection (b) by: inserting 11, at Federal expense," preceding "specialized" and "outdoor recreation" preceding "sites, facilities, equipment, or services"; deleting "related to outdoor recreation" and inserting ", in accordance with this subsection and subsection (d) of this section" following, "shall"; substituting "daily" for "special"; and substituting "at the place of use or any reasonably convenient location" for "for the use of sites, facilities, equipment, or services furnished at Federal expense" immediately prior to the first proviso. The first sentence of subsection (b) was further amended by: inserting the present language of the first proviso, which formerly stated, "provided, that in no event shall there be a charge for the day use or recreational use of those facilities or combination of those facilities

or areas which virtually all visitors might reasonably be expected to utilize, such as, but not limited to, picnic areas, boat ramps where no mechanical or hydraulic equipment is provided, drinking water, wayside exhibits, roads, trails, overlook sites, visitors' centers, scenic drives, and toilet facilities."; inserting the present further provisos; deleting the former second sentence and inserting sentences referring to lakes and reservoirs under the jurisdiction of the Corps of Engineers and to Golden Age Passport permittees, respectively; and deleting paragraph (b)(1) which had stated, "Daily use fees for overnight occupancy within areas specially developed for such use shall be determined on the basis of the value of the capital improvements offered, the cost of the services furnished, and other pertinent factors. Any person bearing a valid Golden Age Passport issued pursuant to paragraph (4) of subsection (a) of this section shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of fifty per centum of the established daily use fee." Section 1(g) of the 1974 Act redesignated former subsection (b)(2) as subsection "(c) RECREATION PERMITS- ", and redesignated subsequent subsections accordingly.

Section 1 (h) of the 1974 Act amended the second sentence of subsection (d) by substituting "a" for "an admission fee or special recreation use" and inserting "pursuant to this section" following "has been established.".

Section 1(i) of the 1974 Act amended the first sentence of subsection (e) by substituting "fee established pursuant to this section" for "entrance fee and/or special recreation use fee, as the case may be.".

Section 1(j) of the 1974 Act amended the first sentence of subsection (f) by inserting "which are" following "all fees" and "by any Federal agency" preceding "shall be covered", and by adding the proviso.

The 1974 Act does not appear herein.

1973 Amendment. Section 1 of the Act of August 1, 1973 (Public Law 93-81, 87 Stat. 178) amended subsection (b) by inserting a first proviso clause in the first sentence and a second sentence, which provided, "No fee may be charged for access to or use of any campground not having the following- flush restrooms, showers reasonably available, access and circulatory roads, sanitary disposal stations reasonably available, visitor protection control, designated tent or trailer spaces, refuse containers and potable water." Section 2 of the Act amended subsection (a)(2) by adding a second sentence providing "A 'single visit' means that length of time a visitor remains within the exterior boundary of a designated fee area beginning from the day he first enters the area until he leaves, except that on the same day such admission fee is paid, the visitor may leave and reenter without the payment of an additional admission fee to the same area." The 1973 Act does not appear herein.

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) added a new section 4. The 1972 Act does not appear herein.

Supplementary Provision. Section 402 of the Act of October 12, 1979 (Public Law 96-87, 93 Stat. 666), as amended by section 202(3)(a) of the Act of December 2, 1980 (Public Law 96-487, 94 Stat. 2382), provides that: "Notwithstanding any other provision of law, the Secretary of the Interior shall not charge any entrance or admission fee in excess of the amounts which were in effect as of January 1, 1979, or charge said fees at any unit of the National Park System where such fees were not in effect as of this date, nor shall the Secretary charge after the date of enactment of this section, user fees for transportation services and facilities in Denali National Park, Alaska." Neither the 1979 nor the 1980 Act appears herein. This provision is codified at 16 U.S.C. 460l-6b.

Reference in the Text. Section 101 of title 23 of the United States Code, referred to in subsection (a)(3) of the text, defines the national Federal-aid highway system to include any one of the Federal-aid highway systems described in 23 U.S.C. § 103. These systems include the Federal-aid primary system, the Federal-aid urban system, the Federal-aid secondary system, and the Interstate System. These provisions do not appear herein.

Reference in the Text. Subsections (b) through (e) of section 3401 of title 18 of the U.S. Code, referred to in subsection (e) of the text, outline the procedure for trial on misdemeanor charges by a United States Magistrate. These provisions do not appear herein.

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Sec. 5. [Special account- Purposes for which appropriations available.]- There shall be submitted with the annual budget of the United States a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the fund. Not less than 40 per centum of such appropriations shall be available for Federal purposes. Those appropriations from the fund up to and including $600,000,000 in fiscal year 1978 and up to and including $750,000,000 in fiscal year 1979 shall continue to be allocated in accordance with this section. There shall be credited to a special account within the fund $300,000,000 in fiscal year 1978 and $150,000,000 in fiscal year 1979 from the amounts authorized by section 2 of this Act. Amounts credited to this account shall remain in the account until appropriated. Appropriations from the special account shall be available only with respect to areas existing and authorizations enacted prior to the convening of the Ninety-fifth Congress, for acquisition of lands, waters, or interests in lands or waters within the exterior boundaries, as aforesaid, of-

(1) the National Park System;

(2) national scenic trails;

(3) the national wilderness preservation system;

(4) federally administered components of the National Wild and Scenic Rivers System; and

(5) national recreation areas administered by the Secretary of Agriculture. (Formerly § 4, 78 Stat 900; § 3, Act of July 15, 1968, 82 Stat. 355; redesignated as § 5 by § 2, Act of July 11, 1972, 86 Stat. 459; § 3(4), Act of April 21, 1976, 90 Stat. 376; § 101(2), Act of September 28, 1976, 90 Stat. 1314; § 1(2), Act of June 10, 1977, 91 Stat. 210; 16 U.S.C. § 460*l*-7.)

EXPLANATORY NOTES

1977 Amendment. Section 1(2) of the Act of June 10, 1977 (Public Law 95-42, 91 Stat. 210) amended section 5 by adding the third and subsequent sentences relating to a special account in the Land and Water Conservation Fund. The 1977 Act does not appear herein.

1976 Amendment. Section 101(2) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1314) amended section 5 by: deleting "AUTHORIZATION FOR ADVANCE APPROPRIATIONS" from the heading; deleting the second sentence of subsection (a) and substituting therefor "Not less than 40 per centum of such appropriations shall be available for Federal purposes."; deleting subsection (b); and striking out the subsection (a) heading in the remaining text. The 1976 Act does not appear herein.

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 4 as section 5. The 1972 Act does not appear herein.

1968 Amendment. Section 3 of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) amended the first sentence of subsection (b) by substituting "until the end of fiscal year 1969" for "for a total of eight years". The 1968 Act does not appear herein.

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Sec. 6. [Financial assistance to States.]- (a) [Secretary of Interior authorized to make payments to States to carry out purposes of Act.]- The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this Act, for outdoor recreation: (1) planning, (2) acquisition of land, waters, or interests in land or waters, or (3) development.

(b) [Apportionment among States- Finality of administrative determination- Formula- Notification- Reapportionment of unobligated amounts.]- Sums appropriated and available for State purposes for each fiscal year shall be apportioned among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:

(1) Forty per centum of the first $225,000,000; thirty per centum of the next $275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and

(2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this Act. The determination of need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the Federal resources and programs in the particular States.

(3) The total allocation to an individual State under paragraphs (1) and (2) of this subsection shall not exceed 10 per centum of the total amount allocated to the several States in any one year.

(4) The Secretary shall notify each State of its apportionments; and the amounts thereof shall be available thereafter for payment to such State for planning, acquisition, or development projects as hereafter prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two

fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) of this subsection, without regard to the 10 per centum limitation to an individual State specified in this subsection.

(5) For the purposes of paragraph (1) of this subsection, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the Northern Mariana Islands (when such islands achieve Commonwealth status) shall be treated collectively as one State, and shall receive shares of such apportionment in proportion to their populations. The above listed areas shall be treated as States for all other purposes of this title.

(c) [Matching requirements.]- Payments to any State shall cover not more than 50 per centum of the cost of planning, acquisition, or development projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as shall be satisfactory to the Secretary. No payment may be made to any State for or on account of any cost or obligation incurred or any service rendered prior to September 3, 1964.

(d) [Comprehensive statewide recreation plan required prior to financial assistance- Requirements- Correlation with other State, regional and local plans.]- A comprehensive statewide outdoor recreation plan shall be required prior to the consideration by the Secretary of financial assistance for acquisition or development projects. The plan shall be adequate if, in the judgment of the Secretary, it encompasses and will promote the purposes of this Act: *Provided,* That no plan shall be approved unless the Governor of the respective State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with others, criteria for public participation, which criteria shall constitute the basis for the certification by the Governor. The plan shall contain-

(1) the name of the State agency that will have authority to represent and act for the State in dealing with the Secretary for purposes of this Act;

(2) an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;

(3) a program for the implementation of the plan; and

(4) other necessary information, as may be determined by the Secretary.

The plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Housing and Home Finance Agency, any statewide outdoor recreation plan prepared for purposes of this Act shall be based upon the same population, growth, and other pertinent factors as are used in formulating the Housing and Home Finance Agency financed plans.

The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when such plan is not otherwise available or for the maintenance of such plan.

(e) [Assistance from Fund for land and water acquisition and recreation facility development.]- In addition to assistance for planning projects, the Secretary may provide financial assistance to any State for the following types of projects or combinations thereof if they are in accordance with the State comprehensive plan:

(1) For the acquisition of land, waters, or interests in land or waters (other than land, waters, or interests in land or waters acquired from the United States for less than fair market value), but not including incidental costs relating to acquisition.

Whenever a State provides that the owner of a single-family residence may, at his option, elect to retain a right of use and occupancy for not less than six months from the date of acquisition of such residence and such owner elects to retain such a right, such owner shall be deemed to have waived any benefits under sections 203, 204, 205, and 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 101(6) of that Act.

(2) For development of basic outdoor recreation facilities to serve the general public, including the development of Federal lands under lease to States for terms of twenty-five years or more: *Provided*, That no assistance shall be available under this part to enclose or shelter facilities normally used for outdoor recreation activities, but the Secretary may permit local funding, and after September 28, 1976, not to exceed 10 per centum of the total amount allocated to a State in any one year to be used for sheltered facilities for swimming pools and ice skating rinks in areas where the Secretary determines that the severity of climatic conditions and the increased public use thereby made possible justifies the construction of such facilities.

(f) [Requirements and conditions for project approval- Progress payments- Payments to Governors or State officials- State transfer of funds to public agencies- Conversion of property to other uses- Reports to Secretary- Evaluation by States- Discrimination prohibited.]- (1) Payments may be made to States by the Secretary only for those planning, acquisition, or development projects that are approved by him. No payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any project with respect to which such assistance has been given or promised under this Act. The Secretary may make payments from time to time in keeping with the rate of progress

toward the satisfactory completion of individual projects: *Provided,* That the approval of all projects and all payments, or any commitments relating thereto, shall be withheld until the Secretary receives appropriate written assurance from the State that the State has the ability and intention to finance its share of the cost of the particular project, and to operate and maintain by acceptable standards, at State expense, the particular properties or facilities acquired or developed for public outdoor recreation use.

(2) Payments for all projects shall be made by the Secretary to the Governor of the State or to a State official or agency designated by the Governor or by State law having authority and responsibility to accept and to administer funds paid hereunder for approved projects. If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.

(3) No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

(4) No payment shall be made to any State until the State has agreed to (1) provide such reports to the Secretary, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his duties under this Act, and (2) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for Federal funds paid to the State under this Act.

(5) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(6) The Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this Act.

(7) Each State shall evaluate its grant programs annually under guidelines set forth by the Secretary and shall transmit, so as to be received by the Secretary no later than December 31, such evaluation to the Secretary, together with a

list of all projects funded during that fiscal year, including, but not limited to, a description of each project, the amount of Federal funds employed in such project, the source of other funds, and the estimated cost of completion of the project. Such evaluation and the publication of same shall be eligible for funding on a 50-50 matching basis. The results of the evaluation shall be annually reported on a fiscal year basis to the Bureau of Outdoor Recreation, which agency shall forward a summary of such reports to the Committees on Interior and Insular Affairs of the United States Congress by no later than March 1 of each year. Such report to the committees shall also include an analysis of the accomplishments of the fund for the period reported, and may also include recommendations as to future improvements for the operation of the Land and Water Conservation Fund program.

(8) With respect to property acquired or developed with assistance from the fund, discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

(g) [President authorized to issue regulations to assure consistency and coordination with other Federal programs.]– In order to assure consistency in policies and actions under this Act with other related Federal programs and activities (including those conducted pursuant to title VII of the Housing Act of 1961 (42 U.S.C. § 1500 et seq.) and section 701 of the Housing Act of 1954 (40 U.S.C. § 461)) and to assure coordination of the planning, acquisition, and development assistance to States under this section with other related Federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable and such assistance may be provided only in accordance with such regulations. (Formerly § 5, 78 Stat. 900; redesignated as § 6 by § 2, Act of July 11, 1972, 86 Stat. 459; § 2, Act of June 7, 1974, 88 Stat. 194; § 101(3) Act of September 28, 1976, 90 Stat. 1314; § 606, Act of November 10, 1978, 92 Stat. 3519; 16 U.S.C. § 460*l*-8.)

EXPLANATORY NOTES

1978 Amendment. Section 606(a) of the Act of November 10, 1978 (Public Law 95-625, 92Stat. 3519), also known as the National Parks and Recreation Act of 1978, amended subsection (f)(7) by inserting in the first sentence thereof ", so as to be received by the Secretary no later than December 31," after "transmit". Section 606(b) of the 1978 Act amended the third sentence of subsection (f)(7) by inserting at the end thereof "by no later than March 1 of each year.". The 1978 Act does not appear herein.

1976 Amendment. Section 101(3) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1314) amended section 6 by: deleting from subsection (b) former paragraphs (1) and (2), and the three sentences subsequent thereto, and substituting therefor present paragraphs (1) through (5); inserting in subsection (d) the proviso to the second sentence and the third

sentence; inserting in subsection (e)(2) "of basic outdoor recreation facilities to serve the general public" following "For development" and inserting the proviso; and inserting in subsection (f) appropriate paragraph numbers to previously existing paragraphs, deleting "of the Interior" following "Secretary" in paragraphs (5) and (6), and inserting paragraphs (7) and (8). The 1976 Act does not appear herein.

1974 Amendment. Section 2 of the Act of June 7, 1974 (Public Law 93-303, 88 Stat. 194) amended subsection (e)(1) by adding the final sentence. The 1974 Act does not appear herein.

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 5 as section 6. The 1972 Act does not appear herein.

Reference in the Text. Sections 4601(6) and 4623 through 4626 of title 42 of the U.S. Code, referred to in subsection (e) of the text, are part of the Uniform Relocation Assistance Program and cover replacement housing for homeowners and tenants, relocation assistance advisory services, and last resort housing replacement. These provisions are part of the Act of January 2, 1971 (Public Law 91-646, 84 Stat. 1894), extracts from which appear in Volume IV in chronological order.

NOTE OF OPINION

1. Concurrent funding under Federal Water Project Recreation Act

The construction of a boat ramp and launching facility at Keswick Reservoir, under the provisions of the Land and Water Conservation Fund Act, does not prohibit the funding of other features by the Federal Water Project Recreation Act so long as the respective developments are clearly defined, separate projects for which the non-Federal portion of the cost will be met locally, because the two sources of Federal funding cannot be applied in such a way that they overlap. Memorandum of Associate Solicitor Meyer to Associate Solicitor, Reclamation and Power, March 8, 1968, in re proposed recreation management agreement with Shasta County.

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Sec. 7. [Allocation of land and water conservation fund moneys for Federal purposes.]- (a) [Allowable purposes and subpurposes- Acquisition of land and waters and interests therein- Offset for specified capital costs.]- Moneys appropriated from the fund for Federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes:

(1) For the acquisition of land, waters, or interests in land or waters as follows:

National Park System; Recreation Areas- Within the exterior boundaries of areas of the National Park System now or hereafter authorized or established and of areas now or hereafter authorized to be administered by the Secretary of the Interior for outdoor recreation purposes.

National Forest System- In holdings within (a) wilderness areas of the National Forest System, and (b) other areas of national forests as the boundaries of those forests exist on the effective date of this Act, or purchase units approved by the National Forest Reservation Commission subsequent to the date of this Act,

all of which other areas are primarily of value for outdoor recreation purposes: *Provided,* That lands outside of but adjacent to an existing national forest boundary, not to exceed three thousand acres in the case of any one forest, which would comprise an integral part of a forest recreational management area may also be acquired with moneys appropriated from this fund: *Provided further,* That except for areas specifically authorized by Act of Congress, not more than 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

National Wildlife Refuge System- Acquisition for (a) endangered species and threatened species authorized under section 5(a) of the Endangered Species Act of 1973; (b) areas authorized by section 2 of the Act of September 28, 1962, as amended (16 U.S.C., § 460k-1); (c) national wildlife refuge areas under section 7(a)(5) of the Fish and Wildlife Act of 1956 (16 U.S.C. § 742f(5)) [sic, (a)(5)] except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. § 715-715s); (d) any areas authorized for the National Wildlife Refuge System by specific Acts.

(2) For payment into miscellaneous receipts of the Treasury as a partial offset for those capital costs, if any, of Federal water development projects hereafter authorized to be constructed by or pursuant to an Act of Congress which are allocated to public recreation and the enhancement of fish and wildlife values and financed through appropriations to water resource agencies.

(3) Appropriations allotted for the acquisition of land, waters, or interests in land or waters as set forth under the headings "National Park System; Recreation Areas" and "National Forest System" in paragraph (1) of this subsection shall be available therefor notwithstanding any statutory ceiling on such appropriations contained in any other provision of law enacted prior to the convening of the Ninety-fifth Congress or, in the case of national recreation areas, prior to the convening of the Ninety-sixth Congress; except that for any such area expenditures may not exceed a statutory ceiling during any one fiscal year by 10 per centum of such ceiling or $1,000,000, whichever is greater. The Secretary of the Interior shall, prior to the expenditure of funds which would cause a statutory ceiling to be exceeded by $1,000,000 or more, and with respect to each expenditure of $1,000,000 or more in excess of such a ceiling, provide written notice of such proposed expenditure not less than thirty calendar days in advance to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(b) [Restrictions on acquisitions.]- Appropriations from the fund pursuant to this section shall not be used for acquisition unless such acquisition is otherwise authorized by law: *Provided, however,* That appropriations from the

fund may be used for preacquisition work in instances where authorization is imminent and where substantial monetary savings could be realized.

(c) [Secretary of the Interior authorized to make minor boundary changes- Restrictions- Donations.]- Whenever the Secretary of the Interior determines that to do so will contribute to, and is necessary for, the proper preservation, protection, interpretation, or management of an area of the National Park System, he may, following timely notice in writing to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate of his intention to do so, and by publication of a revised boundary map or other description in the Federal Register, (i) make minor revisions of the boundary of the area, and moneys appropriated from the fund shall be available for acquisition of any lands, waters, and interests therein added to the area by such boundary revision subject to such statutory limitations, if any, on methods of acquisition and appropriations thereof as may be specifically applicable to such area: *Provided, however,* That such authority shall apply only to those boundaries established subsequent to January 1, 1965; and (ii) acquire by donation, purchase with donated funds, transfer from any other Federal agency, or exchange, lands, waters, or interests therein adjacent to such area, except that in exercising his authority under this clause (ii) the Secretary may not alienate property administered as part of the National Park System in order to acquire lands by exchange, the Secretary may not acquire property without the consent of the owner, and the Secretary may acquire property owned by a State or political subdivision thereof only by donation. Prior to making a determination under this subsection, the Secretary shall consult with the duly elected governing body of the county, city, town, or other jurisdiction or jurisdictions having primary taxing authority over the land or interest to be acquired as to the impacts of such proposed action, and he shall also take such steps as he may deem appropriate to advance local public awareness of the proposed action. Lands, waters, and interests therein acquired in accordance with this subsection shall be administered as part of the area to which they are added, subject to the laws and regulations applicable thereto. (Formerly § 6, 78 Stat. 903; § 1(6), Act of July 15, 1968, 82 Stat. 355; redesignated as § 7 by § 2, Act of July 11, 1972, 86 Stat. 459; § 13(c), Act of December 28, 1973, 87 Stat. 902; § 101(4), Act of September 28, 1976, 90 Stat. 1317; § 1(3)-(5), Act of June 10, 1977, 91 Stat. 210, 211; § 2, Act of March 10, 1980, 94 Stat. 81; 16 U.S.C. § 460*l*-9.)

EXPLANATORY NOTES

1980 Amendment. Section 2 of the Act of March 10, 1980 (Public Law 96-203, 94 Stat. 81) amended section 7 by inserting in subsection (a)(3) "or, in the case of national recreation areas, prior to the convening of the Ninety-sixth Congress" after "Ninety-fifth Congress" and substituting in subsection (c) "apply only to those boundaries established subsequent to

January 1, 1965" for "expire ten years from the date of enactment of the authorizing legislation establishing such boundaries;". The 1980 Act does not appear herein.

1977 Amendment. Section 1(3) of the Act of June 10, 1977 (Public Law 95-42, 91 Stat. 210) amended section 7 by adding paragraph (3) to subsection (a). Section 1(4) of the Act added the proviso relating to preacquisition work to subsection (b). Section 101(5) of the Act added subsection (c). The 1977 Act does not appear herein.

1976 Amendment. Section 101(3) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1317) amended subsection (a) by inserting in the second subparagraph ", or purchase units approved by the National Forest Reservation Commission subsequent to the date of this Act, all of" following "the effective date of this Act"; substituting "three thousand" for "five hundred" in the first proviso and inserting "except for areas specifically authorized by Act of Congress" preceding "not more than 15 per centum" in the further proviso; and deleting the third and fourth subparagraphs of paragraph (1) and inserting therefor a third subparagraph headed "NATIONAL WILDLIFE REFUGE SYSTEM-". The 1976 Act does not appear herein.

1973 Amendment. Section 13(c) of the Act of December 28, 1973 (Public Law 93-205, 87 Stat. 903), commonly known as the Endangered Species Act of 1973, amended the third subparagraph of subsection (a)(1) by substituting "ENDANGERED SPECIES AND THREATENED SPECIES - for lands, water, and interests therein, the acquisition of which is authorized under Section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants." for the former text. Extracts from the 1973 Act, including section 13, appear in Volume IV in chronological order.

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 6 as section 7.

1968 Amendment. Section l(c) of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) amended subsection (a) by striking out the words "in substantially the same proportion as the number of visitor-days in areas and projects hereinafter described for which admission fees are charged under Section 2 of this Act." Section 1(d) of the 1968 Act provided that this amendment would be effective March 31, 1970. The 1968 Act does not appear herein.

Reference and Error in the Text. Section 7(a)(5) of the Fish and Wildlife Act of 1956 (Act of August 8, 1956, 70 Stat. 1123) originally was codified at 16 U.S.C. § 742f(a)(5), not § 742f(5) as stated in subsection (a)(1) of the text. Section 4 of the Fish and Wildlife Improvement Act of 1978 (Act of November 8, 1978, Public Law 95-616, 92 Stat. 3112) incorporated the provisions of paragraph 7(a)(5) of the 1956 Act into paragraph 7(a)(4) of that Act, so the land acquisition authority is now codified at 16 U.S.C. § 742f(a)(4). The 1956 Act does not appear herein. Extracts from the 1978 Act, not including section 4, appear in Volume IV at page 3133.

Reference in the Text. The Migratory Bird Conservation Act of 1929 (Act of February 18, 1929, 45 Stat. 1222) referred to in subsection (a) of the text, provides for the management of migratory birds and their environment. The 1929 Act does not appear herein.

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Sec. 8. [Moneys in fund not available for publicity purposes- Exceptions.]- Moneys derived from the sources listed in section 2 of this Act shall not be available for publicity purposes: *Provided, however,* That in each case where significant acquisition or development is initiated, appropriate standardized temporary signing shall be located on or near the affected site, to

the extent feasible, so as to indicate the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the per centum and dollar amounts financed by Federal and non-Federal funds, and that the source of the funding includes moneys derived from Outer Continental Shelf receipts. The Secretary shall prescribe standards and guidelines for the usage of such signing to assure consistency of design and application. (Formerly § 7, 78 Stat. 903; redesignated as § 8 by § 2, Act of July 11, 1972, 86 Stat. 459; § 101(5), Act of September 28, 1976, 90 Stat. 1318; 16 U.S.C. § 460*l*-10.)

EXPLANATORY NOTES

1976 Amendment. Section 101(5) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1318) amended section 8 by adding the proviso relating to temporary signing. The 1976 Act does not appear herein.

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 7 as section 8. The 1972 Act does not appear herein.

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Sec. 9. [Spending limit on acquisition of properties within areas specified in section 7 (a) (1) – Contracting authority.]– Not to exceed $30,000,000 of the money authorized to be appropriated from the fund by section 3 of this Act may be obligated by contract during each fiscal year for the acquisition of lands, waters, or interests therein within areas specified in section 7(a)(1) of this Act. Any such contract may be executed by the head of the department concerned, within limitations prescribed by the Secretary of the Interior. Any such contract so entered into shall be deemed a contractual obligation of the United States and shall be liquidated with money appropriated from the fund specifically for liquidation of such contract obligation. No contract may be entered into for the acquisition of property pursuant to this section unless such acquisition is otherwise authorized by Federal law. (Formerly § 8 as added by § 4, Act of July 15, 1968, 82 Stat. 355; § 3, Act of July 7, 1970, 84 Stat. 410; redesignated as § 9 by § 2, Act of July 11, 1972, 86 Stat. 459; § 3, Act of June 7, 1974, 88 Stat. 194; 16 U.S.C. § 460*l*-10a.)

EXPLANATORY NOTES

1974 Amendment. Section 3 of the Act of June 7, 1974 (Public Law 93-303, 88 Stat. 194) amended the first sentence of section 9 by substituting "7(a)(1)" for "6(a)(1)". The 1974 Act does not appear herein.

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 8 as section 9. The 1972 Act does not appear herein.

1970 Amendment. Section 3 of the Act of July 7, 1970 (Public Law 91-308, 84 Stat. 410) amended section 8 by substituting "fiscal year" for "of fiscal years 1969 and 1970". The 1970 Act does not appear herein.

1968 Amendment. Section 4 of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) added section 8 to the Act. The 1968 Act does not appear herein.

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Sec. 10. [Authority to contract for options to acquire areas authorized for inclusion in National Park System.]– The Secretary of the Interior may enter into contracts for options to acquire lands, waters, or interests therein within the exterior boundaries of any area the acquisition of which is authorized by law for inclusion in the National Park System. The minimum period of any such option shall be two years, and any sums expended for the purchase thereof shall be credited to the purchase price of said area. Not to exceed $500,000 of the sum authorized to be appropriated from the fund by section 3 of this Act may be expended by the Secretary in any one fiscal year for such options. (Formerly § 9 as added by § 4, Act of July) 15, 1968, 82 Stat. 355; redesignated as § 10 by § 2, Act of July 11, 1972, 86 Stat. 459; 16 U.S.C. § 460*l*-10b)

EXPLANATORY NOTES

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 9 as section 10. The 1972 Act does not appear herein.

1968 Amendment. Section 4 of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) added section 9 of the Act. The 1968 Act does not appear herein.

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Sec. 11. [Repeal of provisions prohibiting or restricting collection of recreation user fees or charges– Exception.]– All provisions of law that prohibit the collection of entrance, admission, or other recreation user fees or charges authorized by this Act or that restrict the expenditure of funds if such fees or charges are collected are hereby repealed: *Provided*, That no provision of any law or treaty which extends to any person or class of persons a right of free access to the shoreline of any reservoir or other body of water, or to hunting and fishing along or on such shoreline, shall be affected by this repealer. (Formerly § 10 as added by § 1 (a), Act of July 15, 1968, 82 Stat. 354; redesignated as § 11 by § 2, Act of July 11 1972, 86 Stat. 459; 16 U.S.C. § 460*l*-10c.)

EXPLANATORY NOTES

1972 Amendment. Section 2 of the Act of July 11, 1972 (Public Law 92-347, 86 Stat. 459) renumbered former section 10 as section 11. The 1972 Act does not appear herein.

1968 Amendment. Section 1 (a) of the Act of July 15, 1968 (Public Law 90-401, 82 Stat. 354) redesignated the fourth paragraph of former subsection 2(a) as section 10. Section 1(d) of the 1968 Act provided that the redesignation would be effective March 31, 1970. The 1968 Act does not appear herein.

Sec. 12. [Secretary to submit reports to Congress on urban recreation needs– Consultation with affected cities, counties and States.]– Within one year of September 28, 1976, the Secretary is authorized and directed to submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives a comprehensive review and report on the needs, problems, and opportunities associated with urban recreation in highly populated regions, including the resources potentially available for meeting such needs. The report shall include site specific analyses and alternatives, in a selection of geographic environments representative of the Nation as a whole, including, but not limited to, information on needs, local capabilities for action, major site opportunities, trends, and a full range of options and alternatives as to possible solutions and courses of action designed to preserve remaining open space, ameliorate recreational deficiency, and enhance recreational opportunity for urban populations, together with an analysis of the capability of the Federal Government to provide urban oriented environmental education programs (including, but not limited to, cultural programs in the arts and crafts) within such options. The Secretary shall consult with, and request the views of, the affected cities, counties, and States on the alternatives and courses of action identified. (Added by § 101(6), Act of September 28, 1976, 90 Stat. 1318; 16 U.S.C. § 460*l*-10d.)

EXPLANATORY NOTE

1976 Amendment. Section 101(6) of the Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1318) added section 12 to the Act. The 1976 Act does not appear herein.

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Sec. 201. [Transfers to and from land and water conservation fund.]– (a) [Motorboat fuel taxes– Set aside in land and water conservation fund.]– There shall be set aside in the land and water conservation fund in the Treasury of the United States provided for in title I of this Act the amounts specified in section 209(f)(5) of the Highway Revenue Act of 1956 (relating to special motor fuels and gasoline used in motorboats).

(b) [Refund of gasoline taxes for certain nonhighway purposes.]- There shall be paid from time to time from the land and water conservation fund into the general fund of the Treasury amounts estimated by the Secretary of the Treasury as equivalent to-

(1) the amounts paid before October 1, 1989, under section 6421 of the Internal Revenue Code of 1954 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motorboats, on the basis of claims filed for periods ending before October 1, 1988; and

(2) 80 percent of the floor stocks refunds made before October 1, 1989, under section 641 (a)(2) of such Code with respect to gasoline to be used in motorboats. (78 Stat. 904; § 302, Act of December 31, 1970, 84 Stat. 1743; § 3(4), Act of April 21, 1976, 90 Stat. 376; § 302, Act of May 5, 1976, 90 Stat. 456; § 503(b), Act of November 6, 1978, 92 Stat. 2757; § 531(c), Act of January 6, 1983, 96 Stat. 2191; 16 U.S.C. § 460*l*-11.)

EXPLANATORY NOTES

1983 Amendment. Section 531(c) of the Act of January 6, 1983 (Public Law 97-424, 96 Stat. 2191) amended section 201 by substituting "1989" for "1985" wherever it appeared. The 1983 Act does not appear herein.

1978 Amendment. Section 503(b) of the Act of November 6, 1978 (Public Law 95-599, 92 Stat. 2757), also known as the Surface Transportation Assistance Act of 1978, amended section 201 by substituting in subsection (b) "1984" for "1979" wherever it appeared and "1985" for "1980" wherever it appeared. The 1978 Act does not appear herein.

1976 Amendment. Section 302 of the Act of May 5, 1976 (Public Law 94-280, 90 Stat. 456), also known as the Federal-Aid Highway Act of 1976, amended section 201 by substituting in subsection (b) "1979" for "1977" wherever it appeared and "1980" for "1978" wherever it appeared. The 1976 Act does not appear herein.

1970 Amendment. Section 302 of the Act of December 31, 1970 (Public Law 91-605, 84 Stat. 1713), also known as the Federal-Aid Highway Act of 1970, amended section 201 by substituting in subsection (b) "1977" for " 1972" wherever it appeared and " 1978" for "1973" wherever it appeared. The 1970 Act does not appear herein.

FEDERAL WATER PROJECT RECREATION ACT

Pages 1820, S389

[Sec. 1. Congressional policy.]–

* * * * *

NOTES OF OPINIONS

Projects, eligibility of 1
Relationship with other laws 2

1. Projects, eligibility of

Inclusion of a golf course and tennis courts in the proposed recreation plan to be made a part of the feasibility report on the Chikaskia Project, Kansas-Oklahoma, is for the purpose of "outdoor recreation" and is therefore within the purview of the Act. Memorandum of Assistant Solicitor Mauro to Commissioner of Reclamation, September 11, 1980.

Application by the Nevada Department of Fish and Game for a grant of $100,000 under the Federal Water Project Recreation Act to construct and operate a trout hatchery at Lake Mead, Boulder Canyon Project, must be denied as this is not the type of project contemplated by the Act. Moreover, the hatchery is proposed for construction within the Lake Mead National Recreation Area and section 1 of the Act prohibits its application to areas or facilities within a national recreation area. Similarly, section 7 of the Act permits construction of such facilities only after entering into an agreement in accordance with section 3(b) of the Act, but section 6(e) of the Act makes section 3 inapplicable to areas within a national recreation area. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 1, 1971.

2. Relationship with other laws

Assuming that the Federal Water Project Recreation Act, which authorizes consideration of opportunities for recreation and wildlife enhancement, applies to San Juan-Chama Project water, nothing in the statute authorizes storage solely for recreational purposes. The statute does not suggest that the specific limitations of the Colorado River Storage Project Act and the Act of June 13, 1962, which make recreational use only incidental to irrigation, municipal, and industrial use, should be ignored in favor of recreation or wildlife. *Jicarilla Apache Tribe v. United States,* 657 F.2d 1126 (10th Cir. 1981).

Pages 1820, S389

Sec. 2. [Non-Federal administration–Cost sharing.]–(a) If, before authorization of a project, non-Federal public bodies indicate their intent in writing to agree to administer project land and water areas for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and to bear not less than one-half the separable costs of the project allocated to recreation, and to bear one-quarter of such costs

allocated to fish and wildlife enhancement, and not less than one-half the costs of operation, maintenance, and replacement incurred therefor-

(1) the benefits of the project to said purpose or purposes shall be taken into account in determining the economic benefits of the project;

(2) costs shall be allocated to said purpose or purposes and to other purposes in a manner which will insure that all project purposes share equitably in the advantage of multiple-purpose construction: *Provided*, That the costs allocated to recreation or fish and wildlife enhancement shall not exceed the lesser of the benefits from those functions or the costs of providing recreation or fish and wildlife enhancement benefits of reasonably equivalent use and location by the least costly alternative means; and

(3) not more than one-half the separable costs of the project allocated to recreation and exactly three-quarters of such costs allocated to fish and wildlife enhancement and all the joint costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by the United States and be nonreimbursable.

Projects authorized during the calendar year 1965 may include recreation and fish and wildlife enhancement on the foregoing basis without the required indication of intent. Execution of an agreement as aforesaid shall be a prerequisite to commencement of construction of any project to which this subsection is applicable. (79 Stat. 214; § 77 (a) (1), (2), Act of March 7, 1974, 88 Stat. 33; § 2804(a), Act of October 30, 1992, Public Law 102-575, 106 Stat. 4691; 16 U.S.C. § 4601-13.)

EXPLANATORY NOTES

1992 Amendment. Subsection 2804(a) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4691) amended section 2(a) in the matter preceding paragraph (1) by striking "all the costs of operation, maintenance, and replacement" and inserting "not less than one-half the costs of operation, maintenance, and replacement". Subsection 2804(a) of the 1992 Act appears in Volume V at page 3915.

1974 Amendment. Subsection (a) of section 77 of the Water Resources Development Act of 1974 (Act of March 7, 1974, Public Law 93-251, 88 Stat. 33) amended the text preceding item (1) and the text of item (3) to read as they appear above. The amendment increased the Federal share of the separable costs allocated to fish and wildlife enhancement from fifty percent to seventy-five percent. Extracts from the 1974 Act, including section 77, appear in Volume IV at page 2833.

Supplementary Provision: Modification of Existing Cost-Sharing Requirements. Subsections (b) and (c) of section 7 of the Water Resources Development Act of 1974 (Act of March 7, 1974, Public Law 93-251, 88 Stat. 33) require that all projects and all existing cost-sharing requirements of projects not substantially completed as of March 7, 1974, shall reflect the 1974 amendment of sections 2 and 3 of the Federal Water Project Recreation Act. The 1974 amendment increased the Federal share of the separable costs allocated to fish and wildlife enhancement from fifty percent to seventy-five percent. Extracts from the 1974 Act, including section 77, appear in Volume IV at page 2833.

NOTES OF OPINIONS

2. Local contribution

The credit received by the State of Colorado against its obligations under a repayment contract pursuant to section 2 of the Federal Water Project Recreation Act is limited to the appraised value of land and interests donated for outdoor recreation and fish and wildlife enhancement purposes. Land or interests therein donated by the State for other purposes may not be included in this credit. Memorandum of Associate Solicitor Good to Field Solicitor, Amarillo, December 16, 1981, in re Closed Basin Division, San Luis Valley Project, Colorado.

3. Nonreservoir projects

The exception in section 6(e) of the Federal Water Project Recreation Act which states that section 2 of that Act shall not apply to nonreservoir flood control projects may be interpreted to also cover nonreservoir "local protection" projects. Consequently, for the purpose of planning local participation in recreation and fish and wildlife enhancement in connection with nonreservoir "local protection" projects, section 2(a) cannot be applied to nonreservoir projects authorized under section 3 of the Flood Control Act of 1936. Memorandum of Acting Associate Solicitor Davis to Regional Solicitor, Portland, September 11, 1969.

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Sec. 3. [Basis for recreation and fish and wildlife enhancement.]-

* * * * *

(b) Notwithstanding the absence of an indication of intent as specified in subsection 2(a), lands may be provided in connection with project construction to preserve the recreation and fish and wildlife enhancement potential of the project:

(1) If non-Federal public bodies execute an agreement after initial operation of the project (which agreement shall provide that the non-Federal public bodies will administer project land and water areas for recreation or fish and wildlife enhancement or both pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and will bear not less than one-half the costs of lands, facilities, and project modifications provided for recreation, and will bear one-quarter of such costs for fish and wildlife enhancement, and not less than one-half the costs of planning studies, and the costs of operation, maintenance, and replacement attributable thereto) the remainder of the costs of lands, facilities, and project modifications provided pursuant to this paragraph shall be nonreimbursable. Such agreement and subsequent development, however,

shall not be the basis for any reallocation of joint costs of the project to recreation or fish and wildlife enhancement.

* * * * *

(c)(1) Any recreation facility constructed under this Act may be expanded or modified if-

(A) the facility is inadequate to meet recreational demands; and

(B) a non-Federal public body executes an agreement which provides that such public body

(i) will administer the expanded or modified facilities pursuant to a plan for development for the project that is approved by the agency with administrative jurisdiction over the project; and

(ii) will bear not less than one-half of the planning and capital costs of such expansion or modification and not less than one-half of the costs of the operation, maintenance, and replacement attributable to the expansion of the facility.

(2) The Federal share of the cost of expanding or modifying a recreational facility described in paragraph (1) may not exceed 50 percent of the total cost of expanding or modifying the facility.

(79 Stat. 214; § 77 (a)(3), Act of March 7, 1974, 88 Stat. 33; § 2804(b), Act of October 30, 1992, Public Law 102-575, 106 Stat. 4691; 16 U.S.C. § 4601-14.)

EXPLANATORY NOTES

1992 Amendment. Subsection 2804(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4691) amended section 3(b)(1) as follows:

(1) by striking "within ten years"; and

(2) by striking "all costs of operation, maintenance, and replacement attributable" and inserting "not less than one-half the costs of planning studies, and the costs of operation, maintenance, and replacement attributable".

Subsection 2804(d) of the 1992 Act amended section 3 by adding subsection (c) as it appears above. Subsection 2804(b) of the 1992 Act appears in Volume V at page 3916.

1974 Amendment. Section 77 of the Water Resources Development Act of 1974 (Act of March 7, 1974, Public Law 99-251, 88 Stat. 33) amended section 3(b)(1) to read as it appears in the text. The amendment increased the Federal share of the costs allocated to fish and wildlife enhancement from fifty percent to seventy-five percent. Extracts from the 1974 Act, including section 77, appear in Volume IV at page 2833.

NOTE OF OPINION

2. **Projects, eligibility of**

Application by the Nevada Department of Fish and Game for a grant of $100,000 under the Federal Water Project Recreation Act to construct and operate a trout hatchery at Lake Mead, Boulder Canyon Project, must be denied as this is not the type of project contemplated by the Act. Moreover, the hatchery is proposed

for construction within the Lake Mead National Recreation Area and section 1 of the Act prohibits its application to areas or facilities within a national recreation area. Similarly, section 7 of the Act permits construction of such facilities only after entering into an agreement in accordance with subsection 3(b) of the Act, but subsection 6(e) of the Act makes section 3 inapplicable to areas within a national recreation area. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 1, 1971.

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Sec. 4. [Lease of facilities and lands to non-Federal public bodies.]– At projects, the construction of which has commenced or been completed as of the effective date of this Act, where non-Federal public bodies agree to administer project land and water areas for recreation and fish and wildlife enhancement purposes and to bear not less than one-half the costs of operation, maintenance, and replacement of existing facilities serving those purposes, such facilities and appropriate project lands may be leased to non-Federal public bodies. (79 stat. 215; § 2804(c), Act of October 30, 1992, Public Law 102-575, 106 Stat. 4691; 16 U.S.C. § 460*l*-15.)

EXPLANATORY NOTE

1992 Amendment. Subsection 2804(c) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4691) amended section 4 by striking "costs of operation, maintenance, and replacement of existing" and inserting "not less than one-half the costs of operation, maintenance, and replacement of existing". Subsection 2804(c) of the 1992 Act appears in Volume V at page 3916.

* * * * *

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Sec. 6. [Misc.: Reports, cost allocation, expenditures, TVA and other projects excluded, payments and repayments.]–

* * * * *

(d) This Act shall not apply to the Tennessee Valley Authority, but the Authority is authorized to recognize and provide for recreational and other public uses at any dams and reservoirs heretofore or hereafter constructed in a manner consistent with the promotion of navigation, flood control, and the generation of electrical energy, as otherwise required by law, nor to projects constructed under authority of the Small Reclamation Projects Act, as amended,

or under authority of the Watershed Protection and Flood Prevention Act, as amended. (79 Stat. 216; Act of October 21, 1976, 90 Stat. 2728; 16 U.S.C. § 4601-17)

EXPLANATORY NOTES

1976 Amendment. The Act of October 21, 1976 (Public Law 94-576, 90 Stat. 2728) amended subsection (d) by authorizing the Tennessee Valley Authority to provide for the recreational or other public use of dams and reservoirs in a manner consistent with the promotion of navigation, flood control, and generation of electrical energy as otherwise required by law. The 1976 Act does not appear herein.

Reference in the Text. The Small Reclamation Projects Act of 1956, Act of August 6, 1956, Public Law 84-984 (70 Stat. 1044) appears in Volume II at page 1331 and in Supplement I at page 5268.

The Watershed Protection and Flood Prevention Act, Act of August 4, 1954, Public Law 83-566 (68 Stat. 666) appears in Volume II at page 1164 and in Supplement I at page S217.

(e)

* * * * *

NOTES OF OPINIONS

Nonreservoir projects 1
Projects, eligibility of 2

1. Nonreservoir projects

The exception in section 6(e) of the Federal Water Project Recreation Act which states that section 2 of that Act shall not apply to nonreservoir flood control projects may be interpreted to also cover nonreservoir "local protection" projects. Consequently, for the purpose of planning local participation in recreation and fish and wildlife enhancement in connection with nonreservoir "local protection" projects, section 2(a) cannot be applied to nonreservoir projects authorized under section 3 of the Flood Control Act of 1936. Memorandum of Acting Associate Solicitor Davis to Regional Solicitor, Portland, September 11, 1969.

2. Projects, eligibility of

Application by the Nevada Department of Fish and Game for a grant of $100,000 under the Federal Water Project Recreation Act to construct and operate a trout hatchery at Lake Mead, Boulder Canyon Project, must be denied as this is not the type of project contemplated by the Act. Moreover, the hatchery is proposed for construction within the Lake Mead National Recreation Area and section 1 of the Act prohibits its application to areas or facilities within a national recreation area. Similarly, section 7 of the Act permits construction of such facilities only after entering into an agreement in accordance with subsection 3(b) of the Act, but subsection 6(e) of the Act makes section 3 inapplicable to areas within a national recreation area. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 1, 1971.

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Sec. 7. [Existing reservoirs- Other agencies.]- (a) The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public outdoor recreation and fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interests therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with subsection (b) or (c) of section 3 of this Act has been executed.

EXPLANATORY NOTES

1992 Amendment. Section 2804(e) of the Act of October 30, 1992, (Public Law 102-575, 106 Stat. 4692) amended section 7(a) above as follows:

(1) by striking "purposes: *Provided,"* and all that follows through the end of the sentence and inserting "purposes"; and

(2) by striking "subsection 3(b)" and inserting "subsection (b) or (c) of section 3".

Section 2804(e) of the 1992 Act appears in Volume V at page 3916.

1992 Amendment. Sec. 206 of the Act of October 2, 1992 (Public Law 102-377, 106 Stat. 1332) amended subsection (a) of section 7 above by deleting the Proviso from the first sentence and by changing the colon after the word "purposes" to a period. Prior to amendment, the proviso read, "*Provided,* That not more than $100,000 shall be available to carry out the provisions of this subsection at any one reservoir." Section 206 appears among extracts of the 1992 Act in Volume V at page 3758.

Editor's Note. The Act of October 30, 1992 repeated the amendatory action of the Act of October 2, 1992, in subsection 2804(e)(1) striking the proviso and making an additional amendment with subsection 2804(e)(2).

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NOTES OF OPINIONS

1. Authority for development

The Federal Water Project Recreation Act does not grant the Secretary authority to construct and operate recreation facilities and to acquire lands for recreation purposes at new water resource projects, and therefore such authority must be contained in the authorizing legislation for each new project. However, the Secretary continues to have the authority under the Fish and Wildlife Coordination Act to construct fish and wildlife enhancement facilities, and the intrinsic authority to construct

minimum health and safety facilities. Memorandum of Acting Solicitor Weinberg, August 13, 1965.

2. Limit on Federal expenditures

The $100,000 limit extends to that part of the Federal expenditure which is to be repaid by the non-Federal public body as well as to that part which is nonreimbursable. For example, if the total cost of the project is $150,000, $100,000 of Federal money is authorized to be expended on it, of which $75,000 (one-half of total project cost) would be nonreimbursable and $25,000 would be subject to repayment; the non-Federal public body would have to contribute $50,000 in cash or in kind. Memorandum of Associate Solicitor Hogan, September 27, 1965.

3. Local contribution

In computing the 50 percent share of costs required by sections 7(a) and 3(b) to be contributed by non-Federal interests, recognition may be given under section 2(b)(1) to non-Federal lands or facilities if title thereto is transferred to the United States. The amount of the contribution can be taken as either the fair market value of the lands and facilities on the date of the contract or the actual cost of lands specifically acquired for transfer to the United States as payment. Memorandum of Associate Solicitor Meyer, September 23, 1966.

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NOTES OF OPINIONS

Acquisition of lands or interests in lands 4
Authority for development 1

1. Authority for development

Application by the Nevada Department of Fish and Game for a grant of $100,000 under the Federal Water Project Recreation Act to construct and operate a trout hatchery at Lake Mead, Boulder Canyon Project, must be denied as this is not the type of project contemplated by the Act. Moreover, the hatchery is proposed for construction within the Lake Mead National Recreation Area and section 1 of the Act prohibits its application to areas or facilities within a national recreation area. Similarly, section 7 of the Act permits construction of such facilities only after entering into an agreement in accordance with subsection 3(b) of the Act, but subsection 6(e) of the Act makes section 3 inapplicable to areas within a national recreation area. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 1, 1971.

The construction of a boat ramp and launching facility at Keswick Reservoir under the provisions of the Land and Water Conservation Fund Act does not prohibit the funding of other features by the Federal Water Project Recreation Act so long as the respective developments are clearly defined, separate projects for which the non-Federal portion of the cost will be met locally, since the two sources of Federal funding cannot be applied in such a way that they overlap. Memorandum of Associate Solicitor Meyer to Associate Solicitor, Reclamation and Power, March 8, 1968 in re proposed recreation management agreement with Shasta County.

4. Acquisition of lands or interests in lands

The Reclamation Project Authorization Act of 1972 authorizes the acquisition of less than fee title in Colorado State-owned lands taken for recreational areas, as section 106 of the 1972 Act incorporates by reference the Federal Water Project Recreation Act, which provides, at section 7(a), for the acquisition of "lands or interests therein." However, as Department regulations expressly require that fee title be obtained for lands needed for outdoor recreation, the Department should give notice through the *Federal Register* if it intends to deviate from this policy. Memorandum of Associate Solicitor Good to Field Solicitor,

Amarillo, December 16, 1981, in re Closed Basin Division, San Luis Valley Project, Colorado.

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(b) The Secretary of the Interior is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

NOTE OF OPINION

1. Grant v. cooperative agreement or procurement contract

The principal purpose of cost-sharing arrangements under the Federal Water Project Recreation Act between the Water and Power Resources Service and non-federal entities for the development and administration of outdoor recreation and fish and wildlife enhancement facilities at Federal water projects is not the acquisition by lease, purchase or barter of property or services for the direct benefit or use of the Federal Government, but rather the allocation of value to the non-Federal entity to accomplish a public purpose of support authorized by a Federal statute. Also, there is no substantial involvement of the Service in the administration of the facilities. Accordingly, a grant agreement rather than a procurement contract or a cooperative agreement is the proper legal instrument to be used in funding construction of such facilities. Solicitor Martz Opinion, M-36931 (January 19, 1981).

(c) No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and the head of any such agency is authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: *Provided,* That the lands and waters within the flow lines of any reservoir

or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with water resource projects or to disposition of public lands for such purposes. (79 Stat. 216; 16 U.S.C. § 4601-18.)

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NOTE OF OPINION

1. Disposition of revenues

Where Reclamation project grazing and farm land has been transferred to the administration of the Forest Service for recreation purposes pursuant to section 7(c) of the Federal Water Project Recreation Act, whether revenues generated by recreation use should be credited to the project by subsection I of the Fact Finders' Act or diverted to the land and water conservation fund depends upon whether a liberal or restricted interpretation is given to the preservation of existing contract rights in section 2(a) of the Land and Water Conservation Fund Act. However, even under the liberal interpretation, the amount of revenue which should be set aside for meeting the contractual commitment should be equivalent to what had been available when the land was under grazing or farm lease, because to apply to the contract additional revenue generated by recreational development undertaken with appropriated funds would constitute, in our opinion, an unauthorized gift of Federal property. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

Revenues from the sale or rental of surplus water under the Warren Act continue to be credited to the project or division of the project to which the construction cost has been charged, as provided by subsection J of the Fact Finders' Act, and are not diverted to the land and water conservation fund by section 2(a) of the Land and Water Conservation Fund Act even though project lands have been transferred to the administration of the Forest Service for recreation purposes pursuant to section 7(c) of the Federal Water Project Recreation Act. Revenues under subsection J from the sale or rental of surplus water, and revenues from entrance, admission, and recreation user fees under section 2(a) are derived from totally different uses of different forms of property. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

The Act of May 29, 1908 (16 U.S.C. § 500) which mandates that twenty-five percent of all revenues from each national forest be returned to the State in which the forest is situated for the benefit of public schools and public roads, is not affected by section 2(a) of the Land and Water Conservation Fund Act of 1965 when Reclamation land is transferred to the Forest Service for administration pursuant to section 7(c) of the Federal Water Project Recreation Act. It is clear from the language and the legislative history of the Land and Water Conservation Fund Act that section 2(a) of that Act was expressly intended to exempt revenues, including recreation revenues, already allocated under the 1908 Act from being diverted into the conservation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

When Reclamation land has been transferred to the Forest Service for administration pursuant to section 7(c) of the Federal Water Project Recreation Act, the Act of July 19, 1919 (41 Stat. 202) is superseded by section 2(a) of the

Land and Water Conservation Fund Act so that all proceeds from entrance and recreation user fees or charges collected and received shall be covered into the land and water conservation fund and not allocated to the reclamation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

Pages 1827, S394

Sec. 8. [Reclamation feasibility reports must be specifically authorized by law.]–

* * * * *

NOTE OF OPINION

1. Central Arizona Project, Orme Dam

Considering the requirement in section 8 of the Federal Water Project Recreation Act that there be specific authority for the preparation of a feasibility report with respect to any water resource project, the language of section 301(a) of the Colorado River Basin Project Act directing the construction of "Orme Dam and Reservoir or suitable alternative" is adequate for the study of alternatives to Orme Dam but not for the preparation of a feasibility report on the raising of Roosevelt Dam by itself. Memorandum of Assistant Solicitor Mauro to Assistant Secretary, Land and Water Resources, February 26, 1980.

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Pages 1827, S395

Sec. 11. [Entrance and users fees– Amendments.]–

* * * * *

NOTE OF OPINION

1. Disposition of revenues

With regard to revenues derived from entrance, admission and other recreation user fees and charges collected by the Forest Service at areas administered by it for recreation, the Act of March 4, 1907 (34 Stat. 1295), which provides that Forest Service and national forest revenues shall be covered into miscellaneous receipts in the Treasury, was rendered ineffective by section 2(a) of the Land and Water Conservation Fund Act and remains ineffective after the amendment provided by section 11 of the Federal Water Project Recreation Act. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

The clear import and intent of section 2(a) of the Land and Water Conservation Fund Act is that gross, and not net, revenues from recreation user fees are to be covered into the land and water conservation fund. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

The legislative history of section 2(a) of the Land and Water Conservation Fund Act

specifically states that revenues from the sale of auto stickers or similar devices good for admission to recreation areas generally are to be covered into the land and water conservation fund and are not subject to the two exceptions contained in section 2(a) of that Act. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967.

GARRISON DIVERSION UNIT
MISSOURI RIVER BASIN PROJECT

Pages 1841, S401

EXPLANATORY NOTE

1986 Amendment. The Garrison Diversion Unit Reformulation Act of 1986, the Act of May 12, 1986 (Public Law 99-294, 100 Stat. 418), amended the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433), as follows: Section 1 of the 1986 Act amended the first section of the 1965 Act by striking out "That" and all that follows down through the period at the end of such section and substituting new language, as it appears below.

Section 2 of the 1986 Act amended section 2 of the 1965 Act by adding new subsections "i" and "j".

Section 3 of the 1986 Act amended section 5 of the 1965 Act to authorize irrigation facilities in specific areas and under certain conditions.

Section 4 of the 1986 Act amended section 6 of the 1965 Act, formerly covering appropriation authorization, to address utilization of Pick-Sloan Missouri Basin Program power and the utilization of power revenues to assist repayment of irrigation investment in the reformulated Garrison Unit.

Sections 5, 6, 7, 8, and 9 of the 1986 Act add new sections 7, 8, 9, 10, and 11 to the 1965 Act covering municipal, rural, and industrial water service; specific features; excess crops; appropriations; and Wetlands Trust, respectively. The 1986 Act appears in Volume V at page 3464.

Section 1. [Purpose and authorization.]- (a) The Congress declares that the purposes of this Act are to:

(1) implement the recommendations of the Garrison Diversion Unit Commission Final Report (dated December 20, 1984) in the manner specified by this Act;

(2) meet the water needs of the State of North Dakota, including municipal, rural, and industrial water needs, as identified in the Garrison Diversion Unit Commission Final Report;

(3) minimize the environmental impacts associated with the construction and operation of the Garrison Diversion Unit;

(4) assist the United States in meeting its responsibilities under the Boundary Waters Treaty of 1909 (36 Stat. 2448);

EXPLANATORY NOTE

Reference in the Text. The Boundary Waters Treaty of 1909, referenced above and in subsequent sections of this Act, appears in Volume I at page 129.

(5) assure more timely repayment of Federal funds expended for the Garrison Diversion Unit;

(6) preserve any existing rights of the State of North Dakota to use water from the Missouri River; and

(7) offset the loss of farmland within the State of North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin Program, by means of a federally assisted water resource development project providing irrigation for 130,940 acres of land.

(b) The Secretary of the Interior (hereafter referred to as "the Secretary") is authorized to plan and construct a multi-purpose water resource development project within the State of North Dakota providing for the irrigation of 130,940 acres, municipal, rural, and industrial water, fish and wildlife conservation and development, recreation, flood control, and other project purposes in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) and substantially in accordance with the plans set out in the Garrison Diversion Unit Commission Final Report dated December 20, 1984 (43 U.S.C. § 371 notes.).

EXPLANATORY NOTE

Reference in the Text. The Garrison Diversion Unit Commission Final Report dated December 20, 1984, does not appear herein.

(c) Nothing in this Act is intended, nor shall be construed, to preclude the State of North Dakota from seeking congressional authorization to plan, design, and construct additional federally assisted water resource development projects in the future.

(d) Nothing in this Act shall be deemed to diminish the quantity of water from the Missouri River which the State of North Dakota may beneficially use, pursuant to any right or rights it may have under Federal law existing immediately before the date of enactment of this Act and consistent with the treaty obligations of the United States.

(e) The authorization for all features of the Missouri-Souris Unit of the Pick-Sloan Missouri Basin Program located in the State of North Dakota, heretofore authorized in section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891), for which no funds have been appropriated for construction, and which are not authorized for construction by this Act, is hereby terminated, and sections 1 and 6 of the Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) are hereby repealed.

EXPLANATORY NOTE

References in the Text. Section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 891) appears in Volume II at page 806.

The Act of August 5, 1965 (Public Law 89-108, 79 Stat. 433) referenced above appears in Volume III at page 1841.

(f) In implementing the provisions of this Act, the Secretary is directed to construct all supply works to the capacity identified in the Garrison Diversion Unit Commission Final Report, except that the Secretary is directed to construct the James River Feeder Canal to a capacity of no more than 450 cubic feet per second, and the Sykeston Canal to the capacity specified in section 8(a)(1) of this Act.

(g) Where features constructed by the Secretary are no longer used to full capacity pursuant to the recommendations of the Garrison Diversion Unit Commission Final Report, that portion of the Secretary's investment attributable to the construction of such unused capacity shall be nonreimbursable. (100 Stat. 418)

Sec. 2. [Recreation and fish and wildlife enhancement- Mitigation- Conservation.]-

Page 1841

* * * * *

(i) [Mitigation.]- Notwithstanding any other provisions of this section, the mitigation for fish and wildlife losses incurred as a result of construction of the project shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction.

(j) [Conservation.]- The Secretary is directed to implement the provisions of the Garrison Diversion Unit Commission Final Report with respect to fish and wildlife conservation, including habitat impacts, mitigation procedures, and enhancement, except for the following:

(1) The Secretary shall take no action to alter the status of Sheyenne Lake National Wildlife Refuge prior to the completion of construction of Lonetree Dam and Reservoir.

(2) Development and implementation of the mitigation and enhancement plan for fish and wildlife resources impacted by construction and operation of the Garrison Diversion Unit shall not be limited by the cost constraints based on estimates contained in the Garrison Diversion Unit Commission Final Report.

(3) Credit toward mitigation recommended by the Garrison Diversion Unit Commission Final Report for reservoir sites is not authorized. (100 Stat. 419)

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Page S402

Sec. 4(b). [Interest rates for Army power facilities in Missouri's River Basin project.]-

* * * * *

Page 1843

Sec. 5. [Irrigation facilities.]- (a) [Irrigation development.]- (1) Subject to the provisions of subsection (a)(2) of this section, the Secretary is authorized to develop irrigation in the following project service areas: Turtle Lake (13,700 acres), McClusky Canal (4,000 acres), Lincoln Valley (6,515 acres), Harvey Pumping (2,000 acres), New Rockford (20,935 acres), New Rockford Canal (1,200 acres), LaMoure (13,350 acres), West Oakes Extension (4,000acres), and West Oakes (19,660 acres). The Secretary is prohibited from developing irrigation in these areas in excess of the acreage specified herein, except that the Secretary is authorized and directed to develop up to 28,000 acres of irrigation in other areas in North Dakota, not located in the Hudson Bay, Devils Lake, or James River drainage basins.

(2) The Secretary is prohibited from obligating any funds for construction of irrigation service facilities in the areas listed in subsection (a)(1) of this section prior to September 30, 1990. After that date, the Secretary may obligate funds only after completing and submitting to the Congress, the report required by section 5(c) of this Act.

(b) [Initiation of construction restricted.]- (1) The Secretary may not commence construction of the Sykeston Canal, the James River Feeder Canal, and James River channel improvements until 60 days after the report required by section 5(c) of this Act has been completed and submitted to the Congress.

(2) The Secretary is directed to proceed immediately with the construction of-

(A) the New Rockford Canal;

(B) the Oakes Test Area; and

(C) project features authorized in section 7 of this Act.

(c) [Report to Congress.]- (1) The Secretary is directed to submit a comprehensive report to the Congress as soon as practicable, but not later than the end of fiscal year 1988 on the effects on the James River in North Dakota and South Dakota of water resource development proposals recommended by the Garrison Diversion Unit Commission and authorized in this Act. The report shall include the findings of the Secretary with regard to:

(A) the feasibility of using the Oakes Aquifer as a water storage and recharge facility, and an evaluation of the need for offstream regulatory storage in the lower James River basin;

(B) the capability of the river to handle irrigation return flows, project water supplies, and natural runoff without causing flooding, property damage, or damage to wildlife areas, and mechanisms or procedures for compensation or reimbursement of affected landowners for damages from project operation;

(C) the impacts of Garrison Diversion Unit irrigation return flows on the river and on adjacent riverine wetland areas and components of the National Wildlife Refuge System, with regard to water quantity, water quality, and fish and wildlife values;

(D) the need for channelization of the James River under the irrigation and municipal, rural, and industrial water development programs authorized by this Act;

(E) the cost and efficiency of measures required to guarantee that irrigation return flows from the New Rockford (Robinson coulee) irrigation service areas will not enter the Hudson Bay drainage and the impact these return flows will have on the James River;

(F) the feasibility of conveying project flows into the lower James River via Pipestem Creek; and

(G) alternative management plans for operation of Jamestown and Pipestem Reservoirs to minimize impacts on the lower James River.

(2) The costs of the study authorized by this subsection shall be nonreimbursable.

(3) The study authorized by this subsection shall be carried out in accordance with the requirements of the National Environmental Policy Act (42 U.S.C. § 4321note.).

EXPLANATORY NOTE

Reference in the Text. The National Environmental Policy Act of 1969, Act of January 1, 1970 (Public Law 91-190, 83 Stat. 852) referenced above appears in Volume IV at page 2492.

(d) [Contracts.]- The Secretary is prohibited from obligating funds to construct irrigation facilities in the service areas listed in subsection (a)(1) until a contract or contracts, in a form approved by the Secretary, providing for the appropriate payment of the costs allocated to irrigation have been properly executed by a district or districts organized under State law. Such contract or contracts shall be consistent with the requirements of the Reclamation Reform Act of 1982 (Title II, Public Law 97-293; 96 Stat. 1263, 43 U.S.C. § 390aa.).

EXPLANATORY NOTE

Reference in the Text. The Reclamation Reform Act of 1982, Act of October 12, 1982, (Title II, Public Law 97-293, 96 Stat. 1263) referenced above appears in Volume IV at page 3334 and as subsequently amended in Supplement II at page S1092.

(e) [Irrigation development on Indian reservations.]- The Secretary is authorized to develop irrigation in the following project service areas within the boundaries of the Fort Berthold and Standing Rock Indian Reservations: Lucky Mound (7,700 acres), Upper Six Mile Creek (7,500 acres), and one or more locations within the Standing Rock Indian Reservation (2,380 acres), except that, no funds are authorized to be appropriated for construction of these projects until the Secretary has made a finding of irrigability of the lands to receive water as required by the Act of July 31, 1953 (67 Stat. 266; 43 U.S.C. § 390a). Repayment for the units authorized under this subsection shall be made pursuant to the Leavitt Act (25 U.S.C. § 386a).

EXPLANATORY NOTES

1992 Amendment. Section 1701(a) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4669) amended section 5(e) by striking "Fort Yates" and inserting "one or more locations within the Standing Rock Indian Reservation". Section 170(a) of the 1992 Act appears in Volume V at page 3889.

References in the Text. Extracts from the Interior Department Appropriation Act of 1954, Act of July 31, 1953 (67 Stat. 266) referenced above appear in Volume II at page 1114.

The Leavitt Act, Act of July 1, 1932 (ch. 369, 47 Stat. 564) referenced above appears in Volume I at page 504.

(f) [Non-project drainage.]- The Secretary shall not permit the use of project facilities for non-project drainage not included in project design or required for project operations. (100 Stat. 419, 106 Stat. 4669)

Sec. 6. [Pick-Sloan Missouri Basin Program power.]- (a) Municipal, rural, and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944, 58 Stat.891), for the operation of such systems.

(b) Notwithstanding the provisions of section 302(a)(3) of the Department of Energy Organization Act (42 U.S.C. § 7152(a)(3)), any portion of the costs properly chargeable to irrigation for the Garrison Diversion Unit which are beyond the ability of water users to repay as authorized by Reclamation law may be repaid from power revenues, except repayment of investment in irrigation for the Garrison Diversion Unit made after the date of enactment of this Act may not exceed forty years from the year in which irrigation water is first delivered for use by the contracting party and shall be made in equal annual installments.

(c) Pursuant to the provisions of the last sentence of section 302(a)(3) of the Department of Energy Organization Act of 1978 (42 U.S.C. § 7152(a)(3)), any reallocation of costs to project purposes other than irrigation as a result of section 1(e) of this Act shall not result in increased rates to Pick-Sloan Missouri Basin Program customers unless: (1) full use has been made of the current development method of ratesetting in analyzing the repayment status and cost allocations for the Garrison Diversion Unit and (2) the resulting rate increase, if any, is made in equal amounts over the ten year period beginning on the date of any such reallocation pursuant to this Act. Costs reallocated to project purposes other than irrigation as a result of section 1(e) of this Act shall be repaid, if reimbursable, with interest at the rate specified in section 4(b) of this Act beginning on the date of any such reallocation without retroactive interest. Nothing in this Act shall alter or affect in any way the current repayment methodology for other features of the Pick-Sloan Missouri Basin Program. (100 Stat. 421)

EXPLANATORY NOTE

Reference in the Text. Extracts from the Department of Energy Organization Act, Act of August 4, 1977 (Public Law 95-91, 91 Stat. 565) referenced above appear in Volume IV at page 3048.

Sec. 7. [Municipal, rural, and industrial water service.]- (a)(1) The Secretary of the Interior is authorized to construct municipal, rural, and industrial water systems to serve areas throughout the State of North Dakota.

(2) All planning, design, construction and operation of the municipal, rural, and industrial water systems authorized by this section shall be

undertaken in accordance with a cooperative agreement between the Secretary and the State of North Dakota. Such cooperative agreement shall set forth in a manner acceptable to the Secretary the responsibilities of the State for:

(A) needs assessments;

(B) feasibility studies;

(C) engineering and design;

(D) construction;

(E) operation and maintenance; and

(F) the administration of contracts pertaining to any of the foregoing.

(3) Upon execution of the cooperative agreement required under this subsection, the Secretary is authorized to convey to the State of North Dakota, on a nonreimbursable basis, the funds authorized in section 10(b)(1) of this Act. The non-Federal share of the total cost of construction of each water system for which the State of North Dakota receives funding pursuant to this section shall be 25 percent, committed prior to the initiation of construction. The non-Federal share of the cost of operation, maintenance, and replacement of each municipal, rural, and industrial water system funded by this section shall be 100 percent. The Southwest Pipeline Project shall be deemed to be eligible for funding under the terms of this section.

(b) The Secretary is authorized and directed to construct, operate, and maintain a Sheyenne River water supply and release feature (including a water treatment plant) capable of delivering 100 cubic feet per second of water for the cities of Fargo and Grand Forks and surrounding communities. The costs of the construction, operation, maintenance, and replacement of this feature, exclusive of conveyance, shall be nonreimbursable and deemed attributable to meeting requirements of the Boundary Waters Treaty of 1909 (36 Stat. 2448).

(c) The Secretary is authorized and directed to construct, operate, and maintain such municipal, rural, and industrial water systems as he deems necessary to meet the economic, public health and environmental needs of the Fort Berthold, Standing Rock, and Fort Totten Indian Reservations.

(d) Municipal, rural, and industrial water systems constructed with funds authorized under this Act may deliver Missouri River water into the Hudson Bay drainage only after the Secretary of the Interior, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, has determined that adequate treatment has been provided to meet the requirements of the Boundary Waters Treaty of 1909. (100 Stat. 422)

Sec. 8. [Specific features.]- (a)(1) In accordance with the recommendations of the Garrison Diversion Unit Commission Final Report and section 1 of this Act, the Sykeston Canal shall be constructed as a functional replacement for the Lonetree Dam and Reservoir. The Sykeston Canal shall be designed and

constructed to meet only the water delivery requirements of the irrigation areas and municipal, rural, and industrial water supply needs authorized in this Act. The Sykeston Canal shall be located, constructed, and operated so that, in the opinion of the Secretaries of the Interior and State, no violation of the Boundary Waters Treaty of 1909 (36 Stat. 2448) would result. The Secretary may not commence construction on the Sykeston Canal until a master repayment contract consistent with the provisions of this Act between the Secretary and the appropriate non-Federal entity has been executed.

(2) The Lonetree Dam and Reservoir shall remain an authorized feature of the Garrison Diversion Unit; however, construction funds may be requested by the Secretary for Lonetree Dam and Reservoir only after:

(A) the Secretary has determined that there is a need for the dam and reservoir based on a contemporary appraisal using procedures such as those employed in the preparation of feasibility studies for water resources development projects submitted to Congress;

(B) consultations with the Government of Canada have reached a conclusion satisfactory to the Secretary of State, after consultation with the Administrator of the Environmental Protection Agency, that no violation of the Boundary Waters Treaty of 1909 would result from the construction and operation of the dam and reservoir; and

(C) the Secretaries of the Interior and State have submitted the determinations required by subparagraphs (A) and (B) above to the Congress and 90 calendar days have elapsed.

(b) Taayer Reservoir is deauthorized as a project feature. The Secretary is directed to acquire up to 5,000 acres in the Kraft and Pickell Slough areas and to manage the area as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area. In acquiring the lands which comprise the Kraft and Pickell Slough complex, the Secretary is authorized to acquire wetlands in the immediate vicinity which may be hydrologically related and nearby uplands as may be necessary to provide for proper management of the complex. The Secretary is also authorized to provide for appropriate visitor access and control at the refuge. (100 Stat. 423)

Sec. 9. [Excess crops.]– Until the construction costs of the facilities authorized in section 5 are repaid, the Secretary is directed to charge a "surplus crop production charge" equal to 10 percent of full cost, as defined in section 202(3)(A)-(C) of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1263, 43 U.S.C. § 390bb.), for the delivery of project water used in the production of any basic agricultural commodity if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the

amount of the surplus crop production charge for the succeeding year on or before July 1 of each year. The surplus crop production charge shall not apply to crops produced in the 5,000 acre Oakes Test Area for research purposes under the direction of the Secretaries of the Interior or Agriculture. (100 Stat. 423)

EXPLANATORY NOTE

Reference in the Text. The Reclamation Reform Act of 1982, Act of October 12, 1982, Public Law 97-293 (96-1263) appears in Volume IV at page 3334, and this Supplement II at page S1092.

Sec. 10. [Authorization of appropriations.]- (a)(1) There are [sic] authorized to be appropriated $270,395,000 for carrying out the provisions of section 5(a) through section 5(c) and section 8(a)(1) of this Act. Such sums shall remain available until expended.

(2) There is authorized to be appropriated $67,910,000 for carrying out the provisions of section 5(e) of this Act. Such sums shall remain available until expended.

(b)(1) There is authorized to be appropriated $200,000,000 to carry out the provisions of section 7(a) of this Act. Such sums shall remain available until expended.

(2) There are [sic] authorized to be appropriated $61,000,000 to carry out the provisions of section 7(b) through section 7(d) of this Act. Such sums shall remain available until expended.

(c) There is authorized to be appropriated for carrying out the remaining provisions of this Act $80,535,000. No funds are authorized for the construction of the Lonetree Dam and Reservoir. There are [sic] also authorized to be appropriated such additional funds as may be necessary for operation and maintenance of the unit.

(d) Any funds previously appropriated for the Garrison Diversion Unit may be expended to carry out any of the provisions of this Act.

(e) The portion of the $61,000,000 authorized for Indian municipal, rural, and industrial water features shall be indexed as necessary to allow for ordinary fluctuations of construction costs incurred after October 1, 1986, as indicated by engineering costs indices applicable for the type of construction involved. All other authorized cost ceilings shall remain unchanged. (100 Stat. 424, 106 Stat. 4669)

EXPLANATORY NOTE

1992 Amendment. Section 1701(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4669) amended section 10 by adding subsection (e) as it appears above. Section 170(b) of the 1992 Act appears in Volume V at page 3889.

Sec. 11. [Wetlands Trust.]- (a) [Federal contributions.]- From the sums appropriated under section 10 of this Act for the Garrison Diversion Unit, the Secretary of the Interior shall make an annual Federal contribution to a Wetlands Trust established by non-Federal interests in accordance with subsection (b), and operated in accordance with subsection (c), of this section. The amount of each such annual contribution shall be as follows:

(1) For fiscal year 1986: $2,000,000.

(2) For each of the fiscal years 1987 through 1990: 3 percent of the total amount appropriated under section 10 of this Act, but not to exceed $500,000 for each such fiscal year.

(3) For each fiscal year after 1990: 5 percent of the total amount appropriated under section 10 of this Act, but only if a contribution to the Trust equal to 10 percent of all Federal contributions is provided or contracted for by the State of North Dakota from non-Federal funds. The contributions of the State of North Dakota may be paid to the Trust in such amounts and in such manner as may be agreed upon by the Governor and the Secretary.

(4) The total Federal contribution pursuant to this Act shall not exceed $12,000,000.

(b) [Structure of the Trust.]- A Wetlands Trust shall be eligible to receive Federal contributions pursuant to subsection (a) if it complies with each of the following requirements:

(1) The Trust is established by non-Federal interests as a non-profit corporation under the laws of North Dakota with its principal office in North Dakota.

(2) The Trust is under the direction of a Board of Directors which has the power to manage all affairs of the corporation, including administration, data collection, and implementation of the purposes of the Trust.

(3) The Board of Directors of the Trust is comprised of 6 persons appointed as follows, each for a term of 2 years:

(A) 3 persons appointed by the Governor of North Dakota.

(B) 1 person appointed by the National Audubon Society.

(C) 1 person appointed by the National Wildlife Federation.

(D) 1 person appointed by the North Dakota Chapter of the Wildlife Society.

Vacancies on the board are filled in the manner in which the original appointments were made. Any member of the Board of Directors is eligible for reappointment for successive terms. Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed is appointed only for the remainder of such term. A member may serve after the expiration of his or her term until his or her successor has taken office.

(4) Members of the Board of Directors serve without compensation.

(5) The corporate purposes of the Trust are to preserve, enhance, restore, and manage wetland and associated wildlife habitat in the State of North Dakota.

(c) [Operations of the Trust.]- A Wetland Trust established by non-Federal interests as provided in subsection (b) shall be deemed to be operating in accordance with this subsection if, in the opinion of the Secretary, each of the following requirements are met:

(1) The Trust is operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the State of North Dakota in accordance with its corporate purpose as provided in subsection (b)(5).

(2) Pursuant to its corporate charter, the Trust has the authority to exercise each of the following powers:

(A) The power to acquire lands and interests in land and power to acquire water rights. Lands or interests in lands may be acquired by the Trust only with the consent of the owner thereof and with the approval of the Governor of North Dakota.

(B) The power to finance wetland preservation, enhancement, restoration, and management or wetland habitat programs.

(3) All funds received by the Trust under subsection (a) are invested in accordance with the requirements of subsection (d). No part of the principal amount of such funds may be expended for any purpose. The income received by the Trust from the investment of such funds shall be used by the Trust exclusively for its purposes and operations in accordance with this subsection or, to the extent not required for current operations, reinvested in accordance with subsection (d).

(4) The Trust agrees to provide such reports as may be required by the Secretary or the Governor of North Dakota and makes its records available for audit by Federal and State agencies.

(d) [Investment of Trust funds.]- The Secretary of the Interior, in consultation with the Secretary of the Treasury and the Governor of North Dakota, shall establish requirements for the investment of all amounts received by the Trust under subsection (a) or reinvested under subsection (c)(3). Such requirements shall ensure that such amounts are invested in accordance with

sound investment principles and shall ensure that persons managing such investments will exercise their fiduciary responsibilities in an appropriate manner. (110 Stat. 424)

NATIONAL HISTORIC PRESERVATION ACT OF 1966

Editor's Note. This Act was inadvertently omitted from Volume III, included in Volume IV at page 2304, as amended through 1982, and is set forth here, as amended in 1992 by the Act of October 30, 1992 (Public Law 102-575, 106 Stat.4753)

Page 2304

Sec. 1. [Title and findings.]– (a) This Act may be cited as the "National Historic Preservation Act".

(b) The Congress finds and declares that-

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United

States to expand and accelerate their historic preservation programs and activities. (80 Stat. 915; Act of December 12, 1980, 94 Stat. 2987; 16 U.S.C. § 470a.)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 95-515, 94 Stat. 2987) amended section 1 by: adding subsection (a); designating the existing provision as subsection (b); redesignating paragraphs (a) through (d) of subsection (b) as (1), (2), (5), and (7), respectively; and by substituting the word "heritage" for the word "past" in paragraph (1) of subsection (b). The 1980 Act does not appear herein.

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Sec. 2. [Policy of the Federal Government to preserve historic resources.]– It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to-

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (Added by Act of December 12, 1980, 94 Stat. 2988; Act of October 30, 1992, 106 Stat. 4753; 16 U.S.C. § 470-1)

EXPLANATORY NOTES

1992 Amendment. Section 4002 of the Reclamation Projects Authorization and Adjustment Act of 1992, Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4753) amended section 2 as follows:

(1) In paragraph (2) insert "and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments" after "community of nations".

(2) In paragraph (6) insert Indian tribes and Native Hawaiian organizations" after "local governments". Section 4002 of the 1992 Act appears in Volume V at page 3987.

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended the 1966 Act by adding section 2, which sets out the policy of the Federal Government toward historic resources. The 1980 Act does not appear herein.

TITLE I

Sec. 101. (a) [Secretary authorized to expand and maintain National Register- Designation of properties as historic landmarks; properties deemed included- Criteria- Nomination of properties by States, local governments or individuals- Regulations.]-

(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat. 666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

EXPLANATORY NOTE

Reference in the Text. The Act of August 21, 1935 (49 Stat. 666) does not appear herein.

(2) The Secretary in consultation with national historical and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for-

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), and any property nominated under this paragraph or under section 110 (a)(2) shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such

determination shall be made within ninety days from the date of the nomination unless the nomination is appealed under paragraph (5).

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

(7) The Secretary shall promulgate, or revise, regulations-

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110, the Act of June 27, 1960 (16 U.S.C. § 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. § 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 103 (c).

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant

threats to properties included in, or eligible for inclusion on, the National Register, in order to-

(A) determine the kinds of properties that may be threatened;

(B) ascertain the causes of the threats; and

(C) develop and submit to the President and Congress recommendations for appropriate action. (Paragraph 8 added by Act of October 30, 1992, 106 Stat. 4753)

EXPLANATORY NOTES

1992 Amendment. Section 4003 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4753) amended section 101(a) by adding paragraph (8) as it appears above. Section 4003 of the 1992 Act appears in Volume V at page 3987.

Reference in the Text. The Act of June 27, 1960 (Public Law 86-523, 74 Stat. 220) referred to in subsection (a) of the text is an Act for the preservation of historical and archaeological data, including relics and specimens, which might otherwise be lost as a result of the construction of a dam. The 1960 Act appears in Volume III at page 1533 and in Supplement I at page S298.

Reference in the Text. The Archaeological Resources Protection Act of 1979 (Act of October 31, 1979, Public Law 96-95, 93 Stat. 721), also referred to in subsection (a) of the text, appears in Volume IV at page 3170.

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(b) [Regulations for State Historic Preservation Programs- Periodic evaluations and fiscal audits of State programs- Administration- Contracts and cooperative agreements with nonprofit or educational institutions- Treatment of State programs as approved programs.]-

(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program-

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

(2)(A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system-

(i) establishes and maintains substantially similar accountability standards; and

(ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to-

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education, and training and technical assistance in historic preservation;

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) of this section;

(I) consult with appropriate Federal agencies in accordance with this Act - on-

(i) Federal undertakings that may affect historic properties; and

(ii) the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to such properties; and

(J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of-

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after December 12, 1992.

(6)(A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State-

(i) Identification and preservation of historic properties.

(ii) Determination of the eligibility of properties for listing on the National Register.

(iii) Preparation of nominations for inclusion on the National Register.

(iv) Maintenance of historical and archaeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if-

(i) the State Historic Preservation Officer has requested the additional responsibility;

(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);

(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

(C) For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service. (Added by Act of October 30, 1992, 106 Stat. 4754)

EXPLANATORY NOTE

1992 Amendment. Section 4004 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4753) amended subsection 101(b) as follows:

(1) amend paragraph (2) to read as it appears above. Prior to amendment, paragraph (2) read as follows:

"(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this Act. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1) of this section, unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section."

(2)Amend paragraph (3) as follows:

(A) In subparagraph (G), strike "relating to the Federal and State Historic Preservation Programs; and" and insert "in historic preservation;".

(B) In subparagraph (H), strike the period at the end thereof and insert a semicolon.

(C) Add at the end thereof the new subparagraphs (I) and (J) as they appear above.

(3) Amend paragraph (5) by striking "1980" and inserting "1992".

(4) Add at the end thereof the new subparagraphs (6)(A) through (D) as they appear above. Section 4004 of the 1992 Act appears in Volume V at page 3988.

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(c) [Certification of local governments by State Historic Preservation Officer- Transfer of portion of grants- Certification by Secretary- Nomination of properties by local governments for inclusion on National Register.]-

(1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103 (c), of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate, under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government-

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

(2)(A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the

National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the State Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this section. The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provisions of section 103 (c), and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

(4) For the purposes of this section the term-

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c). (Added by Act of October 30, 1992, 106 Stat. 4755)

EXPLANATORY NOTE

1992 Amendments. Section 4005 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4755) amended subsection 101(c) by adding paragraph (4) as it appears above.

Section 4006(a) of the 1992 Act amended section 101 as follows:

(1) Redesignate subsections (d), (e), (f), (g), and (h) as subsections (e), (f), (g), (h), and (i), respectively.

(2) Insert after subsection (c) the new subsection (d) as it appears below.

Sections 4005 and of the 1992 Act appears in Volume V at page 3990.

(d)(1)(A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in reserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1994.

(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3), with respect to tribal lands, as such responsibilities may be modified for tribal program through regulations issued by the Secretary, if-

(A) the tribe's chief governing authority so requests;

(B) the tribe designates a tribal preservation officer to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;

(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(D) the Secretary determines, after consulting with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program-

(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);

(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;

(iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and

(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) on tribal land, if-

(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

(B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by-

(i) the tribe's traditional cultural authorities;

(ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and

(iii) the interested public.

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

(6)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

(C) In carrying out his or her responsibilities under subsection (b)(3), the State Historic Preservation Officer for the State of Hawaii shall-

(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

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(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan. (Added by Act of October 30, 1992, 106 Stat. 4755)

(e) [Grants-in-aid programs for States and for the National Trust for Historic Preservation- Direct grant program for properties included on National Register- Grants or loans to Indian tribes and ethnic or minority groups.]-

(1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

(2) The Secretary shall administer a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927), for the purposes of carrying out the responsibilities of the National Trust.

EXPLANATORY NOTE

Reference in the Text. The Act of October 26, 1949 (63 Stat. 927) does not appear herein.

(3)(A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These

grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer-

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104.

(4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

(5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

(6)(A) As part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. § 1681), the

Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled 'Joint Resolution to approve the "Compact of Free Association" between the United States and Government of Palau, and for other purposes' (48 U.S.C. § 1681). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified. (106 Stat. 4758)

EXPLANATORY NOTES

1992 Amendments. Section 4007 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4758) amended the redesignated subsection 101(e) as follows:

(1) Amend paragraph (1) to read as it appears above. Prior to amendment, it read as follows: "(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.".

(2) Added paragraphs (4), (5), and (6) as they appear above at the end thereof. Section 4007 of the 1992 Act appears at page 3992.

Reference in the Text. The Compact of Free Association Act of 1985 does not appear herein.

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(f) [No grant funds to be used to compensate intervenors.]- No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

(g) [Guidelines for agency-owned historic properties.]- In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110.

(h) [Professional standards.]- Within one year after December 12, 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

(i) [Dissemination of information.]- The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations

and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

(j) [Education and training.]- (1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include-

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation related functions;

(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs;

(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training-

(i) distribution of information on preservation technologies;

(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation. (80 Stat. 915; Act of July 1, 1973, 87 Stat. 139; Act of October 7, 1976, 90 Stat. 1942; Act of March 12, 1980, 94 Stat. 92; Act of December 12, 1980, 94 Stat. 2988; Act of October 30, 1992, 106 Stat. 4755-4758; 16 U.S.C. § 470a.)

EXPLANATORY NOTES

1992 Amendments. Section 4008 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4758) further amended section 101 as amended by section 4005 of the 1992 Act by adding the subsection (j) as it appears above. Section 4008 of the 1992 Act appears in Volume V at page 3994.

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsections (a) and (b) to read as they appear above and added subsections (c) through (h). The amendments to subsections (a) and (b) modified and expanded the responsibilities of the Secretary of the Interior concerning the National Register, National Historic Landmarks, and the World Heritage List,

authorized the establishment of State Historic Preservation Programs, and set out guidelines for their operation. The 1980 Act does not appear herein.

Page 2312

Sec. 102. [Requirements for making grants- State cost contributed by non-Federal sources- Grants not taxable income- Waiver of certain requirements- Prohibition against use of value of real property obtained before effective date of Act.]- (a) No grant may be made under this Act-

(1) unless application therefor is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) in any one fiscal year.*[sic]*;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1954.

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

(c) *Repealed.*

(d) No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the remaining cost of a project for which a grant is made under this Act.

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States

and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6). (80 Stat. 916; Act of September 28, 1976, 90 Stat. 1319; Act of December 12, 1980, 94 Stat. 2993; Act of October 30, 1992, 106 Stat. 4759; 16 U.S.C. § 470b.)

EXPLANATORY NOTES

1992 Amendment. Section 4009 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4759) amended section 102 of this Act as follows:

(1) paragraph (3) of subsection (a) is amended to read as it appears above. Prior to amendment paragraph (3) read as follows: "(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 101 (d)(1) and (2) in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year."

(2) In subsection (b), strike ", in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory for the Secretary".

(3) Add at the end thereof the subsections (d) and (e) as they appear above.

Editors note. Two subsections designated "(d)" have been enacted in section 102.Section 4009 of the 1992 Act appears in Volume V at page 3994.

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987), amended subsection (a) to read as it appears above. The amendments deal with the maximum percentage of the cost of carrying out projects and programs under subsections (d) (1) and (2) for which a grant can be made and the State share of such costs. The Act also deleted subsection (c), which authorized the Secretary to waive the requirements of subsection (a) (3) for the purposes of making grants for the preparation of statewide historic preservation plans and surveys and project plans and restricted any grant to not to exceed 70 per centum of the cost of the project, with the total cost of grants made in any fiscal year not to exceed one-half of the funds appropriated for that fiscal year pursuant to section 108. The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1519) amended section 102 by adding subsection (c) and redesignating former subsection (c) as subsection (d). The 1976 Act does not appear herein.

Reference in the Text. The Land and Water Conservation Fund Act of 1965, Act of September 3, 1964, Public Law 88-578 (88 Stat. 897) appears in Volume III at page 1785 and in Supplement I at page 5359.

Page 2313

Sec. 103. [Apportionment of grant funds- Assistance from other Federal programs- Notification to State- Transfer of funds to local governments- Guidelines for use of funds.]- (a) No grant may be made by the Secretary for the purposes [of] this Act with respect to which financial assistance has been

given or promised under any other Federal program or activity, and no financial assistance may be given under any other Federal program or activity for or on account of any survey or project with respect to which assistance has been given or promised under this Act.

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given, and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101 (c) for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds $65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101 (c).

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments. (80 Stat. 916; Act of September 28, 1976, 90 Stat. 1319; Act of December 12, 1980, 94 Stat. 2993; Act of October 30, 1992, 106 Stat. 4759; 16 U.S.C. § 470c)

EXPLANATORY NOTES

1992 Amendment. Section 4010 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4759) amends section 103 of this Act as follows:

(1) In subsection (a) strike "for comprehensive statewide historic surveys and plans under this Act," and insert "for the purposes this Act".

(2) In subsection (b) strike "by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans." and insert "as the Secretary determines to be appropriate.".

(3) At the end of subsection (b) insert "The

Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.". Section 4010 of the 1992 Act appears in Volume V at page 3995.

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsection (b) to read as it appears above and added subsections (c) and (d). The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1513) amended subsection (a) by eliminating a provision that had restricted to 50 per centum the amount a State could receive for a comprehensive statewide historic survey and plan. The 1976 Act does not appear herein.

Page 2314

Sec. 104. [Loan program for preservation of property included on National Register- Requirements- Limitation on amount- Assignability of insurance contracts- Protection of interests of Federal Government- Conveyance of property acquired by foreclosure- Fees- Loans treated as non-Federal funds- Debt obligation not eligible for purchase by Federal Financing Bank.]- (a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

(b) A loan may be insured under this section only if-

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;

(6) the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

The Secretary shall consult with the Secretary of the Treasury regarding the

interest rate of loans insured under this section.

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsections (g) and (i) of this section, as in effect on December 12, 1980, but which has not been appropriated for any purpose.

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may-

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under sections 101 to 111; and

(2) operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

(g)(1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund

pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out purposes of this Act.

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank. (80 Stat. 917; Act of December 12, 1980, 94 Stat. 2994; 16 U.S.C. § 470d.)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 104 by: (1) eliminating from subsection (a) a provision that had prohibited grants to surveys or projects receiving assistance from any other Federal program or activity and adding the provision authorizing the Secretary to establish and maintain a program of insured loans to finance any project for the preservation of a property listed on the National Register; (2) striking from subsection (b) a provision that had authorized the President to issue regulations to assure consistency in coordination of Federal programs and adding to subsection (b) the provision describing loan qualifications; and by (3) adding subsections (c) through (k). The 1980 Act does not appear herein.

Page 2316

Sec. 105. [Record keeping required.]- The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. (80 Stat. 917; 16 U.S.C. § 470e.)

Sec. 106. [Head of Federal agency shall take account of effect of Federal undertakings on properties listed in National Register- Opportunity to comment given to Advisory Council on Historic Preservation.]- The head of any Federal agency having direct or indirect

jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 201 to 214 a reasonable opportunity to comment with regard to such undertaking. (80 Stat. 917; Act of September 28, 1976, 90 Stat. 1320; 16 U.S.C. § 470f.)

EXPLANATORY NOTE

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 106 by inserting "or eligible for inclusion in" following "included in". The 1976 Act does not appear herein.

NOTE OF OPINION

1. Central Valley Project, San Felipe Division

The Water and Power Resources Service is not responsible for insuring that the proposed Cross Valley Pipeline and Almaden Valley Pipeline Unit 11 comply with Section 106 of the National Historic Preservation Act as they are neither a Federal or Federally-assisted undertaking nor a reasonably foreseeable consequence of a Federal action in that: 1) the pipelines were not contemplated as part of the Central Valley Project, San Felipe Division, and if constructed will not require Federal permission nor be a part of the project; and 2) the pipelines will be located entirely on locally-owned land and constructed and controlled entirely by the local Santa Clara Valley Water District. The sole connection with the Central Valley Project is at the delivery point, the Coyote Pump Station. Memorandum of Associate Solicitor Little to Commissioner, Water and Power Resources Service, October 15, 1980.

Page 2317

Sec. 107. [Exemptions.]– Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds. (80 Stat. 917; 16 U.S.C. § 470g.)

* * * * *

Sec. 110. [Duties of Federal agencies for historic properties federally owned or controlled- Records for historic properties to be altered or destroyed- Agency preservation officer- Coordination with agency programs and projects- Review of plans of transferees of surplus federally owned historic properties- Minimization of harm to National Historical Landmarks- Costs of preservation activities- Annual preservation awards program- Environmental impact statements- Waiver of requirements for major natural disaster or imminent threat to national security.]-

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101a(g), any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure-

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 106-

(i) are consistent with regulations issued by the Council pursuant to section 211;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3002(c)).

EXPLANATORY NOTE

Reference in the Text. The Native American Grave Protection and Repatriation Act does not appear herein.

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101 a(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this subchapter. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101a(h).

(d) Consistent with the agency's missions and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall

afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969 and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

(j) The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such

memorandum shall govern the undertaking and all of its parts. (Added by Act of December 12, 1980, 94 Stat. 2996; Act of October 30, 1992, 106 Stat. 4760; 16 U.S.C. § 470h-2.)

EXPLANATORY NOTES

1992 Amendments. Section 4006(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4757) amended subsection 110(c) by striking "101(g)" and inserting "101(h)".

Section 4006(g) of the 1992 Act appears in Volume V at page 3992.

Section 4012 of the 1992 Act (106 Stat. 4760) amends section 110 as follows:

(1) In subsection (a)(1), strike "101(f)" and insert "101(g)".

(2) Amend subsection (a)(2) to read as it appears above. Prior to amendment, subsection (a)(2) read as follows: "(2) With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101a(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly."

(3) Add at the end thereof the new subsections (k) and (l) as they appear above.

Section 4012 of the 1992 Act appears in Volume V at page 3995.

Reference in the Text. The National Environmental Policy Act of 1969 (Act of January 1, 1970, Public Law 91-190, 83 Stat. 852; 42 U.S.C. § 4321 et seq.), referred to in subsection (i) of the text, appears in Volume in IV at page 2492.

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Sec. 111. [Lease or exchange of historic property- Proceeds of lease- Contracts for management of historic property.]- (a) Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

(b) The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus

proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property. (Added by Act of December 12, 1980, 94 Stat. 2996; Act of October 30, 1992, 106 Stat. 4761; 16 U.S.C. § 470h-3.)

EXPLANATORY NOTE

1992 Amendment. Section 4013 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4761) amends section 111(a) by striking "may, after consultation with the Advisory Council on Historic Preservation," and inserting "after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may". Section 4013 of the 1992 Act appears in Volume V at page 3996.

Sec. 112. [Professional standards.]- (a) [In general.]- Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following-

(1)(A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved. (16 U.S.C. § 470h-4.)

(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(b) [Guidelines.]- In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to-

(1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance, about the need for protection of such resources, and the available means of protection;

(2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

(4) encourage owners who are undertaking archaeological excavations to-

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution; and

(C) allow access to artifacts for research purposes;

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. § 3002(a)(2) (B) and (C)), give notice to and consult with such Indian tribe or Native Hawaiian organization.

Sec. 113. [Interstate and international traffic in antiquities.]- (a) [Study.]- In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities. (16 U.S.C. § 470h-5.)

(b) [Consultation.]- In conducting the study described in subsection (a) the Secretary shall consult with the Council and other Federal agencies that conduct,

cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

(c)[Report.]- Not later than 18 months after the date of enactment of this section, the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a).

(d) [Authorization.]- There are authorized to be appropriated not more than $500,000 for the study described in subsection (a), such sums to remain available until expended. (Act of October 30, 1992, 106 Stat. 4761, 4762)

EXPLANATORY NOTE

1992 Amendment. Sections 4014 and 4015 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4761, 4762) amended title I by adding sections 112 and 113 to the end thereof as they appear above. Section 4014 and 4015 of the 1992 Act appears in Volume V at pages 3996 and 3998.

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TITLE II

Sec. 201. [Advisory Council on Historic Preservation- Membership- Term of office- Vacancies- Quorum.]- (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, appointed by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines;

(10) three at-large members from the general public, appointed by the President; and

(11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

(b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities may be so designated.

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) A vacancy in the Council shall not affect its powers, but shall be filled, not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980, shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980.

(e) The President shall designate a Vice Chairman, from the members appointed under paragraph (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) Nine members of the Council shall constitute a quorum. (80 Stat. 917; Act of May 9, 1970, 84 Stat. 204; Act of July 1, 1973, 87 Stat. 139; Act of September 28, 1976, 90 Stat. 1320; Act of December 12, 1980, 94 Stat. 2998; Act of October 30, 1992, 106 Stat. 4763, 4765; 16 U.S.C. § 470i.)

EXPLANATORY NOTES

1992 Amendment. Section 4016 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4763) amended section 201(a) as follows:

(1) Strike "and" at the end of paragraph (9).

(2) Strike the period at the end of paragraph (10) and insert"; and".

(3) Add at the end thereof the new paragraph (11) as it appears above.

Section 4019(b) of the 1992 Act (106 Stat.

4765) amended section 201(a) by striking "(hereafter referred to as the 'Council')".
Section 4016 of the 1992 Act appears in Volume V at page 3998.

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended subsections (a) through (f) of section 201 to read as they appear above. The amendments dealt with the number of members on the Council, their terms of office and the number of terms they can serve, and filling of vacancies on and new appointments to the Council. The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 201 by increasing the membership of the Council from 20 to 29 members, enlarging Presidential authority to include designation of a Vice Chairman, and striking former subsection (g), which had provided that the Council should remain in existence until December 31, 1985. The 1976 Act does not appear herein.

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Sec. 202. [Functions of Council- Annual report.]- The Council shall-

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this subchapter; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable.

Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act. (80 Stat. 918; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470j.)

EXPLANATORY NOTE

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 202 by adding paragraphs (6) and (7) to subsection (a) and inserting in subsection (b) the provision requiring the Council to include in its report an assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the Federal, State, local, and private historic preservation programs. The 1980 Act does not appear herein.

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Sec. 203. [Cooperation between Council and Federal agencies.]- The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of sections 201 to 214; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds. (80 Stat. 918; 16 U.S.C. § 470k.)

Sec. 204. [Compensation of Council members.]- The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive $100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council. (80 Stat. 918; Act of May 9, 1970, 84 Stat. 204; Act of September 28, 1976, 90 Stat. 1321; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470l.)

Sec. 205. [Executive director- General Counsel- Appointment and compensation of officers and employees- Services to be provided by Department of Interior- Funds, personnel, facilities, services provided by members.]- (a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence

of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5, United States Code: *Provided, however,* That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of title 5, United States Code.

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5, United States Code.

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: *Provided,* That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. § 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. § 1513(d), 1514) shall apply to appropriations of the Council: *And provided further,* That the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (2) through (4) of section 201 (a) shall provide the Council, with or without reimbursement as may

be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act. (80 Stat. 919; Act of May 9, 1970, 84 Stat. 204; Act of September 28, 1976, 90 Stat. 1321; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470m.)

EXPLANATORY NOTES

1980 Amendment. The Act of December 12, 1980 (Public Law 96-515, 94 Stat. 2987) amended section 205 by: (1) inserting in subsection (b) ", including enforcement of agreements with Federal agencies to which the Council is a party" after "appropriate"; (2) substituting in subsection (g) "paragraphs (2) through (4)" for "paragraphs (1) through (16)"; and (3) inserting in subsection (g) the provision authorizing the Council to accept donations of money and authorizing the Executive Director, in his discretion, to accept, hold, use, expend, and administer such moneys. The 1980 Act does not appear herein.

1976 Amendment. The Act of September 28, 1976 (Public Law 94-422, 90 Stat. 1313) amended section 205 with respect to appointment and duties of the Executive Director, furnishing of facilities and financial and administrative services, appointment and compensation of the General Counsel and other personnel, and procurement of temporary and intermittent services. The 1976 Act does not appear herein.

Reference in the Text. The sections of title 5 of the United States Code referred to in subsections (c), (d), and (e) of the text deal generally with compensation of Federal employees, Civil Service laws, and employment of experts and consultants, respectively. Sections 1513(d) and 1514 of title 31 of the United States Code, referred to in subsection (f) of the text, deal with administrative control and apportionment of funds. The two sections of title 31 appear in the Appendix in Supplement I.

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Sec. 211. [Rules and regulations- Participation by local governments.]- The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106

which affect such local governments. (Added by Act of September 28, 1976, 90 Stat. 1322; Act of December 12, 1980, 94 Stat. 2999; 16 U.S.C. § 470s.)

EXPLANATORY NOTE

1992 Amendment. Section 4018 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4763) amended section 211 by striking the period at the end of the first sentence and inserting "in its entirety.". Section 4018 of the 1992 Act appears in Volume V at page 3999.

* * * * *

Sec. 213. [Report by Secretary to Council.]- To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects. (Added by Act of December 12, 1980, 94 Stat. 3000; 16 U.S.C. § 470u.)

Sec. 214. [Exemption for Federal programs or undertakings.]- The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties. (Added by Act of December 12, 1980, 94 Stat. 3000; 16 U.S.C. § 470v.)

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TITLE III

Sec. 301. [Definitions.]- As used in this Act, the term-

(1) "Agency" means agency as such term is defined in section 551 of title 5, United States Code.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.

(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 101.

(7) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including-

(A) those carried out by or on behalf of the agency;

(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit license, or approval; and

(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.

(9) "Cultural park" means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an area which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(12) "State historic preservation review board" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B)-

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the

following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture, and

(C) which has the authority to-

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer, and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among-

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation and landscape architecture or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(14) "Tribal lands" means-

(A) all lands within the exterior boundaries of any Indian reservation; and

(B) all dependent Indian communities.

(15) "Certified local government" means a local government whose local historic preservation program has been certified pursuant to section 101(c).

(16) "Council" means the Advisory Council on Historic Preservation established by section 201.

(17) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who (prior to 1778) occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(18) "Native Hawaiian organization" means any organization which-

(A) serves and represents the interests of Native Hawaiians;

(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupna O Hawai'i Nei, an organization

incorporated under the laws of the State of Hawaii. (Added by Act of December 12, 1980, 94 Stat. 3001; Act of October 30, 1992, 106 Stat. 4763, 4764, 4765; 16 U.S.C. § 470w.)

EXPLANATORY NOTES

1992 Amendment. Section 4019(a) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4763) amended section 301 as follows:

(1) In paragraph (1) strike "Code," and all that follows through the end of the paragraph, and insert in lieu thereof "Code.".

(2) In paragraph (2) strike "the Trust Territories of the Pacific Islands" and insert "the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau".

(3) Amend paragraph (4) to read as it appears above. Prior to amendment paragraph (4) read as follows: 'Indian tribe' means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act."

(4) In paragraph (5) strike "Register" and all that follows through the end of the paragraph and insert "Register, including artifacts, records, and material remains related to such a property or resource.".

(5) Amend paragraph (7) to read as it appears above. Prior to amendment section (7) read as follows: "(7) "Undertaking" means any action as described in section 106."

(6) In paragraph (8) strike "maintenance and reconstruction," and insert "maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities,".

(7) In paragraph (9) strike "urban area" and insert "area".

(8) In paragraph (10) strike "urban area of one or more neighborhoods and" and insert "area".

(9) In paragraph (11) after "of the Interior" insert "acting through the Director of the National Park Service".

(10) In paragraph (12) strike "and architecture" and insert "architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture".

(11) In paragraph (13) strike "archaeology" and insert "prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture".

(12) Add at the end thereof the new paragraphs (14) through (18) as they appear above. Section 4019 of the 1992 Act appears in Volume V at page 3999.

Reference in the Text. The Alaska Native Claims Settlement Act (Act of December 18, 1971, Public Law 92-205, 85 Stat. 688, 43 U.S.C. § 1601 et seq.), referred to in subsection (4) of the text, does not appear herein.

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Sec. 302. [Authorization for expenditure of appropriated funds.]- Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this

Act, except to the extent appropriations legislation expressly provides otherwise. (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-1.)

Sec. 303. [Donations and bequests of money, personal property, and less than fee interests in historic properties.]- (a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose. (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-2.)

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Sec. 304. [Access to information.]- (a) [Authority to withhold from disclosure.]- The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may-

(1) cause a significant invasion of privacy;

(2) risk harm to the historic resources; or

(3) impede the use of a traditional religious site by practitioners.

(b) [Access determination.]- When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) [Consultation with Council.]- When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b). (Added by Act of December 12, 1980, 94 Stat. 3002; 16 U.S.C. § 470w-3.)

EXPLANATORY NOTE

1992 Amendment. Section 4020 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4765) amended section 304 to read as it appears above. Prior to amendment section 304 read as follows:

Sec. 304. [Disclosure of information concerning the location or character of historic resources.]- The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located. Section 4020 of the 1992 Act appears in Volume V at page 4000.

Sec. 305. [Attorneys' fees to prevailing party in civil actions.]- In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable. (Added by Act of December 12, 1980, 94 Stat 3002; 16 U.S.C. § 470w-4.)

* * * * *

Sec. 307. [Regulations- Copy to Congress before publication in Federal Register- Effective date of final regulations- Effective date in case of emergency- Resolution of disapproval by Congress- Effect of Congressional inaction or rejection of disapproval resolution.]- (a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation 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 Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) of this section if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(c) Except as provided in subsection (b) of this section, the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing

with the matter of , which regulation was transmitted to Congress on ," the blank spaces therein being appropriately filled.

(d) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(e) For the purposes of this section-

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(f) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation. (Added by Act of December 12, 1980, 94 Stat. 3004; 16 U.S.C. § 470w-6.)

TITLE IV- NATIONAL CENTER FOR PRESERVATION TECHNOLOGY AND TRAINING

Sec. 401. [Findings.]- The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial. (16 U.S.C. § 470x-1.)

Sec. 402. [Definitions.]- For the purposes of this title-

(1) the term "Board" means the National Preservation Technology and Training Board established pursuant to section 404.

(2) The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 403.

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

Sec. 403. [Establishment of national center.]- (a)[Establishment.]- There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at

Northwestern State University of Louisiana in Natchitoches, Louisiana. (16 U.S.C. § 470x-2.)

(b) [Purposes.]- The purposes of the Center shall be to- (1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

(c) [Programs.]- Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405.

(d) [Executive Director.]- The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

(e) [Assistance from Secretary.]- The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities. (106 Stat. 4766; 16 U.S.C. § 470x-3.)

Sec. 404. [Preservation Technology and Training Board.]- (a) [Establishment.]- There is established a Preservation Technology and Training Board.

(b) [Duties.]- The Board shall- (1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

(c) [Membership.]- The Board shall be comprised of- (1) the Secretary, or the Secretary's designee;

(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Sec. 405. [Preservation grants.]- **(a) [In general.]**- The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

(b) [Grant requirements.]- (1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) [Eligible applicants.]- Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, nonprofit organizations; offices, units, and Cooperative Park Study Units of the National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

(d) [Standards.]- All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

(e) [Authorization of appropriations.]- There is authorized to be appropriated to carry out this section such sums as may be necessary.

Sec. 406. [General provisions.]- **(a) [Acceptance of grants and transfers.]**- The Center may accept-

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

(b) [Contracts and cooperative agreements.]- Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title.

(c) [Authorization of appropriations.]- There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices. (106 Stat. 4767; 16 U.S.C. § 470x-4; 16 U.S.C. § 470x-5.)

Sec. 407. [National Park Service preservation.]– In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties. (106 Stat. 4768; 16 U.S.C. § 470x-6.)

EXPLANATORY NOTES

1992 Amendment. Section 4022 of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4765) amended the National Historic Preservation Act by adding seven sections under title IV as they appear above. Section 4022 of the 1992 Act appears in Volume V at page 4001.

Editor's Note, Annotations. Annotations of opinions dealing with this Act are included only to the extent deemed relevant to the programs and activities of the Bureau of Reclamation and of the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

Legislative History. S. 3035, Public Law 89-665 in the 89th Congress. Reported in House from Interior and Insular Affairs; H.R. Rept. No. 1916. Reported in Senate from Interior and Insular Affairs; S. Rept. No. 1363. Passed House October 10, 1966. Passed Senate October 11, 1966.

MOUNTAIN PARK PROJECT

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[Sec. 1. Mountain Park project authorized.]– The Secretary of the Interior is authorized to construct, operate, and maintain the Mountain Park reclamation project, Oklahoma, under the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto) for the principal purposes of storing, regulating, and furnishing water for municipal, domestic, and industrial uses conserving and developing fish and wildlife resources, providing outdoor recreation opportunities, and controlling floods, and environmental quality activities. As used in this Act, the term 'environmental quality activity' means any activity that primarily benefits the quality of natural environmental resources. The principal features of the project shall consist of a dam and reservoir on the Otter Creek, a diversion dam on Elk Creek, a canal from the diversion dam to a storage reservoir on Otter Creek aqueduct from the storage reservoir to the cities of Altus, Snyder, and Frederick, Oklahoma, a wildlife management area, and basic public outdoor recreation facilities. Construction of the project may be undertaken in such units or stages as in the determination of the Secretary will best serve project requirements and meet water needs. (82 Stat. 853; Act of October 27, 1974, 88 Stat. 1486; Act of October 31, 1994, 108 Stat. 4536; 43 U.S.C. 616aaaa.)

EXPLANATORY NOTES

1994 Amendments. Section 402(a) of the Mountain Park Project Act of 1994, Act of October 31, 1994 (Section 402(a) of Public Law 103-434, 108 Stat. 4536) amended section 1 of the 1968 Act by striking out "and controlling floods." and inserting in lieu thereof "controlling floods, and environmental quality activities. As used in this Act, the term 'environmental quality activity' means any activity that primarily benefits the quality of natural environmental resources." Section 402(b) further amended the Act of September 21, 1968, by adding the following new section 7. Section 402(c) repealed section 3101 of the Act of October 30, 1992, Public Law 102-575, 106 Stat. 4536. Section 402of the 1994 Act appears in Volume V at page 4023.

1992 Supplement. The Act of October 30, 1992 (Title XXXI of Public Law 102-575, 106 Stat. 4698) supplemented the Mountain Park Project Act of September 21, 1968, by authorizing the Secretary to accept prepayment of the Mountain Park Master Conservancy District's repayment obligation under certain repayment criteria and conditions. Title XXXI of the 1992 Act appears in Volume V at page 3923.

1974 Amendment. Section 301 of the Reclamation Development Act of 1974 (Act of October 27, 1974, 88 Stat. 1486) amended section 1 by substituting the words "Altus, Snyder, and Frederick, Oklahoma" for "Altus and Snyder, Oklahoma", thereby providing for a water supply for the city of Frederick, Oklahoma. The 1974 Act appears in Volume IV at page 2898.

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Sec. 7. [Environmental investigations- Reallocation of costs- Contract amendment- Prepayment of repayment obligations- Interest rate- Tax exempt financing- Title to the project.]- (a)(1) Not later than 180 days after the date of enactment of the Mountain Park Project Act of 1994, the Secretary of the Interior (referred to in this section as the "Secretary") shall-

(A) conduct appropriate investigations to determine environmental quality activities that could be carried out for the Mountain Park project; and

(B) on the basis of the determination made under subparagraph (A), make an appropriate reallocation of the costs of the project under sections 2 and 3 (referred to in this section as "project costs") to accommodate the environmental quality activities that the Secretary authorizes pursuant to this subsection.

(2) In conducting investigations under this subsection, the Secretary shall examine the benefits to natural environmental resources achievable from an environmental quality activity that requires reallocating water or using facilities or land of the Mountain Park project, including any of the following activities:

(A) Developing in-stream flows.

(B) Developing wetland habitat.

(C) Any other environmental quality activity that the Secretary determines to be appropriate to benefit the overall quality of the environment.

(b)(1) Upon completion of the investigations under subsection (a)(2), the Secretary shall carry out the following:

(A) The preparation of a proposed reallocation of project costs in conformance with subsection (a)(1)(B).

(B) Negotiations with the Mountain Park Master Conservancy District (referred to in this section as the 'District') to amend the contract executed by the District pursuant to this Act to adjust the obligation of the District to repay project costs, as described in section 2, to reflect the reallocation of nonreimbursable project costs.

(2) For the purposes of paragraph (1), project costs associated with an environmental quality activity specified by the Secretary pursuant to subsection (a)(2) shall be nonreimbursable project costs.

(c)(1) Notwithstanding any other provision of this Act, the Secretary is authorized to accept prepayment of the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city of Altus, Oklahoma, the city of Frederick, Oklahoma, or the city of Snyder, Oklahoma (or any combination

thereof), and, upon receipt of such prepayment, the District's obligation to the United States shall be reduced by the amount of such costs, and any security held therefor, shall be released by the Secretary.

(2) Any prepayment made pursuant to subsection (c)(1) shall realize to the United States an amount calculated by discounting the remaining repayment obligation by the interest rate determined in accordance with subsection (d).

(d)(1) The Secretary of the Treasury shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget and the Department of Treasury Financial Manual. In determining the interest rate, the Secretary shall consider the price of the District's obligation if it were to be sold on the open market to a third party.

(2) If the District uses tax-exempt financing to finance a prepayment under subsection (c)(1), then the interest rate by which the Secretary discounts the remaining payments due on the District's obligation shall be adjusted by an amount that compensates the United States for the direct or indirect loss of future tax revenues.

(e) Notwithstanding any payment made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States. (108 Stat. 4536; 43 U.S.C. § 616ffff-2.)

COLORADO RIVER BASIN PROJECT ACT

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Sec. 304. (c) [Conservation of irrigation water.]– Each contract under which water is provided under the Central Arizona Project shall require that: (1) there be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems through which water is conveyed after its delivery by the United States to the contractors shall be provided and maintained with linings adequate in his judgment to prevent excessive conveyance losses; and (3) *Repealed.*
(82 Stat. 891, 106 Stat. 4751)

EXPLANATORY NOTE

1992 Amendment. Subsection 3710(k) of the Reclamation Projects Authorization and Adjustment Act of 1992, Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4751) repealed subsection 304(c)(3) of this Act. Prior to repeal, subsection 304(c)(3) read as follows: "neither the contractor nor the Secretary shall pump or permit others to pump ground water from within the exterior boundaries of the service area of a contractor receiving water from the Central Arizona Project for any use outside said contractor's service area unless the Secretary and such contractor shall agree, or shall have previously agreed, that a surplus of ground water exists and that drainage is or was required. Such contracts shall be subordinate at all times to the satisfaction of all existing contracts between the Secretary and users in Arizona heretofore made pursuant to the Boulder Canyon Project Act (45 Stat. 1057)." Section 3710(k) of the 1992 Act appears in Volume V at page 3985.

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Sec. 403. [Lower Colorado River Basin Development Fund established–Credits–Provisions.]– (a)

* * * * *

(b)(1) All appropriations made for the purpose of carrying out the provisions of title III of this Act shall be credited to the development fund as advances from the general fund of the Treasury, and shall be available for such purpose.

(2) Except as provided in subsection 309(b), as amended (43 U.S.C. § 1528.), sums advanced by non-Federal entities for the purpose of carrying out the provisions of title III of this Act (43 U.S.C. § 1521.) shall be credited to the development fund and shall be available without further appropriation for such purpose.

(c) There shall also be credited to the development fund-

(1) all revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), until completion of repayment requirements of the Central Arizona project;

(2) any Federal revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis projects, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of those projects: *Provided, however,* That for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act (43 U.S.C. § 1521.), the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4-1/2 mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2-1/2 mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further,* That after the repayment period for said Central Arizona project, the equivalent of 2-1/2 mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section: [sic] and

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(g) All revenues credited to the development fund in accordance with clause (c)(2) of this section (excluding only those revenues derived from the sale of power and energy for use in Arizona during the payout period of the Central

Arizona Project as authorized herein) and such other revenues as remain in the development fund after making the payments required by subsections (d) and (f) of this section shall be available (1) to make payments, if any, as required by sections 307 and 502 of this Act, (2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a)(2), 205(a) (3), and 205(b)(1) of the Colorado River Salinity Control Act and (3) upon appropriation by the Congress, to assist in the repayment of reimbursable costs incurred in connection with units hereafter constructed to provide for the augmentation of the water supplies of the Colorado River for use below Lee Ferry as may be authorized as a result of the investigations and recommendations made pursuant to section 201 and subsection 203(a) of this Act.

* * * * *

(82 Stat. 894; § 205(b)(2), Act of June 24, 1974, 88 Stat. 266; Act of August 17, 1984, 98 Stat. 1333; Act of October 30, 1984, 98 Stat. 2939; 43 U.S.C. § 1543.)

EXPLANATORY NOTES

Aug. 1984 Amendments. Section 102 of the Act of August 17, 1984 (Public Law 98-381, 98 Stat. 1333; 43 U.S.C. § 1543.) amended section 403 as follows:

(a) Subsection 403(b) is amended by inserting "(1)" after "(b)" and adding paragraph "(2)" as it appears above at the end thereof.

(b) Paragraph (1) of subsection 403(c) is revised by the 1984 Act to read as it appears above. Prior to revision, subsection 403 (c)(1) read as follows: "all revenues collected in connection with the operation of facilities authorized in title III in furtherance of the purposes of this Act (except entrance, admission, and other recreation fees or charges and proceeds received from recreation concessionaires), including revenues which, after completion of payout of the Central Arizona Project as required herein are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of said project:"

(c) Paragraph (2) of section 403(c) is revised by the 1984 Act by inserting, immediately preceding the existing proviso, the two additional provisos as they appear above. The August 1984 Act appears in Volume V at page 3403.

Oct. 1984 Amendment. Subsection 4(f)(2) of the Act of October 30, 1984 (Public Law 98-569, 98 Stat. 2933) amended subsection 403(g)(2) by inserting "the costs of measures to replace incidental fish and wildlife values foregone, and the costs of on-farm measures" before "payable from". Section 4(f)(2) of the 1984 Act appears in Volume V at page 3454.

Reference in the Text. The Colorado River Salinity Control Act of June 24, 1974, Public Law 93-320 (88 Stat. 266) appears in Volume IV at page 2857.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

* * * * *

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TITLE I-GENERAL PROVISIONS

Sec. 101. [Definitions.]- As used in this Act-

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term "State'" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)-

(i) any person who moves from real property, or moves his personal property from real property-

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who moves from real property, or moves his personal property from real property-

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include-

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily-

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 4622 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not

such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term "comparable replacement dwelling" means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(12) The term "lead agency" means the Department of Transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. (84 Stat. 1894; Act of April 2, 1987, Public Law 100-17, Sec. 402, 101 Stat. 246; 42 U.S.C. § 4601.)

EXPLANATORY NOTE

1987 Amendments. Sec. 402(a) of the Uniform Relocation Act Amendments of 1978, Act of April 2, 1987 (Public Law 100-17, 101 Stat. 246) amended paragraph (1) generally. Prior to amendment, paragraph (1) read as follows: ``The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof."

Sec. 402(b), amended paragraph (3) generally. Prior to amendment, paragraph (3) read as follows: ``The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States."

Sec. 402(c) inserted ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual," after "insurance" in paragraph (4).

Sec. 402(d) amended paragraph (6) generally. Prior to amendment, paragraph (6) read as follows: "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

Sec. 402(e), added paragraphs (10) to (13) as they appear above.

Sec. 402(f), substituted "section 4622" for "section 4622(a)" in paragraph (7)(D) above. Extracts from the 1987 Act appear in Volume V at page 3545.

NOTE OF OPINION

1. State agency

The uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Uniform Act) applies to acquisitions made by irrigation districts or other public agencies for construction of facilities financed under the Distribution System Loan Act. It is evident that a loan under the Distribution Systems Loan Act qualifies as Federal financial assistance within the meaning of the Uniform Act. Moreover, it is apparent from the overall scheme of the Distribution Systems Loan Act that loan recipients must be either irrigation districts, which have inherent taxing authority, or other public agencies which also enjoy the power to tax and, therefore, such loan recipients must be considered political subdivisions, bringing them within the definition of the term "State agency" in section 101(3) of the Uniform Act. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, June 28, 1971.

Sec. 102. [Effect upon property acquisition].– (a) The provisions of section 301 of title III of the Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act. (84 Stat. 1895; 42 U.S.C. § 4602)

Sec. 103. [Certification].– (a) Notwithstanding sections 210 and 305 of this Act, the head of a Federal agency may discharge any of his responsibilities under this Act by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this Act.

(b)(1) The head of the lead agency shall issue regulations to carry out this section. (42 U.S.C. § 4604.)

(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this Act.

(c)(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law. (101 Stat. 248; 42 U.S.C. § 4604.)

EXPLANATORY NOTE

1987 Amendment. Section 403 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 248) amended title I of this Act by adding section 103 as it appears above. Section 403 of the 1987 Act appears in Volume V at page 3548.

Sec. 104. [Displaced persons not eligible for assistance.]- (a) [In general.]- Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this Act if the displaced person is an alien not lawfully present in the United States.

(b) [Determinations of eligibility.]- (1) [Promulgation of regulations.]- Not later than 1 year after the date of enactment of this section, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

(2) [Contents of regulations.]- Regulations promulgated under paragraph (1) shall-

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c).

(c) [Exceptional and extremely unusual hardship.]- If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this Act if the displaced person would be eligible for the assistance but for subsection (a).

(d) [Limitation on statutory construction.]- Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law. (111 Stat. 2384; 42 U.S.C. § 4605.)

EXPLANATORY NOTE

1997 Amendment. Section 1 of the Act of November 21, 1997 (Public Law 105 -117, 111 Stat. 2384) amended title I by adding at the end section 104 as it appears above. The 1997 Act appears in Volume V at page 4116.

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TITLE II- UNIFORM RELOCATION ASSISTANCE

Sec. 201. [Declaration of findings and policy].– (a) The Congress finds and declares that-

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) It is the intent of Congress that-

(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

(3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible,

in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964. (101 Stat. 248; 42 U.S.C. § 4621.)

EXPLANATORY NOTES

1987 Amendment. Section 404 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 248) amended section 201to read as it appears above. Prior to amendment, section 201 read as follows: "The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." (84 Stat. 1895; 42 U.S.C. § 4621)

Section 404 of the 1987 Act appears in Volume V at page 3548.

Reference in the Text. Title VIII of the Act of April 11, 1968 (Public Law 90-284; 42 U.S.C. § 3601) referenced above does not appear herein.

Extracts from title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000d.) appear in Supplement I at page S625.

NOTE OF OPINION

1. Canal Act

In acquiring rights-of-way under the Canal Act, the Bureau of Reclamation must comply with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as the latter Act expressly applies to all real property acquisitions associated with Federal and federally-assisted programs and projects. Even though the Canal Act refers only to reservations of rights-of-ways. Congress has recognized that such reservations constitute an acquisition of land by enacting the Acts of September 2, 1964 (Public Law 88-561, 78 Stat. 808) and October 4, 1966 (Public Law 89-624, 80 Stat. 873) providing for the payment of just compensation for land taken under the Canal Act for projects initiated after January 1, 1961. Memorandum of Associate Solicitor Morthland to Commissioner, July 15, 1971.

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Sec. 202. [Moving and related expenses].– (a) [Business reestablishment expenses.]– Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of-

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal

to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000. (101 Stat. 249)

(b) [Alternative residential allowance.]- Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) [Alternative business allowance.]- Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) [Certain utility relocation expenses.]- (1) Except as otherwise provided by Federal law-

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term-

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue-

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means-

"(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system; located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned. (101 Stat. 249; 42 U.S.C. § 4622.)

EXPLANATORY NOTE

1987 Amendments. Sec. 405(a) of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 249) amended section 202(a) as follows:

(1) by striking out the matter preceding paragraph (1) and inserting in lieu thereof subsection (a) as it appears above.

(2) by striking out "and" at the end of paragraph (2);

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.".

Section 405(b) of the 1987 Act amended section 202(b) above by striking out all that follows "may receive" and inserting in lieu thereof "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.". The language struck out by the amendment read as follows: ". . .a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200."

Sec. 405(c) of the 1987 Act amended section 202(c) to read as it appears above. Prior to amendment, section (c) read as follows: "Any displaced person eligible for payments under subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss

of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earning, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period." (84 Stat. 1895; 42 U.S.C. § 4622.)

Sec. 405(d) of the 1987 Act amended section 202 by adding at the end thereof the new subsection (d) as it appears above. Section 405 of the 1987 Act appears in Volume V at page 3549.

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Sec. 203. [Replacement housing for homeowner].- (a)(1) In addition to payments otherwise authorized by this title, the head of the displacing agency shall make an additional payment not in excess of $22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B)The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2)The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act (42 U.S.C. § 4625) is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is

extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (84 Stat. 1896, 101 Stat. 251; 42 U.S.C. § 4623.)

EXPLANATORY NOTE

1987 Amendments. Sec. 406 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 251) amended section 203(a) above as follows:

(1) by striking out "Federal" in the portion of paragraph (1) preceding subparagraph (A) and inserting in lieu thereof "displacing";

(2) by striking out "$15,000" and inserting in lieu thereof "$22,500";

(3) by striking out "acquired by" and all that follows through "the additional payment." in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.";

(Prior to amendment, paragraph (1)(A) read as follows: "The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.")

(4) by striking out paragraph (1)(B) and inserting a new paragraph (1)(B) as it appears above; and

(Prior to amendment paragraph (1)(B) read as follows: "The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.")

(5) by striking out paragraph (2) and inserting in lieu thereof a new paragraph (2) as it appears above.

Prior to amendment, paragraph (2) read as follows: "The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he

receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage." (84 Stat. 1896; 42 U.S.C. § 4623)

Section 406 of the 1987 Act appears in Volume V at page 3551.

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Sec. 204. [Replacement housing for tenants and certain others- Disadvantaged persons.]- (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations. (101 Stat. 251; 42 U.S.C. § 4624.)

EXPLANATORY NOTE

1987 Amendments. Section 407 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 251) amended section 204 to read as it appears above. Prior to amendment, section 204 read as follows: "In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either-

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a) (1) (C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment." (84 Stat. 1897; 42 U.S.C. § 4624.)

Section 407 of the 1987 Act appears in Volume V at page 3552.

Sec. 205. [Relocation planning, assistance, coordination, and advisory services- Business and industry- Agriculture and agricultural commodities.]- (a) Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is [sic] caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to-

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of-

(A) a major disaster as defined in section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. § 5122.);

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this title with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

(f) Notwithstanding section 101(6) of this Act (42 U.S.C. § 4601.), in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency. (84 Stat. 1897, 101 Stat. 252; 42 U.S.C. § 4625.)

EXPLANATORY NOTES

1987 Amendments. Section 408 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 252) amended section 205 as it appears above. Prior to amendment section 205 read as follows: "RELOCATION ASSISTANCE ADVISORY SERVICES

Sec. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is [sic] caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to-

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Section 408 of the 1987 Act appears in Volume V at page 3552.

Reference in the Text. Extracts from the Disaster Relief Act of 1974, Act of May 22, 1974 (Public Law 93-288, 88 Stat. 143) referenced above, appear in Volume IV at page 2843. Section 102 does not appear herein.

NOTE OF OPINION

1. Timing

The responsibilities of the Bureau of Reclamation under section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act to provide a relocation assistance advisory program in connection with the construction of the Initial Stage of the Oahe Unit need not be discharged at one time with respect to all those who eventually will be displaced by the project. *United Family Farmers, Inc. v. Kleppe*, 418 F. Supp. 591 (1976), affirmed on other grounds, 552 F.2d 823 (8th Cir. 1977).

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Sec. 206. [Housing replacement by Federal agency as last resort.]– (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 203 and 204 on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person. (84 Stat. 1898, 101 Stat. 253; 42 U.S.C. § 4626.)

EXPLANATORY NOTE

1987 Amendments. Section 409 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 252) amended section 206 as it appears above. Prior to amendment, section 206 read as follows: "(a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c) (3), is available to such person." (84 Stat. 1898)

Section 409 of the 1987 Act appears in Volume V at page 3554.

Sec. 207. [State required to furnish real property incident to federal Assistance (local cooperation).]- Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance. (84 Stat. 1898; 42 U.S.C. § 4627)

Sec. 208. [State acting as agent for federal program.]- Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project. (84 Stat. 1899; 42 U.S.C. § 4628)

Sec. 210. [Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing.]- Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such displacing agency that-

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 205(c) (3). (84 Stat. 1899, 101 Stat. 254; 42 U.S.C. § 4630.)

EXPLANATORY NOTE

1987 Amendments. Section 410 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 254) amended section 210 by striking out "State agency" the first place it appears and inserting

in lieu thereof "displacing agency (other than a Federal agency)"; by striking out "State agency" the second place it appears and inserting in lieu thereof "displacing agency"; and by striking out "decent, safe, and sanitary" in paragraph (3) and inserting in lieu thereof "comparable". Section 410 of the 1987 Act appears in Volume V at page 3555.

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Sec. 211. [Federal share of costs.]– (a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act (42 U.S.C. § 4651.) shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) No payment or assistance under this title or title III of this Act shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section. (101 Stat. 254; 42 U.S.C. § 4631(a) and (b).)

EXPLANATORY NOTE

1987 Amendments. Section 411 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 254) amended subsections 211(a) and 211(b) as they appear above. Prior to amendment, subsections 211(a) and (b) read as follows: "(a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available." Section 411 of the 1987 Act appears in Volume V at page 3555.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305. (84 Stat. 1900, 101 Stat. 254; 42 U.S.C. § 4631.)

Sec. 212. [Administration- Relocation assistance in programs receiving federal financial assistance.]- In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. (84 Stat. 1900; 42 U.S.C. § 4632.)

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Sec. 213. [Duties of lead agency.]- (a) [General provisions.]- The head of the lead agency shall-

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this Act;

(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 104;

(3) ensure that displacing agencies implement section 104 fairly and without discrimination in accordance with section 104(b)(2)(B);

(4) ensure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

(6) perform such other duties as may be necessary to carry out this Act.

(b) [Regulations.]- The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure-

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

(c) The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and Rural Electrification Administration only with respect to relocation assistance under this title and title I. (84 Stat. 1900, 101 Stat. 254, 111 Stat. 2385, 105 Stat. 2002; 42 U.S.C. § 4633.)

EXPLANATORY NOTES

1997 Amendment. Section 2 of the Act of November 21, 1997 (Public Law 105-117, 111 Stat. 2385) amended section 213(a) as follows:

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after paragraph (1) paragraphs (2) and (3) as they appear above. Section 2 of the 1997 Act appears in Volume V at page 4117.

1991 Amendment. Section 1055 of the Act of December 18, 1991 (Public Law 102-240, 105 Stat. 2002) amended section 213(c) by inserting "and the Rural Electrification Administration" after "Tennessee Valley Authority". The 1991 Act does not appear herein.

1987 Amendment. Section 412 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 254) amended subsection 213 generally by providing substitute language. Prior to the 1987 amendment, section 213 read as follows: (a) "In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall

consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure-

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act."

Section 412 of the 1987 Act appears in Book V at page 3555.

Sec. 214. *Repealed.* (84 Stat. 1901, 101 Stat. 255; 42 U.S.C. § 4634.)

EXPLANATORY NOTE

Section Repealed. Section 415 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) repealed section 214. Prior to repeal, section 214 read as follows: "**Sec. 214.** The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs; (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) any indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations." Section 415 of the 1987 Act appears in Volume V at page 3556.

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Sec. 215. [Planning and other preliminary expenses for additional housing.]- In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from

dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts. (84 Stat. 1901; 42 U.S.C. § 4635)

Sec. 216. [Payments not to be considered as income.]- No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance). (84 Stat. 1902, 101 Stat. 255; 42 U.S.C. § 4636.)

EXPLANATORY NOTE

1987 Amendments. Section 413 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) amended section 216 by inserting after "Federal law" the following: "(except for any Federal law providing low-income housing assistance)". Section 413 of the 1987 Act appears at page 3556.

Sec. 217. [Displacement by code enforcement, rehabilitation, and demolition programs receiving federal assistance.]– *Repealed.* (84 Stat. 1902, 101 Stat. 255; 42 U.S.C. § 4637.)

EXPLANATORY NOTE

Section Repealed. Section 415 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) repealed section 217. Prior to repeal, section 217 read as follows: "A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property." Section 415 of the 1987 Act appears in Volume V at page 3556.

Sec. 218. [Transfers of surplus property.]– The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing. (84 Stat. 1902, 101 Stat. 255; 42 U.S.C. § 4638.)
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EXPLANATORY NOTES

1987 Amendment. Section 414 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) amended section 218 by inserting "net" after "all". Section 414 of the 1987 Act appears in Volume V at page 3556.

Reference in the Text. Extracts from the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), referred to in the text, relating to surplus property, appear in Volume II at page 956.

Sec. 219. *Repealed.*

EXPLANATORY NOTE

Section Repealed. Section 415 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) repealed section 219. The text of section 219 prior to repeal does not appear herein. Section 415 of the 1987 Act appears in Volume V at page 3556.

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Sec. 220. [Repeals.]- (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. §§ 1231-1234). (84 Stat. 1903; 43 U.S.C. § 1231.)

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2473). (84 Stat. 1903; 42 U.S.C. § 2473.)

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. § 1606(b)). (84 Stat. 1903; 49 U.S.C. § 1606.)

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. § 1465.)

(6) Paragraphs (7)(b) (iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. § 1415, 1415 (8)), except the first sentence of paragraph (8). (84 Stat. 1903; 42 U.S.C. § 1415.)

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. § 3074.)

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. § 3307). (84 Stat. 1903; 42 U.S.C. § 3307.)

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495). (84 Stat. 1903; 23 U.S.C. § 501 note.)

(b) Any rights or liabilities now existing under prior Acts or. portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section. (84 Stat. 1903; 42 U.S.C. § 4621 note)

EXPLANATORY NOTE

Reference in the Text. The Act to Reimburse Landowners for their moving expenses, the Act of May 29, 1958, Public Law 85-433 (72 Stat. 152, 43 U.S.C. § 1231), repealed

by section 220(a)(1), appears in Volume II at page 1418 and in Supplement I at page S283. The remaining Acts repealed by section 220 do not appear herein.

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Sec. 221. [Effective date.]- (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State. (84 Stat. 1904; 42 U.S.C. § 4601 note.)

TITLE III- UNIFORM REAL PROPERTY ACQUISITION POLICY

Sec. 301. [Uniform policy on real property acquisition practices.]- In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration

within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. § 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest

after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine. (84 Stat. 1904, 101 Stat. 255; 42 U.S.C. § 4651)

EXPLANATORY NOTES

1987 Amendments. Section 416(a) of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 255) amended section 301(2) by inserting before the period at the end thereof the following: ", except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value".

Section 416(b) of the 1987 Act amended section 301(9) to read as it appears above. Prior to amendment, section 301(9) read as follows: "If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property."

Section 416(c) of the 1987 Act amended section 301by adding at the end thereof the new paragraph (10) as it appears above. Section 416 of the 1987 Act appears in Volume V at page 3556.

Reference in the Text. Section 1 of the Act of February 26, 1931 (46 Stat. 1421) referred to in paragraph (4) of the text, appears in Volume III at page 1974 and in Supplement I at page S547.

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Sec. 302. [Buildings, structures, and improvements.]- (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value

of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection. (84 Stat. 1905; 42 U.S.C. § 4652)

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Sec. 303. [Expenses incidental to transfer of title to United States.]- The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for-

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier. (84 Stat. 1906; 42 U.S.C. § 4653.)

Sec. 304. [Litigation expenses.]- (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if-

(1) the final judgement is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgement or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. (84 Stat. 1906; 42 U.S.C. § 4654.)

EXPLANATORY NOTE

References in the Text. Sections 1346(a)(2) and 1491 of title 28, United States Code, referred to in subsection (c) of the text, appear in Volume III at pages 1950 and 1951, respectively and in Supplement I at pages S493 and S494, respectively.

Sec. 305. [Requirements for uniform land acquisition policies- Payments of expenses incidental to transfer of real property to state- Payment of litigation expenses in certain cases.]- (a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such acquiring agency that-

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

(b) For purposes of this section, the term "acquiring agency" means-

(1) a State agency (as defined in section 101(3)) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

(84 Stat. 1906, 101 Stat. 256; 42 U.S.C. § 4655)

EXPLANATORY NOTE

1987 Amendments. Section 417 of the Act of April 2, 1987 (Public Law 100-17, 101 Stat. 256) amended section 305 above by inserting "(a)" after "Sec. 305.", by striking out "a State agency" the first place it appears and inserting in lieu thereof "an acquiring agency", by striking out "State agency" the second place it appears and inserting in lieu thereof "acquiring agency", and by adding at the end thereof the new subsection (b) as it appears above. Section 417 of the 1987 Act appears in Volume V at page 3557.

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Sec. 306. [Repeals.]- Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. §§ 3071-3073), section 35(a) of the Federal Aid Highway Act of 19688 (23 U.S.C. § 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. § 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section. (84 Stat. 1907; 42 U.S.C. § 4651 note.)

EXPLANATORY NOTES

References in the Text. None of the statutory provisions repealed by section 306 appear herein.

Legislative History. S. 1, Public Law 91-646 in the 91st Congress. Reported in Senate from Government Operations October 21, 1969; S. Rept. No. 91-488. Passed Senate October 27, 1969. Reported in House from Public Works December 2, 1970; H. R. Rept. No. 91-1656. Passed House, amended, December 7, 1970. Senate agrees to House amendment with amendments December 17, 1970. House agrees to Senate amendments to House amendment December 18, 1970.

Editor's Note, Annotations. Annotations of opinions are included only to the extent deemed relevant to activities of the Bureau of Reclamation and the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations.

NOTES OF OPINIONS

1. Canal Act

In acquiring rights-of-way under the Canal Act, the Bureau of Reclamation must comply with the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 as the latter Act expressly applies to all real property acquisitions associated with Federal and federally-assisted programs and projects. Even though the Canal Act refers only to reservations of rights-of ways, Congress has recognized that such reservations constitute an acquisition of land by enacting the Acts of September 2, 1964, and October 4, 1966, providing for the payment of just compensation for land taken under the Canal Act for projects initiated after January 1, 1961. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 15, 1971.

2. Displaced persons

Members of the Navajo and Hopi tribes

forced to relocate after their tribes granted leases for coal mining rights to their lands to Peabody Coal Company, are not "displaced persons" as defined by section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 merely because the leases and mining plan were approved by the Department of Interior and the company subsequently sold strip-mined coal from the reservations to the Navajo generating station, in which the Bureau of Reclamation is a participant and which supplies power for the Mojave generating station which, allegedly, receives Bureau of Reclamation subsidies. The focus of section 101(6) is not on the degree of involvement by a Federal agency or a program of such agency which results in the acquisition, but is instead on whether the person involved was displaced by governmental action either acquiring the property or issuing an order to vacate the property. *Austin v. Andrus*, 638 F.2d 113 (9th Cir. 1981).

3. Distribution system loans

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Uniform Act) applies to acquisitions made by irrigation districts or other public agencies for construction of facilities financed under the Distribution Systems Loan Act. It is evident that a loan under the Distribution Systems Loan Act qualifies as Federal financial assistance within the meaning of the Uniform Act. Moreover, it is apparent from the overall scheme of the Distribution Systems Loan Act that loan recipients must be either irrigation districts, which have inherent taxing authority, or other public agencies which also enjoy the power to tax and, therefore, such loan recipients must be considered political subdivisions, bringing them within the definition of the term "State agency" in section 101(3) of the Uniform Act. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, June 28, 1971.

ADDENDUM

NOTE OF OPINION

1. Condemnation

Section 301(8) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which specifies that the Federal Government need not initiate condemnation proceedings in order for the owner of property it acquires "to prove the fact of the taking of his real property," provides that once an agency initiates negotiations for property acquisition, a taking, as real as that under condemnation, has occurred. Thus, where the Bureau of Reclamation notifies a landowner of its intention to acquire a specific piece of land under the Act and indicates the price it will pay, the subsequent sale is the practical equivalent of a condemnation, even though the landowner accepts the indicated price and no judicial proceedings are instituted. *Mealey v. Orlich*, 120 Ariz. 321, 585 P.2d 1233 (1978).

RECLAMATION PROJECT AUTHORIZATION ACT OF 1972

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Sec. 101. [Authorization of closed basin division, including channel rectification of Rio Grande-Purposes-Construction in stages-Compliance with water quality standards.]- (a) The Secretary of the Interior is authorized to construct, operate, and maintain the closed basin division, San Luis Valley project, Colorado, in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), and as otherwise provided in this Act, for the principal purposes of salvaging, regulating, and furnishing water from the closed basin area of Colorado; transporting such water into the Rio Grande; making water available for fulfilling the United States obligation to the United States of Mexico in accordance with the treaty dated May 21, 1906 (34 Stat. 2953); furnishing irrigation water, industrial water, and municipal water supplies to water deficient areas of Colorado, New Mexico, and Texas through direct diversion and exchange of water; establishing the Russell Lakes Waterfowl Management Area and furnishing a water supply for the Russell Lakes Waterfowl Management Area by purchase of required lands with appurtenant water rights and a partial water supply for the operation of the Blanca Wildlife Habitat Area and Alamosa National Wildlife Refuge essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982; providing outdoor recreational opportunities; augmenting the flow of the Rio Grande; and other useful purposes, in substantial accordance with the engineering plans set out in the report of the Secretary of the Interior on this project as modified by the plans shown in the Definite Plan Report of the Water and Power Resources Service, dated November 1979, and as modified by the plans essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982: *Provided*, That no wells of the project, other than observation wells, shall be permitted to penetrate the aquiclude, or first confining clay layer. (86 Stat. 964, 98 Stat. 2941)

EXPLANATORY NOTES

1988 Amendment. Subsection 22(1) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 101(a) of Public Law 92-514 (86 Stat. 964) by striking the phrase, "including channel rectification of the Rio Grande between the uppermost point of discharge into the river of waters salvaged by the project, and the Colorado-New Mexico State line, so as to provide for the carriage of water so salvaged without flooding of surrounding lands, to minimize losses of waters through evaporation, transpiration, and seepage, and to provide a conduit for the reception of waters salvaged by drainage

projects undertaken in the San Luis Valley below Alamosa, Colorado," following the words "San Luis Valley project, Colorado," and preceding the words "in accordance with." Section 22 of the 1988 Act appears in Volume V at page 3611. **1986 Designation**. The Act of September 28, 1986 (Public Law 99-416, 100 Stat. 950) designated the "Closed Basin Conveyance Channel" as the "Franklin Eddy Canal." The 1986 Act appears in Volume V at page 3475.

1984 Amendment. The Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941) amended Sec. 101of Public Law 92-514 (86 Stat. 964) by (1) striking out "establishing the Mishak National Wildlife Refuge and furnishing a water supply for the operation of the Mishak National Wildlife Refuge and the Alamosa National Wildlife Refuge and for conservation and development of other fish and wildlife resources" and inserting in lieu thereof "establishing the Russell Lakes Waterfowl Management Area and furnishing a water supply for the Russell Lakes Waterfowl Management Area by purchase of required lands with appurtenant water rights and a partial water supply for the operation of the Blanca Wildlife Habitat Area and Alamosa National Wildlife Refuge essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982" and (2) by inserting ", and as modified by the plans essentially as shown in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982" after "November 1979". The 1984 Act appears in Volume V at page 3456.

1980 Amendment. Section 6 of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505) added the words "modified by the plans shown in the Definite Plan Report of the Water and Power Resources, dated November 1979" preceding the proviso in subsection (a). The 1980 Act appears in Volume IV at page 3218.

References in the Text. The treaty of May 21, 1906 (34 Stat. 2953) referred to in subsection (a) of the text is established by Article I of the Convention, and requires the United States to deliver annually to Mexico 60,000 acre-feet of water via the Rio Grande. The Convention appears in Volume I at page 114.

The Water Quality Act of 1965 referred to in subsection (c) of the text, amended in part the Federal Water Pollution Control Act of July 9, 1956 (70 Stat. 498). The 1956 Act was extensively revised by the Federal Water Pollution Control Act Amendments of October 18, 1972 (Public Law 92-500, 86 Stat. 816) and subsequent amendatory legislation, and, as amended, is commonly referred to as the Clean Water Act. Extracts from the Act as amended are set forth in Volume IV, under the 1972 Amendments, as they appear at page 2664 in chapter 26 of Title 33 of the U.S. Code as of January 14, 1983.

* * * * *

(c) The closed basin division, San Luis Valley project, Colorado, shall be operated in such manner that the delivery of water to the river and return flows of water will not cause the Rio Grande system to be in violation of water quality standards promulgated pursuant to the Clean Water Act (Public Law 92-500), as amended. (86 Stat. 964; Act of October 3, 1980, § 6, Public Law 96-375, 94 Stat.1505; 102 Stat. 2575)

EXPLANATORY NOTES

1988 Amendment. Subsection 22(2) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 101(c) of Public Law 92-514 (86 Stat. 964) by striking the phrase "Water Quality Act of 1965 (79 Stat. 903)" and inserting in lieu thereof the phrase "Clean Water Act (Public Law 92-500), as amended.". Section 22 of the 1988 Act appears in Volume V at page 3611.

Reference in the Text. Extracts from the Clean Water Act (Public Law 92-500, 86 Stat. 816) referenced above appear in Volume IV at page 2664.

Sec. 102. [Control system of observation- Protection of water table and artesian wells.]- (a) Prior to commencement of construction of any part of the project, there shall be incorporated into the project plans a control system of observation wells, which shall be designated to provide positive identification of any fluctuations in the water table of the area surrounding the project attributable to operation of the project or any part thereof. Such control system, or so much thereof as is necessary to provide such positive identification with respect to any stage of the project, shall be installed concurrently with such stage of the project.

(b) The Secretary shall operate project facilities in a manner that will not cause the water table available for any irrigation or domestic wells in existence outside the project boundary prior to the construction of the project to drop more than two feet and in a manner that will not cause reduction of artesian flows in existence prior to the construction of the project.

(c) The Secretary is authorized to acquire water pursuant to the procedural and substantive laws of the State of Colorado from within the Rio Grande Basin in the State of Colorado by purchase, lease, or exchange from willing sellers for the purposes of this Act, provided that-

(1) such water is obtained, made available, and delivered for project purposes at less cost for operation and maintenance than the same amounts of water can be made available by operation of project pumping facilities and without necessitating the construction of additional physical facilities by the Secretary;

(2) such water max be used in lieu of water pumped from the project only if the Secretary has complied with all Federal, State, and local laws, rules, and regulations which apply to such water or the facilities other than those of the project which develop such water;

(3) such water is subject to all of the limitations, conditions, and requirements of this Act to the same extent and in the same manner as water pumped by the project; and

(4) this authorization shall not entitle the Secretary to obtain such water or any water rights by condemnation or by exercising the power of eminent domain. (86 Stat.964; Act of October 3, 1980, § 6, Public Law 96-375, 94 Stat. 1505; Act of October 24, 1988, 102 Stat. 2575)

EXPLANATORY NOTES

1988 Amendment. Subsection 22(3) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 102 (a) of Public Law 92-514 (86 Stat. 964) by striking the phrase "except channel rectification,". Subsection 22(4) amended Sec. 102 further by adding subsection (c). Section 22 of the 1988 Act appears in Volume V at page 3611.

1980 Amendment. Section 6 of the Act of October 3, 1980 (Public Law 96-375, 94 Stat. 1505) added to subsection (b) the words "outside the property boundary" after the words "domestic wells in existence." Section 6 of the 1980 Act appears in Volume IV at page 3218.

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Sec. 103. [Operating committee.]– There is hereby established an operating committee consisting of one member appointed by the Secretary, one member appointed by the Colorado Water Conservation Board, and one member appointed by the Rio Grande Water Conservation District, which is authorized to determine from time to time whether the requirements of section 102 of this Act are being complied with. The committee shall inform the Secretary if the operation of the project fails to meet the requirements of section 102 or adversely affects the beneficial use of water in the Rio Grande Basin in Colorado as defined in article I(c) of the Rio Grande compact (53 Stat. 785). Upon receipt of such information the Secretary shall modify, curtail, or suspend operation of the project to the extent necessary to comply with such requirements or eliminate such adverse effect. (86 Stat. 965; Act of October 24, 1988, 102 Stat. 2575)

EXPLANATORY NOTE

Reference in the Text. The Rio Grande Basin in Colorado as defined in Article I(c) of the Rio Grande Compact, Act of March 18, 1939 (53 Stat. 785) referred to in the text means "all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado." The Closed Basin in Colorado is defined as "that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lake and adjacent territory, and do not normally contribute to the flow of the Rio Grande." Article I(c) of the Rio Grande Compact appears in Volume I at page 622 and a Note of Opinion appears in Supplement I at page S123.

Sec. 104. [Priority of uses of water–Project costs nonreimbursable except as determined by Secretary within ability to pay.]– (a) Except as hereinafter provided, project costs shall be nonreimbursable.

(b) After the project or any phase thereof has been constructed and is operational, the Secretary shall make water available in the following listed order of priority:

(1) To assist in making the annual delivery of water at the gaging station on the Rio Grande near Lobatos, Colorado, as required by article III of the Rio Grande compact: *Provided,* That the total amount of water delivered for this purpose shall not exceed an aggregate of six hundred thousand area-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of January next succeeding the year in which the Secretary determined that the project authorized by this Act is operational.

(2) To maintain the Alamosa National Wildlife Refuge and the Blanca Wildlife Habitat Area: *Provided,* That the amount of project salvaged water delivered to the Alamosa National Wildlife Refuge and the Blanca Wildlife Habitat Area shall not exceed five thousand three hundred acre-feet annually. The Secretary is authorized to negotiate and enter into an agreement with the Rio Grande Water Conservation District which provides for the temporary delivery of project salvaged water to the refuge and the habitat area in those years in which there is not sufficient water to fully satisfy the purposes of both paragraphs (1) and (2) of this subsection. (86 Stat. 965, 98 Stat. 2941, 102 Stat. 2575, 43 U.S.C. § 615ddd.)

EXPLANATORY NOTES

1988 Amendment. Subsection 22(5) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 104(b)(2) of Public Law 92-514 (86 Stat. 964) by adding a new sentence beginning with "The Secretary is authorized to . . . " Section 22 of the 1988 Act in Volume V at appears at page 3611.

1984 Amendment. The Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941) amended Sec. 104(b)(2) of Public Law 92-514 (86 Stat. 965)to read as shown above without the last sentence. The last sentence was added by the 1988 amendment. The original language appears in Volume IV at page 2750. The 1984 Act appears in Volume V at page 3456.

(3) To apply to the reduction and elimination of any accumulated deficit in deliveries by Colorado as is determined to exist by the Rio Grande Compact Commission under article VI of the Rio Grande compact at the end of the compact water years in which the Secretary first determines the project to be operational.

(4) For irrigation or other beneficial uses in Colorado: *Provided,* That no water shall be delivered until contracts between the United States and water

users in Colorado, or the Rio Grande Water Conservation District acting for them, have been executed providing for the repayment of such construction costs as in the opinion of the Secretary are appropriate and within the ability of the users to pay and for the payment of all of the costs of operation and maintenance which are allocable to the production of this priority 4 water. (86 Stat. 965; Act of October 24, 1988, 102 Stat. 2575)

EXPLANATORY NOTE

1988 Amendment. Subsection 22 (6) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 104(b)(4) of Public Law 92-514 (86 Stat. 964) by restating the subsection with an added statement regarding the payment of operation and maintenance costs. Section 22 of the 1988 Act appears in Volume V at page 3611.

NOTE OF OPINION

1. Priority of water use

It is clear from both the plain language and the legislative history of the Reclamation Project Authorization Act of 1972 that section 104(b) requires that, in times of water shortage insufficient to meet all the needs of the project, the first 60,000 acre-feet per year be allocated to fulfill the treaty obligation of Article III of the Rio Grande Compact. Only after this requirement is met will water be available for the lower priority Alamosa and Mishak National Wildlife Refuges, up to the statutory maximum. Memorandum of Associate Solicitor Good to Field Solicitor, Amarillo, December 16, 1981, in re Closed Basin Division, San Luis Valley Project, Colorado.

Page 2751

Sec. 105. [Conveyance of State lands- Limitations on acquisition of private lands.]- Construction of the project shall not be started until the State of Colorado agrees that it will, as its participation in the project, convey to the United States easements and rights-of-way over lands owned by the State that are needed for wells, channels, laterals, and wildlife refuge areas, as identified in the Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982. Acquisition of privately owned land shall, where possible and consistent with the development of the project, be restricted to easements and rights-of-way in order to minimize the removal of land from local tax rolls. Private lands required for permanent project facilities may, at the option of the United States, be acquired by fee title. (86 Stat. 965, 98 Stat. 2942, 43 U.S.C. § 615eee.)

EXPLANATORY NOTE

1984 Amendment. The Act of October 30, 1984 (Public Law 98-570, 98 Stat. 2941) amended Sec. 105 of Public Law 92-514 (86 Stat. 965) by striking out "project plan" and inserting in lieu thereof "Revised Fish and Wildlife Coordination Act Report for the San Luis Valley project, dated June 1982" and by adding at the end thereof a new sentence to read: "Private lands required for permanent project facilities may, at the option of the United States, be acquired by fee title.". The 1984 Act appears in Volume V at page 3456.

NOTE OF OPINION

1. Acceptance of less than fee for title

Section 105 authorizes the United States to accept less than fee title for Colorado state lands needed for wells, channels, laterals and wildlife refuge areas as identified in the project plan, as the Act plainly contemplates that Colorado may retain ownership of the lands involved by specifying that "[T]he State of Colorado agrees that it will. . .convey to the United States easements and rights-of-way over lands owned by the State. . . ." Memorandum of Acting Associate Solicitor Elliott, Energy and Resources, to Field Solicitor, Amarillo, February 19, 1981, in re Closed Basin Division, San Luis Valley Project.

* * * * *

Page 2752

Sec. 109. [Authorization of Appropriations.]- There is hereby authorized to be appropriated the sum of $94,000,000 (October 1988 prices) for the construction of the Closed Basin Division of the San Luis Valley project, of which amount not more than $31,000,000 may be adjusted 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 herein, and such additional sums for the operation and maintenance of the project as may be required: *Provided,* That none of the funds authorized herein for construction in excess of $75,000,000 may be expended by the Secretary unless and until the State of Colorado or a political subdivision thereof has entered into a binding agreement with the Secretary to contribute during construction one-third of the costs of construction in excess of $75,000,000, or $6,000,000, whichever is less. Such agreement shall include a reasonable limitation on administrative overhead expenses charged by the Secretary. (86 Stat. 966; Act of October 24, 1988, 102 Stat. 2576)

EXPLANATORY NOTE

Codification Omitted. Title I of this Act originally was codified at 43 U.S.C. § § 615aa to 615ii but was omitted from the 1976 and subsequent editions of the U.S. Code as having limited applicability.

1988 Amendment. Subsection 22 (7) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2575) amended Sec. 109 of Public Law 92-514 (86 Stat. 964) regarding the appropriation authorization by substituting new language that provided an increased cost ceiling subject to certain conditions. Section 22 of the 1988 Act appears in Volume V at page 3611.

COLORADO RIVER BASIN SALINITY CONTROL ACT

Pages 2857

[Sec. 1. Short Title.]- This Act may be cited as the "Colorado River Basin Salinity Control Act". (Public Law 93-320, 88 Stat. 266; 43 U.S.C. § 1571.)

TITLE I-PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

* * * * *

EXPLANATORY NOTE

1980 Amendment. Sections 101-111 under Title I appear, as amended by the Act of September 4, 1980 (Public Law 96-366, 94 Stat. 1063) in Volume IV at page 2857.

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TITLE II-MEASURES UPSTREAM FROM IMPERIAL DAM

* * * * *

Sec. 201. **[Implementation of salinity control policies-Interagency cooperation.]**- (a)

* * * * *

(b) The Secretary is hereby directed to expedite the investigation, planning, and implementation of the salinity control program generally as described in chapter VI of the Secretary's report entitled, "Colorado River Water Quality Improvement Program, February 1972". 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. (88 Stat. 270, 98 Stat. 2933; 43 U.S.C. § 1591.)

EXPLANATORY NOTE

1984 Amendment. Section 1 of the Act of October 30, 1984, (Public Law 98-569, 98 Stat. 2933) amended section 201(b) by adding at the end thereof a new sentence as it appears above.

The 1984 Act appears in Volume V at page 3447.

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Sec. 202. [Construction, operation, and maintenance of certain salinity control units authorized.]– (a) [Authority of Secretary.]– The Secretary is authorized to construct, operate, and maintain the following salinity control units and salinity control program as the initial stage of the Colorado River Basin salinity control program:

(1) The Paradox Valley unit, Montrose County, Colorado, consisting of facilities for collection and disposition of saline ground water of Paradox Valley, including wells, pumps, pipelines, solar evaporation ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities, and consisting of measures to replace incidental fish and wildlife values foregone.

(2) The Grand Valley unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce the seepage of irrigation water from the irrigated lands of Grand Valley into the ground water and thence into the Colorado River. Measures shall include lining of canals and laterals, replacing canals and laterals with pipe, and the combining of existing canals and laterals into fewer and more efficient facilities 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. Prior to initiation of construction of the Grand Valley unit, or 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 Grand Valley, singly or in concert, will assume the obligations specified in subsection (b)(2) of this section relating to the continued operation and maintenance of the unit's facilities to the end that the maximum reduction of salinity inflow to the Colorado River will be achieved.

(3) The Las Vegas Wash unit, Nevada, consisting of facilities for collection and disposition of saline ground water of Las Vegas Wash, including infiltration galleries, pumps, desalter, pipelines, solar evaporation facilities, and all appurtenant works including but not limited to roads, fences, power transmission facilities, and operating facilities, and consisting of measures to replace incidental fish and wildlife values foregone.

(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 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) of this section 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 (43 U.S.C. § 1501 et seq.) and Public Law 84-485 (43 U.S.C. § 620 et seq.), 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 chapter. Repayment of costs allocated to irrigation shall be subject to the Acts which authorized the Dolores participating project, the Reclamation Act of 1902, (43 U.S.C. § 371 note.) 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) of this section relating to the continued operation and maintenance of the unit's facilities.

(6) A basinwide salinity control program that the Secretary, acting through the Bureau of Reclamation, shall implement. The Secretary may carry out the

purposes of this paragraph directly, or may make grants, commitments for grants, or advances of funds to non-Federal entities under such terms and conditions as the Secretary may require. Such program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources that the Secretary considers appropriate. Such program shall provide for the mitigation of incidental fish and wildlife values that are lost as a result of the measures and associated works. The Secretary shall submit a planning report concerning the program established under this paragraph to the appropriate committees of Congress. The Secretary may not expend funds for any implementation measure under the program established under this paragraph before the expiration of a 30-day period beginning on the date on which the Secretary submits such report. (100 Stat. 225, 104-20 43 U.S.C. § 1592.)

EXPLANATORY NOTE

Reference in the Text. Colorado River Storage Project section 501 of authorized by Public Law 90-537 (82 Stat. 896) and Public Law 84-485 (70 Stat. 105) appears in Volume IV at page 2416 and in Volume II at page 1248, respectively.

(b) [Implementation of authorized units- Reports to Congress- Operation and maintenance (O&M) contracts with non-Federal entities- Reimbursement of certain O&M costs- Replacement costs- Organization of private canal and lateral owners- State water laws- Funding for and implementation of measures to replace incidental fish and wildlife values foregone.]- In implementing the units authorized to be constructed pursuant to subsection (a) of this section, 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) of this section, 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) of this section: *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 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 chapter, 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.

(4) In implementing the units authorized to be constructed or the program pursuant to paragraphs (1), (2), (3), (4), (5), and (6) of subsection (a) of this section, the Secretary shall comply with procedural and substantive State water laws.

(5) The Secretary may, under authority of this title and limited to the purposes of this chapter, 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.

(6) In implementing the units authorized to be constructed pursuant to subsection (a) of this section, 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.

(109 Stat. 256; 43 U.S.C. §§ 1595-1598.)

(c) [Salinity control measures.]– The Secretary of Agriculture shall carry out salinity control measures (including watershed enhancement and cost-share measures with livestock and crop producers) in the Colorado River Basin as part of the environmental quality incentives program established under chapter 4 of subtitle D of title XII of the Food Security Act of 1985. (88 Stat. 271; Act of October 30, 1984, 98 Stat. 2933; Act of July 28, 1995, 109 Stat. 255, 256; Act of April 4, 1996, 110 Stat. 1006; 43 U.S.C.§ 1592)

EXPLANATORY NOTES

1996 Amendment. Subsection 336(c)(1) of the Act of April 4, 1996 (Public Law 104-127, 110 Stat. 1006,Title III, Subsection D) struck subsection 202(c) as provided by the Act of October 30, 1984, and inserted new language as it appears above.

Relevant extracts from the Act of April 4, 1996, appear in Volume V at page 4075.

1995 Amendments. Sec. 1(1) of the Act of July 28, 1995 (Public Law 104-20, 109 Stat. 255), amended section 202(a) as follows: in section 202(a)- (A) in the first sentence- (i) by striking "the following salinity control units" and inserting "`the following salinity control units and salinity control program"; and (ii) by striking the period and inserting a colon; and (B) by adding at the end the following the new paragraph: "(6)" as it appears above.

The 1995 Act appears in Volume V at page 4063.

1984 Amendments. The Act of October 30, 1984, **(**Public Law 98-569, 98 Stat. 2933) amended section 202 by- inserting "(a)" after "Sec. 202."; and then amending Sec. 202(a) as follows: (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 (which read as follows: "The Secretary is also authorized to provide, as an element of the Grand Valley unit, for a technical staff to provide information and assistance to water users on means and measures for limiting excess water applications to irrigated lands: *Provided,* That such assistance shall not exceed a period of five years after funds first become available under this Title. The Secretary will enter into agreements with the Secretary of Agriculture to develop a unified control plan for the Grand Valley unit. The Secretary of Agriculture is directed to cooperate in the planning and construction of on-farm system measures under programs available to that Department.");

(5) by striking out paragraph (3)) and by redesignating paragraph (4) as paragraph (3); Prior to striking, paragraph (3) read as follows: "The Crystal Geyser unit, Utah, consisting of facilities for collection and disposition of Saline geyser discharges; including dikes, pipelines, solar evaporation ponds, and all necessary appurtenant works including operating facilities."

(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 new paragraphs "(4)" and "(5)" as they appear above.

Section 202 is further amended by Public Law 98-569, Sec. 2(c), by adding new subsections (b) and (c) as they appear above.

The 1984 Act appears in Volume V at page 3447.

* * * * *

Sec. 203. (a) [Completion and submittal of planning reports.]–

* * * * *

(b) [Cooperation with the Secretary of Agriculture on research and demonstration projects- Interagency cooperation.]- The Secretary is directed-

(1) in the investigation, planing, construction, and implementation of any salinity control unity involving control of salinity from irrigation sources, to cooperate with the Secretary of Agriculture in carrying out research and demonstration projects and in implementing on-the-farm improvements and farm management practices and programs which will further the objective of this title;

(2) to undertake research on additional methods for accomplishing the objective of this title, utilizing to the fullest extent practicable the capabilities and resources of other Federal departments and agencies, interstate institutions, States, and private organizations;

(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 (43 U.S.C. § 1594.) by July 1, 1987;

(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.

(88 Stat. 271, Act of October 30 1984, Public Law 98-569, 98 Stat. 2937; 43 U.S.C. § 1593.)

EXPLANATORY NOTE

1984 Amendments. Section 3 of the Act of October 30, 1984 (Public Law 98-569, 98 Stat. 2937; 43 U.S.C. § 1593.) amended section 203(b) 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 new paragraphs (3), (4), and (5) as they appear above.

The 1984 Act appears in Volume V at page 3452.

Page 2870

Sec. 204. [Colorado River Basin Salinity Control Advisory Council created- Duties.]-

* * * * *

EXPLANATORY NOTE

Termination of Advisory Councils. Sections 3(2) and 14 of the Act of October 6, 1972, Public Law 92-463, 86 Stat. 770, 776, provide that advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law.

Sec. 205. (a) [Cost allocation of salinity control units- Fifty-year repayment period.]- The Secretary shall allocate the total costs (excluding costs borne by non-Federal participants) of the on-farm measures authorized by section 202(c) of this title, of all measures to replace incidental fish and wildlife values foregone, and of each unit or separable feature thereof authorized by section 202(a) of this title, as follows:

(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the policy embodied in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. § 1251 et seq.), 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a)(1), (2), and (3) of this title, 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 paragraphs (4) through (6) of section 202(a) of this title, 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) of this title, including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone, shall be nonreimbursable. The total costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5) of subsection (a) of this section.

(2) The reimbursable portion of the total costs shall be allocated between the Upper Colorado River Basin Fund established by section 5(a) of the Colorado River Storage Project Act (70 Stat. 107; 43 U.S.C. § 620d(a).) and the Lower Colorado River Basin Development Fund established by section 403(a) of this title, after consultation with the Advisory Council created in section 204(a) of this title and consideration of the following items:

(i) benefits to be derived in each basin from the use of water of improved quality and the use of works for improved water management;

(ii) causes of salinity; and

(iii) availability of revenues in the Lower Colorado River Basin Development Fund and increased revenues to the Upper Colorado River Basin Fund made available under section 205d(d)(5) of this title:

Provided, That costs allocated to the Upper Colorado River Basin Fund under this paragraph (2) shall not exceed 15 per centum of the costs allocated to the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund.

(3) Costs of construction and replacement of each unit or separable feature thereof authorized by section 205(a)(1), (2), and (3) of this title 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 section 205(a)(1), (2), and (3) of this title, allocated to the upper basin and to the lower basin under subsection (a)(2) of this section 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.

(4)(i) Costs of construction and replacement of each unit or separable feature thereof authorized by paragraphs (4) through (6) of section 202 of this title, 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) of this title or of the units authorized by paragraphs (4) through (6) of section 202 of this title, and costs of implementation of the on-farm measures authorized by section 202(c) of this title allocated to the upper basin and to the lower basin under subsection (a)(2) of this section 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 chapter 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 October 30, 1984, for costs outstanding at that date, or, in the case of costs incurred subsequent to October 30, 1984, 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) of this title and of measures to replace incidental fish and wildlife values foregone allocated to the upper basin and to the lower basin under subsection (a)(2) of this section 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 subsection (a)(4)(iv) of this section. Any reimbursement due non-Federal

entities pursuant to section 202(b)(2) of this title shall be repaid without interest in the fiscal year next succeeding the fiscal year in which such operation and maintenance costs are incurred.

(b) [Repayment by lower basin- Section 403(g) of Colorado River Basin Project Act amended.]-

(1) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a) of this title, 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) of this title, allocated for repayment by the lower basin under subsection (a)(2) of this section shall be paid in accordance with section 203(g)(2) of this title, from the Lower Colorado River Basin Development Fund.

(2) Section 403(g) of the Colorado River Basin Project Act (82 Stat.896) is hereby amended as follows: strike the word "and" after the word "Act," in line 8; insert after the word "Act," the following "(2) for repayment to the general fund of the Treasury the costs of each salinity control unit or separable feature thereof payable from the Lower Colorado River Basin Development Fund in accordance with sections 205(a)(2), 205(a)(3), and 205(b)(1) of the Colorado River Salinity Control Act and"; change paragraph (2) to paragraph (3).

(c) [Repayment by the upper basin.]- Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof authorized by section 202(a) of this title, 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) of this title allocated for repayment by the upper basin under subsection (a)(2) of this section shall be paid in accordance with section 5(d)(5) of this title [Colorado River Storage Project Act] from the Upper Colorado River Basin Fund within the limit of the funds made available under subsection (e) of this section.

(d) [Section 5(d) of the Colorado River Storage Project Act amended.]-

* * * * *

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(e) [Upward adjustment in electrical rates to cover costs of salinity control units- Limitations]- The Secretary is authorized to make upward adjustments in rates charged for electrical energy under all contracts administered by the Secretary under the Colorado River Storage Project Act (70

Stat. 105; 43 U.S.C. 620) as soon as practicable and to the extent necessary to cover the costs allocated to the Upper Colorado River Basin Fund under section 205(a)(2) of this section and in conformity with section 205(a)(3), section 205(a)(4) and section 205(a)(5) of this section: *Provided,* That revenues derived from said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control units, for the construction, operation, and maintenance of measures to replace incidental fish and wildlife values foregone, and for the implementation of on-farm measures in the Colorado River Basin herein authorized.

(f) [Use of Basin Funds by the Secretary of Agriculture.]- The Secretary may expend funds available in the Basin Funds referred to in this section to carry out cost-share salinity measures in a manner that is consistent with the cost allocations required under this section. (88 Stat. 272; Act of Oct. 30, 1984, 98 Stat. 2937-2939; Act of July 28, 1995, 109 Stat. 255; Act of April 4, 1996, Title III, Subtitle D, § 336(c)(1), (2), 110 Stat. 1006; 43 U.S.C. 1595.)

EXPLANATORY NOTES

1996 Amendments. The Act of April 4, 1996, Title III, Subtitle D, § 336(c)(2), (110 Stat.1006) amends section 205 of this Act by- (A) in subsection (a), by striking "pursuant to section 202(c)(2)(C)"; and (B) by adding at the end of section 205 the subsection (f) as it appears above.

Relevant extracts from the Act of April 4, 1996, appear in Volume V at page 4075.

1995 Amendments. Sec. 1(2) of the Act of July 28, 1995 **(**Public Law 104-20, 109 Stat. 255) amended section 205(a) by- (A) in paragraph (1) by striking "authorized by section 202(a)(4) and (5)" and inserting "authorized by paragraphs (4) through (6) of section 202(a)"; and (B) in paragraph (4)(i), by striking "sections 202(a)(4) and (5)" each place it appears and inserting "paragraphs (4) through (6) of section 202".

The 1995 Act appears in Volume V at page 4063.

1984 Amendments. Sec. 4(a) of the Act of October 30, 1984, Public Law 98-569, amended section 205(a) of this Act by inserting "(a)" after "section 202" and inserting "(excluding costs borne by non-Federal participants pursuant to section 202(c)(2)(C) of this title) of the on-farm measures authorized by section 202(c) of this title, of all measures to replace incidental fish and wildlife values foregone, and" after "total costs".

Sec. 4(b), amended section 205(a)(1) by inserting before "shall be nonreimbursable." the words "authorized by section 202(a)(1), (2), and (3) of this title, 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) of this title, 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) of this title, including 70 per centum of the total costs of the associated measures to replace incidental fish and wildlife values foregone,". Section 205(a)(1) was further amended by inserting "The total

costs remaining after these allocations shall be reimbursable as provided for in paragraphs (2), (3), (4), and (5), of subsection (a) of this section" at the end thereof.

Sec. 4(c) amended section 205(a)(2) of this Act (43 U.S.C. § 1595.) by striking "Twenty-five per centum" and inserting in lieu thereof "The reimbursable portion".

Sec. 4(d), amended section 205(a)(3) of this Act to read as it appears above.

Sec. 4(e) amended section 205(a) of this Act by adding new paragraphs (4) and (5) as they appear above.

Sec. 4(f)(1) amended section 205(b)(1) of this Act by inserting "authorized by section 202(a) of this title, 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) of this title," before "allocated for repayment".

Sec. 4(g), amended section 205(c) by inserting "authorized by section 202(a) of this title, 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) of this title" before "allocated for".

Sec. 4(i), amended section 205(e)of this Act by- (1) striking out "of construction, operation, maintenance, and replacement of units" before "allocated under", (2) inserting "to the Upper Colorado River Basin Fund" after "allocated", (3) inserting ", subsection (a)(4) and subsection (a)(5) of this section" after "subsection (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".

Section 4 of the 1984 Act appears in Volume V at page 3452.

References in Text. The Federal Water Pollution Control Act Amendments of 1972, referred to in subsection (a)(1), is Public Law 92-500, October 18, 1972, (86 Stat. 816). Extracts from that Act appear in Volume IV at page 2664.

Section 5(d)(5) of the Colorado River Storage Project Act referred to in subsection (c), was in the original a reference to "section 205(d) of Title II of Public Law 93-320." Section 205(d) amended section 5(d) of the Colorado River Storage Project Act by inserting a new paragraph (5), into the Colorado River Storage Project Act. The Colorado River Storage Project Act, referred to in subsection (d), is the Act of April 11, 1956, (ch. 203, 70 Stat. 105, as amended; 43 U.S.C. § 620 et seq.). The 1956 Act appears in Volume II at page 1248. Amendments thereto appear in Volume IV at pages 2416 and 2871, Supplement I at page S247, and Supplement II at page 5873.

* * * * *

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Sec. 208. (a) [Modification of projects authorized- Limitations.]- The Secretary is authorized to provide for modifications of the projects authorized by this title as determined to be appropriate for purposes of meeting the objective of this title. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to appropriate committees of the Congress, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress

approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall be notified of these changes.

(b) Contracts authorized in advance of appropriations- Appropriations authorized.]- The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this title, in advance of the appropriation of funds therefor. There is hereby authorized to be appropriated the sum of $125,100,000 for the construction of the works and for other purposes authorized in section 202(a) or (b) of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in costs involved therein, and such sums as may be required to operate and maintain such works. 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) of this section, including measures as provided for in subsection (b) of section 202 of this title. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 90-646; 42 U.S.C. § 4601 et seq.).

(c) Implementation of basinwide salinity control program- Limitations.]- In addition to the amounts authorized to be appropriated under subsection (b) of this section, there are authorized to be appropriated $75,000,000 for subsection 202(a) of this title, including constructing the works described in paragraph 202(a)(6) and carrying out the measures described in such paragraph. Notwithstanding subsection (b), the Secretary may implement the program under paragraph 202(a)(6) of this title only to the extent and in such amounts as are provided in advance in appropriations Acts. (88 Stat. 274; Act of October 30, 1984, 98 Stat. 2939; Act of July 28, 1995, 109 Stat. 256; 43 U.S. Code. 1598.)

EXPLANATORY NOTES

1995 Amendments. Paragraph (3)of the Act of July 28, 1995 (Public Law 104-20, 109 Stat. 255) amended section 208 of this Act by adding section 208(c) as it appears above.

The 1995 Act appears in Volume V at page 4063.

1984 Amendments. Section 5(a) of the Act of October 30, 1984 (Public Law 98-569, 98 Stat. 2939) amended section 208(a) of this Act by striking out "and not then if disapproved by said committees,". Section 5(b)(1) amended the second sentence of section 208(b) by inserting "(a) or (b)" after "section 202".

Sec. 5(b)(2), amended section 208(b) of this Act 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) of this

section, including measures as provided for in subsection (b) of section 202 of this title.".

Section 5 of the 1984 Act appears in Volume V at page 3445.

References in Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsection (b), is Public Law 91-646, January 2, 1971, 84 Stat. 1894, which is classified generally to chapter 61 (Sec. 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

Extracts from the 1970 Act appear in Volume IV at page 2617.

RECLAMATION DEVELOPMENT ACT OF 1974

INCORPORATION OF PAGE, ARIZONA

* * * * *

Sec. 104. [Water supply contract-Limit on consumptive use-United States to retain title of pumping and conveyance system-Operation of retained facilities-Schedule of payments by municipality-Water system beyond Glen Canyon Dam.]-

* * * * *

Page 2900

(c) Such retained facilities shall be operated and maintained by the Secretary at the expense of the United States until termination of the fifth fiscal year following the year of incorporation. Not to exceed two thousand seven hundred and forty acre-feet of water per annum will be pumped by the United States from Lake Powell to the water treatment plant, or to such intermediate points of delivery as shall be mutually agreed upon by the municipality and the United States for use by the municipality. (88 Stat. 1488, 108 Stat. 4538)

EXPLANATORY NOTE

1994 Amendment. Section 701 of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4538) amended subsection 104(c) by striking "or three million gallons of water in any twenty-four-hour period,".

Section 701 of the 1994 Act appears in Volume V at page 4026.

RECLAMATION AUTHORIZATION ACT OF 1975

* * * * *

TITLE IV

POLLOCK-HERREID UNIT, SOUTH DAKOTA

* * * * *

Page 2939

Sec. 407. [Appropriation authorized.]- *Repealed*. (90 Stat. 209, 102 Stat. 2572)

EXPLANATORY NOTE

Section Repealed. Section 12 of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2572) repealed section 407 of the Reclamation Authorization Act of 1975, Act of March 11, 1976 (Public Law 94-288, 90 Stat. 209) which appears in Volume IV at page 2939. However, the 1988 Act provided that "The Pollock-Herreid Unit shall remain an authorized feature of the Pick-Sloan Missouri Basin Program." Section 12 of the 1988 Act appears in Volume V at page 3607.

TETON DAM DISASTER ASSISTANCE ACT

* * * * *

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Sec. 8. [Annual report to Congress.]—*Repealed.* (90 Stat. 1213, 112 Stat. 3290)

EXPLANATORY NOTE

Section Repealed. Section 901(f) of the Act of November 10, 1998 (Public Law 105-362, 112 Stat. 3290) repealed section 8 of the Teton Dam Disaster Assistance Act. Prior to repeal, section 8 read as follows: "At the end of the year following approval of this Act and each year thereafter until the completion of the claims program, the Secretary shall make an annual report to the Congress of all claims submitted to him under this Act stating the name of each claimant, the amount claimed, a brief description of the claim, and the status or disposition of the claim including the amount of each administrative payment and award under the Act." Section 901 of the 1998 Act appears in Volume V at page 4135.

RECLAMATION AUTHORIZATIONS ACT OF 1976

TITLE II

OROVILLE-TONASKET UNIT, WASHINGTON

* * * * *

Page 2954

Sec. 208. [Appropriation authorized.]– There is hereby authorized to be appropriated for construction of the works and measures authorized by this title for the fiscal year 1978 and thereafter the sum of $88,000,000 (January 1987 prices): *Provided,* That of the $88,000,000 authorized herein, only $18,000,000 thereof may be adjusted by such amounts, plus or minus, as may be required by reason of changes in the cost of construction work of the types involved therein as shown by engineering cost indexes. There are also authorized to be appropriated such sums as may be required for the operation and maintenance of the project. (90 Stat. 1327, 101 Stat. 1313)

EXPLANATORY NOTE

1987 Amendment. The Act of December 18, 1987 (Public Law 100-196, 101 Stat. 1313) amended section 208 by deleting "$39,370,000 (January 1976 prices), plus or minus such amounts, if any," and inserting in lieu thereof "$88,000,000 (January 1987 prices): *Provided,* That of the $88,000,000 authorized herein, only $18,000,000 thereof may be adjusted by such amounts, plus or minus,". The 1987 Act appears in Volume V at page 3558.

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TITLE IV

AMERICAN CANAL EXTENSION, EL PASO, TEXAS

Sections 401, 402, and 403. *Repealed.*

EXPLANATORY NOTE

1990 Amendment. Subsection 3(f) of the Act of October 18, 1990 (Public Law 101-438, 104 Stat. 1003) repealed Title IV. The repealed sections appear on pages 2955 and 2956 in Volume IV. Subsection in 3(f) of the 1990 Act appears in Volume V at page 3657.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Sec. 204. [Withdrawals.]–

* * * * *

Page 2974

(e) [Emergency withdrawal.]– When the Secretary determines, or when the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with both of theses committees. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable and (b)(1) of this section. The information required, in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) [Report to congressional committees.]– All withdrawals and extensions thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions to the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate. (90 Stat. 2751, 108 Stat. 4594)

* * * * *

Sec. 311. [Public lands program report.]- (a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years. (90 Stat. 2768; 43 U.S.C. § 1741.)

EXPLANATORY NOTES

1994 Amendment. Section 16(d) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4594) amended sections 204(e) and (f), 215(b)(5), and 311(b) as follows:

(1) In section 204 (43 U.S.C. 1714)-

(A) in subsection (e)-

(i) strike "Committee on Interior and Insular Affairs of either the House of Representatives or the Senate" and substitute "Committee on Natural Resources of the House of Representatives or the Committee on Energy and Natural Resources of the Senate"; and

(ii) strike "the Committees on Interior and Insular Affairs of the Senate and the House of Representatives" and substitute "both of those Committees"; and

(B) in subsection (f), strike "Committees on Interior and Insular Affairs of the House of Representatives and the Senate" and substitute "Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate".

(2) In section 215(b)(5) (43 U.S.C. 1723(b)(5)), strike "Interior and Insular Affairs" and substitute "Natural Resources".

Editor's Note: Section 215(b)(5) does not appear herein.

(3) In section 311(b) (43 U.S.C. 1741(b)), strike "Committees on Interior and Insular Affairs of the House and Senate" and substitute "Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate".

Section 16(d) of the 1994 Act appears in Volume V at page 4061.

* * * * *

TITLE V- RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

Sec. 501. [Authorization to grant rights-of-way.[- (a) [Grants of rights-of-way.]- The Secretary, with respect to the public lands (including public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. § 818)) and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for-

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act, including Part II thereof (41 Stat. 1063, 16 U.S.C. § 79la-825r);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

EXPLANATORY NOTE

Reference in the Text. The Federal Power Act, including Part I, appears in Volume I at pages 262 and 527.

(b) **[Disclosure of plans–Terms and conditions.]–** (1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

* * * * *

(d) [Projects located on lands subject to a reservation under section 24 of the Federal Power Act.]– With respect to any project or portion thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act which is located on lands subject to a reservation under section 24 of the Federal Power Act and which did not receive a permit, right-of-way or other approval under this section prior to enactment of this subsection, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act, of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest lands not subject to such reservation. (90 Stat. 2776; 106 Stat. 3096; 43 U.S.C. § 1761)

EXPLANATORY NOTE

1992 Amendment. Section 2401 of the Act of October 24, 1992 (Public Law 102-486, 106 Stat. 2776.) amended section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1761) as follows:

(1) by inserting in subsection (a) after "public lands" the following: "(including public lands, as defined in section 103(e) of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. § 818))";

(2) in paragraph (4) of subsection (a), by striking "Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. § 791)" and inserting in lieu thereof "Federal Energy Regulatory Commission under the Federal Power Act, including part 1 thereof (41 Stat. 1063, 16 U.S.C. § 79la-825r)."; and

(3) by adding a new subsection "(d)" at the end thereof, as it appears above. Section 2401 of the 1992 Act appears in Volume V at page 3786.

NOTE OF OPINION

1. **Public lands**

The Bonneville Power Administration was not required to obtain a right-of-way from the Bureau of Land Management for a transmission line crossing privately held lands in which the United States has retained mineral rights, as such lands are not "public lands" and therefore not subject to the right-of-way requirements of the Federal Land Policy and Management Act. *Columbia Basin Land Protection Association v. Schlesinger,* 643 F. 2d 585, 601-02 (9th Cir. 1981), affirming *Columbia Basin Land Protection Association v. Kleppe,* 417 F. Supp. 46 (E.D. Wash. 1976).

DEPARTMENT OF ENERGY ORGANIZATION ACT

* * * * *

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TITLE V-ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

Sec. 501. [Procedures.]- (a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission's functions under section 402(c) (1) or which the Secretary has assigned under section 402(e).

(b)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral

presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(c) The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d)(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which except for indirect effects of an inconsequential nature, are confined to-

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof; the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection-

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action. (91 Stat. 587, 111 Stat. 245; 42 U.S.C. § 7191.)

EXPLANATORY NOTE

1997 Amendments. Subsection 2(a) of the Act of July 18, 1997 (Public Law 105-28, 111 Stat. 245) amended section 501 as follows:

(1) by striking subsections (b) and (d),

(2) by redesignating subsection (c) as subsection (b) and by redesignating subsections (e), (f), and (g) as subsections (c), (d), and (e), respectively, and

(3) in subsection (c) (as so redesignated), by striking "subsections (b), (c), and (d)" and inserting "subsection (b)".

The former subsection (b) read as follows: "(b)(1) In addition to the requirements of subsection (a) of this section, notice of any proposed title, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

(2) Public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency pursuant to a delegation under this Act shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

(3) For the purposes of this title, the exception from the requirements of section 553 of title 5, United States Code, provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available."

The former subsection (d) read as follows: "(d) Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period." Subsection 2(a) of the 1997 Act appears in Volume V at page 4112.

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NOTES OF OPINIONS

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1. Interim rates

The Secretary of Energy is without authority under sections 301(b) and 501(a)(1) of the Department of Energy Organization Act to place power rates into effect on an interim basis without confirmation and approval by the Federal Energy Regulatory Commission, as successor to the Federal Power Commission, as required by section 5 of the Flood Control Act of 1944. *City of Fulton v. United States*, 680 F. 2d 115 (Ct. Cl. 1982).

Editor's note. This decision was affirmed by the Federal Circuit, 751 F.2d 1255 (1985) but reversed by the Supreme Court sub. nom. *United States v. City of Fulton,* 475 U.S. _____, 89 L. Ed 2d 661, 106 S.Ct. 1422 (1986).]

2. Ratemaking, generally

Despite the implication in sections 301(b)(2) and 501(a)(1) to the contrary, the unification in the hands of the Secretary of Energy of the separate functions of the Secretary of the Interior to prepare rates and of the Federal Power Commission to confirm and approve rates, amends section 5 of the Flood Control Act of 1944 to alter the strict procedural requirements of a bifurcated rate implementation scheme. *United States v. Tex-La Electric Cooperative, Inc.,* 693 F. 2d. 592, 404 (5th Cir. 1982).

3. Rulemaking

Power from Federal hydroelectric projects is "public property" and thus was exempt from the rulemaking requirement of section 553 of the Administrative Procedure Act (APA) before the exemption was eliminated by section 501(b)(3) of the Department of Energy Organization Act. However, if the criteria used by the Southeastern Power Administration for allocating power had become so "crystallized" as to be considered a "rule" or "regulation" within the meaning of section 552 of the APA, they would have to be published. *Greenwood Utilities Commission v. Schlesinger,* 515 F. Supp. 653, 659-61 (M.D. Ga. 1981).

Editor's note. The court's decision was affirmed, 764 F.2d 1459 (11th Cir. 1985); however, the annotated holding was not discussed.]

WATER RESEARCH AND DEVELOPMENT ACT OF 1978

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* * * * *

Water Resources and Development Act of 1978, Act of October 17, 1978, Public Law 95-467 (92 Stat. 1279) Repealed.

EXPLANATORY NOTE

Law Repealed. Section 110 of The Act of March 22, 1984 (Public Law 98-242, 98 Stat. 97) repealed the Act of October 17, 1978 (Public Law 95-467, 92 Stat. 1279) subject to the following conditions: "(a) Public Law 95-467 (42 U.S.C. § 7801 et seq.) is repealed.

(b) Rules and regulations issued prior to the date of enactment of this Act under the authority of Public Law 95-467 shall remain in full force and effect under this Act until superseded by new rules and regulations promulgated under this Act." (98 Stat. 102, 42 U.S.C. § 7801 note.)

Section 110 of the repealed Act appears in Volume IV at page 3105. Section 110 provided that construction shall proceed on any feature of the Upper Colorado River Storage Project, the Colorado River Basin Salinity Control Project, the Central Arizona Project, and the Southern Nevada Water Project if a final Environmental Impact Statement has been filed on any such feature. Section 110 of the 1984 Act appears in Volume V at page 3390.

RECLAMATION SAFETY OF DAMS ACT OF 1978

* * * * *

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Sec. 4 [Reimbursable and nonreimbursable costs.]–

* * * * *

(b) With respect to the $100,000,000 authorized to be appropriated in the Reclamation Safety of Dams Act of 1978, costs hereto for, or hereafter incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes shall be nonreimbursable and nonreturnable under the Federal Reclamation law. (92 Stat 2471, 98 Stat. 1481; 43 U.S.C. § 506 et seq.)

(c) With respect to the additional $650,000,000 authorized to be appropriated in The Reclamation Safety of Dams Act Amendments of 1984, costs incurred in the modification of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes, shall be reimbursed to the extent provided in this subsection.

(1) Fifteen percent of such costs shall be allocated to the authorized purposes of the structure, except that in the case of Jackson Lake Dam, Minidoka Project, Idaho-Wyoming, such costs shall be allocated in accordance with the allocation of operation and maintenance charges.

(2) Costs allocated to irrigation water service and capable of being repaid by the irrigation water users shall be reimbursed within 50 years of the year in which the work undertaken pursuant to this Act is substantially complete. Costs allocated to irrigation water service which are beyond the water users' ability to pay shall be reimbursed in accordance with existing law. (43 U.S.C. § 506 note.)

(3) Costs allocated to recreation or fish and wildlife enhancement shall be reimbursed in accordance with the Federal Water Project Recreation Act (79 Stat. 213, 16 U.S.C. § 460 *1*-12 note.), as amended.

EXPLANATORY NOTE

Reference in the Text. The Federal Water Project Recreation Act referenced above appears in its original form in Volume III at page 1820. Amendments and annotations appear in Volume IV at page 2838, and Supplement I at pages S389-S395.

(4) Costs allocated to the purpose of municipal, industrial, and miscellaneous water service, commercial power, and the portion of recreation and fish and wildlife enhancement costs reimbursable under the Federal Water Project Recreation Act, shall be repaid within 50 years with interest. The interest rate used 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 applicable reimbursement period during the month preceding the fiscal year in which the costs are incurred. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish an interest rate at the weighted average of the rates so determined. (98 Stat. 1481)

(d) The Secretary is authorized to negotiate appropriate contracts with project beneficiaries providing for the return of reimbursable costs under this Act: *Provided, however*, That no contract entered into pursuant to this Act shall be deemed to be a new or amended contract for the purposes of section 203(a) of Public Law 97-293 (43 U.S.C. § 390 cc, 506 note, 509.).

EXPLANATORY NOTE

Reference in the Text. Section 203(a) of Public 97-293 referenced above is part of the "Reclamation Reform Act of 1982" (96 Stat. 1264) and appears in Volume IV at page 3336. The Act also appears as subsequently amended in this Supplement II at page S1092.

Sec. 5. [Authorization of appropriations- Report to Congress- Required finding and technical report.]- There are hereby authorized to be appropriate for fiscal year 1979 and ensuing fiscal years such sums as may be necessary and, effective October 1, 1983, not to exceed an additional $650,000,000 (October 1, 1983, price levels), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: *Provided*, That no funds exceeding $750,000 shall be obligated for carrying out actual construction to modify an existing dam under authority of this Act prior to sixty days (which sixty days 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 calendar days to a day certain) from the date that the Secretary has transmitted a report on such existing dam to the Congress. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification, the corrective action deemed to be required, alternative solutions to structural modification that were considered, the estimated cost of needed modifications, and environmental impacts if any resulting from the implementation of the recommended plan of modification. (92 Stat. 2471, 98 Stat. 1481; 43 U.S.C. § 509.)

* * * * *

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Sec. 12. [Scope of the Act.]- Included within the scope of this Act are Fish Lake, Four Mile, Ochoco, Savage Rapids Diversion and Warm Springs Dams, Oregon; Como Dam, Montana; Little Wood River Dam, Idaho; and related facilities which have been made a part of a Federal reclamation project by previous Acts of Congress. Coolidge Dam, San Carlos Irrigation Project, Arizona, shall also be included within the scope of this Act (43 U.S.C. § 506 note.)

Sec. 13. [Certain costs at Twin Buttes and Foss Dam nonreimbursable.]- The cost of foundation treatment, drainage and instrumentation work planned or underway at Twin Buttes, Texas, and Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under Federal reclamation law. (98 Stat. 1482)

EXPLANATORY NOTE

1984 Amendments. The Act of August 28, 1984 (Public Law 98-404, 98 Stat. 1481) amended the Reclamation Safety of Dams Act of 1978 (92 Stat.2471, 43 U.S.C. 506, et seq.) as follows:

(1) In subsection 4(b), strike "Costs" and insert the following in lieu thereof: "With respect to the $100,000,000 authorized to be appropriated in the Reclamation Safety of Dams Act of 1978, costs".

(2) After section 4(b), the following new subsections were added, as they appear above: "(c), (c)(1), (c)(2), (c)(3), (c)(4), and (d)".

(3) In the first sentence of section 5, strike the comma and all that follows through *"Provided,* That no funds" and insert in lieu thereof: "and, effective October 1, 1983, not to exceed an additional $650,000,000 (October 1, 1983, price levels), . . . to remain available until expended if so provided by the appropriations Act: *Provided,* That no funds exceeding $750,000".

(4) After section 11, the new sections, 12 and 13, were inserted as they appear above. The 1984 Act appears in Volume V at page 3421.

PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

* * * * *

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Sec. 3. [Definitions.]-

* * * * *

(19) The term "integrated resource planning" means, in the case of an electric utility, a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(20) The term "system cost" means all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance.

(21) The term "demand side management" includes load management techniques. (106 Stat. 2796; 16 U.S.C. § 2602.)

EXPLANATORY NOTE

1992 Amendment. Section 111(d) of the Energy Policy Act of 1992 (Act of October 24,1992 Public Law 102-486, 106 Stat. 2776) amended section 3 of this Act by adding at the end paragraphs (19), (20), and (21) as they appear above. Section 111(d) of the 1992 Act appears in Volume V at page 3769.

TITLE I- RETAIL REGULATORY POLICIES FOR ELECTRIC UTILITIES

* * * * *

Subtitle B- Standards For Electric Utilities

Sec. 111. [Consideration and determination respecting certain ratemaking standards.]-

* * * * *

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(c) [Implementation.]-

* * * * *

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall-

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses. (106 Stat. 2795; 16 U.S.C. § 2621.)

EXPLANATORY NOTE

1992 Amendment. Section 111(b) of the Energy Policy Act of 1992 (Act of October 24,1992, Public Law 102-486, 106 Stat. 2776) amended section 111(c) of this Act by adding at the end a new paragraph (3) as it appears above. Section 111(b) of the 1992 Act appears in Volume V at page 3768.

(d) [Establishment.]-

* * * * *

(7) [Integrated resource planning.]– Each electric utility shall employ integrated resource planning. All plans or filings before a State regulatory authority to meet the requirements of this paragraph must be updated on a regular basis, must provide the opportunity for public participation and comment, and contain a requirement that the plan be implemented.

(8) [Investments in conservation and demand management.]– The rates allowed to be charged by a State regulated electric utility shall be such that the utility's investment in and expenditures for energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources, and other demand side management measures are at least as profitable, giving appropriate consideration to income lost from reduced sales due to investments in and expenditures for conservation and efficiency, as its investments in and expenditures for the construction of new generation, transmission, and distribution equipment. Such energy conservation, energy efficiency resources and other demand side management measures shall be appropriately monitored and evaluated.

(9) [Energy efficiency investments in power generation and supply.]– The rates charged by any electric utility shall be such that the utility is encouraged to make investments in, and expenditures for, all cost-effective improvements in the energy efficiency of power generation, transmission and distribution. In considering regulatory changes to achieve the objectives of this paragraph, State regulatory authorities and nonregulated electric utilities shall consider the disincentives caused by existing ratemaking policies, and practices, and consider incentives that would encourage better maintenance, and investment in more efficient power generation, transmission and distribution equipment. (106 Stat. 2795; 16 U.S.C. § 2621.)

EXPLANATORY NOTE

1992 Amendment. Section 111(a) of the Energy Policy Act of 1992 (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776) amended section 111(d) of this Act by adding at the end paragraphs (7), (8), and (9) as they appear above. Section 111(a) of the 1992 Act appears in Volume V at page 3767.

Sec. 112. [Obligations to consider and determine.]-

* * * * *

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(b) [Time limitations.]- (1) Not later than 2 years after the date of the enactment of this Act (or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility shall commence the consideration referred to in section 111, or set a hearing date for such consideration, with respect to each standard established by section 111(d).

(2) Not later than three years after the date of the enactment of this Act (or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d)), each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by section 111(d). (106 Stat. 2795; 16 U.S.C. § 2622.)

EXPLANATORY NOTE

1992 Amendment. Section 111(c) of the Energy Policy Act of 1992 (Act of October 24, 1992, Public Law 102-486, 106 Stat. 2776) amended section 112(b) of this Act by inserting "(or after the enactment of the Comprehensive National Energy Policy Act in the case of standards under paragraphs (7), (8), and (9) of section 111(d))" after "Act" in both places such word appears in paragraphs (1) and (2). Section 111(c) of the 1992 Act appears in Volume V at page 3768.

* * * * *

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Sec 210. [Cogeneration and small power production.]- (a) [Cogeneration and small power production rules.]- Not later than 1 year after the date of enactment of this Act, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities at not more than 80 megawatts capacity, which rules require electric utilities to offer to-

(1) sell electric energy to qualifying cogeneration facilities and qualifying small production facilities and

(2) purchase electric energy from such facilities.

Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) [Rates for purchases by electric utilities.]- The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase-

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

(c) [Rates for sales by utilities.]- The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale-

(1) shall be just and reasonable and in the public interest and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

(d) [Definition.]- For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source.

(e) [Exemptions.]- (1) Not later than 1 year after the date of enactment of this Act and from time to time thereafter, the Commission shall, after consultation with representatives of Sate regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and

after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which geothermal small power production facilities of not more than 80 megawatts capacity, qualifying cogeneration facilities, and qualifying small power production facilities are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

(2) No qualifying small power production facility which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 30 megawatts or 80 megawatts for a qualifying small power production facility using geothermal energy as the primary energy source, may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source, may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying cogeneration facility may be exempted under this subsection from-

(A) any State law or regulation in effect in a State pursuant to subsection (f).

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

EXPLANATORY NOTE

Reference in the Text. Sections 210, 211, or 212 of the Federal Power Act appear in Supplement I pages S101-S105. Extracts from Parts II and III appear in Volume I at page 527.

(f) [Implementation of rules for qualifying cogeneration and qualifying small power production facilities.]- (1) Beginning on or before the date one

year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority.

(2) Beginning on or before the date one year after any rule is prescribed by the Commission under subsection (a) or revised under such subsection, each nonregulated electric utility shall, after notice and opportunity for public hearing, implement such rule (or revised rule).

(g) [Judicial review and enforcement.]- (1) judicial review may be obtained respecting any proceeding conducted by a State regulatory authority or nonregulated electric utility for purposes of implementing any requirement of a rule under subsection (a) in the same manner, and under the same requirements, as judicial review may be obtained under section 123 in the case of a proceeding to which section 123 applies.

(2) Any person (including the Secretary) may bring an action against any electric utility, qualifying small power producer, or qualifying cogenerator to enforce any requirement established by a State regulatory authority or nonregulated electric utility pursuant to subsection (f). Any such action shall be brought only in the manner, and under the requirements, as provided under section 123 with respect to an action to which section 123 applies.

(h) [Commission enforcement.]- (1) For purposes of enforcement of any rule prescribed by the Commission under subsection (a) with respect to any operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility which are subject to the jurisdiction of the Commission under Part II of the Federal Power Act, such rule shall be treated as a rule under the Federal Power Act. Nothing in subsection (g) shall apply to so much of the operations of an electric utility, a qualifying cogeneration facility or a qualifying small power production facility as are subject to the jurisdiction of the Commission under Part II of the Federal Power Act.

(2)(A) The Commission may enforce the requirements of subsection (f) against any State regulatory authority or nonregulated electric utility. For purposes of any such enforcement, the requirements of subsection (f)(1) shall be treated as a rule enforceable under the Federal Power Act. For purposes of any such action, a State regulatory authority or nonregulated electric utility shall be treated as a person within the meaning of the Federal Power Act. No enforcement action may be brought by the Commission under this section other than

(i) an action against the State regulatory authority or nonregulated electric utility for failure to comply with the requirements of subsection(f) or

(ii) an action under paragraph (1).

(B) Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State regulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue such injunctive or other relief as may be appropriate. The Commission may intervene as a matter of right in any such action.

(i) [Federal contracts.]- No contract between a Federal agency and any electric utility for the sale of electric energy by such Federal agency for resale which is entered into after the date of the enactment of this Act may contain any provision which will have the effect of preventing the implementation of any rule under this section with respect to such utility. Any provision in any such contract which has such effect shall be null and void.

(j) [New dams and diversions.]- Except for a hydroelectric project located at a Government dam (as defined in section 3(10) of the Federal Power Act at which non-Federal hydroelectric development is permissible, this section shall not apply to any hydroelectric project which impounds or diverts the water of a natural watercourse by means of a new dam or diversion unless the project meets each of the following requirements:

(1) [No substantial adverse effects.]- At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

EXPLANATORY NOTE

Reference in the Text. Section 3(10) of the Federal Power Act appears in Volume I at page 265 and in Supplement I at page S56. The Electric Consumers Protection Act of 1986, Act of October 16, 1986, Public Law 99-495 (100 Stat. 1243) appears in Volume V at page 3486.

(2) [Protected rivers.]- At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) [Fish and wildlife terms and conditions.]- The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(k) [Definition of new dam or diversion.]- For purposes of this section, the term "new dam or diversion" means a dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices).

(l) [Definitions.]- For purposes of this section, the terms "small power production facility", "qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective meanings provided for such terms under section 3 (17) and (18) of the Federal Power Act. (92 Stat. 3144; § 643(b), Act of June 30, 1980, 94 Stat. 770; Act of October 16, 1986, 100 Stat. 1249; 16 U.S.C. § 824a-3.)

EXPLANATORY NOTES

1986 Amendment. Section 8 of the Act of October 16, 1986 (Public Law 99-495, 100 Stat. 1249) amended section 210 of the Public Utilities Policies Act by inserting the new subsections (j) and (k) as they appear above and redesignating the former subsection (j) as subsection (l). Section 8 of the 1986 Act appears in Volume V at page 3493.

1980 Amendment. Section 643(b) of the Act of June 30, 1980 (Public Law 96-294, 94 Stat. 611, 770), known as the Energy Security Act, inserted references to geothermal small power production facilities in subsections (a), (e) (1) and (e) (2). Title VI of that act, in which section 643 is located, is known as the Geothermal Energy Act of 1980. The Act does not appear herein.

ARCHAEOLOGICAL RESOURCES PROTECTION ACT

* * * * *

Sec. 3. [Definitions: "Archaeological resource"; "Federal land manager"; "Public lands"; "Indian lands"; "Indian Tribe"; "Person".]-

* * * * *

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(3) The term "public lands" means-

(A) lands which are owned and administered by the United States as a part of-

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution. (93 Stat. 721, 102 Stat. 2983, 16 U.S.C. § 470bb.)

EXPLANATORY NOTE

Nov. 1988 Amendment. Subsection 1(a) of the Act of November 3, 1988 (Public Law 100-588, 102 Stat. 2983) amended Section 3(3) above by striking out the semicolon at the end thereof and substituting a period. The 1988 Act appears in Volume V at page 3634.

* * * * *

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Sec. 6. [Prohibited acts-Criminal penalties for knowing violations-Effective date-Exemptions from penalty.]- (a) No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

EXPLANATORY NOTE

Nov. 1988 Amendment. Subsection 1(b) of the Act of November 3, 1988 (Public Law 100-588, 102 Stat. 2983) amended subsection 6(a) above by inserting after "deface" the following: ", or attempt to excavate, remove, damage, or otherwise alter or deface". The 1988 Act appears in Volume V at page 3634.

* * * * *

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both. (93 Stat. 724, 102 Stat. 2983, 16 U.S.C. § 470ee.)

EXPLANATORY NOTE

Nov. 1988 Amendment. Subsection 1(c) of the Act of November 3, 1988, Public Law 100-588, 102 Stat. 2983) amended subsection 6(d) above by striking "$5,000" and inserting in lieu thereof "$500". The 1988 Act appears in Volume V at page 3634

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Sec. 10. [Rules and regulations.]–

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(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program. (93 Stat. 727, 102 stat. 2983, 16 U.S.C. § 470ii.)

EXPLANATORY NOTE

Nov. 1988 Amendment. Subsection 1(d) of the Act of November 3, 1988 (Public Law 100-588, 102 Stat. 2983) amended Section 10 by adding a subsection (c) as it appears above. The 1988 Act appears in Volume V at page 3634.

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Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall- (a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies. (102 Stat. 2778, 16 U.S.C. 470mm.)

EXPLANATORY NOTE

Oct. 1988 Amendment. The Act of October 28, 1988 (Public Law 100-555, 102 Stat. 2778) amended the 1979 Act by adding section 14. The October 1988 Act appears in Volume V at page 3618.

LINING OF BESSEMER DITCH

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Sec. 4. [Appropriation authorization.]- The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of $1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: *Provided,* That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total cost of the design and construction of such additional lining. The non-Federal contribution may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the construction at cost of the additional gunite lining authorized by this section. (94 Stat. 940, 102 Stat. 2576)

EXPLANATORY NOTE

1988 Amendment. Section 23 of the Act of October 24, 1988 (Public Law 100-516, 102 Stat 2576) amended the Act of July 9, 1980 (Public Law 96-309, 94 Stat. 940), by adding a section 4 as it appears above. The 1988 Act appears in Volume V at page 3613.

FEASIBILITY STUDIES

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Sec. 4. [Contra Costa Canal relocation, Los Vaqueros Dam, Kellogg Unit-Impacts must be described-Protection of Delta water quality and ecology.]- In preparing the studies and review authorized by subsections (11) and (12) of section 1 and section 3, the Secretary of the Interior shall fully describe all potential beneficial or detrimental impacts resulting from the construction or operation of the projects under study. (94 Stat. 1506, 112 Stat. 3289)

EXPLANATORY NOTE

1998 Amendment. Section 901(c) of the Act of November 10, 1998 (Public Law 105-362, 112 Stat. 3289) amended section 4 by striking the second sentence. Prior to striking, the second sentence read as follows: "The Secretary shall further make recommendations to the Congress for assuring that neither the construction nor the operation of any such project results in the deterioration of the water quality ecology of the Sacramento-San Joaquin Delta or the San Francisco Bay estuarine system."

Section 901(c) of the 1998 Act appear in Volume V at page 4133.

RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

* * * * *

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TITLE IV-FOR THE RELIEF OF THE VERMEJO CONSERVANCY DISTRICT

Sec. 401. [Secretary authorized to amend contract to defer repayment obligation and to transfer title to project facilities to district-Transfer not to include interests in land or water held for management of Maxwell NWR-District to continue to operate project-Further Federal expenditures limited to contract administration and fish and wildlife-Repayment obligation to continue-Flexible repayment plan according to ability to pay.]- That, notwithstanding any other provision of law, the Secretary of the Interior is authorized, subject to the written consent of the Vermejo Conservancy District, to amend contract numbered 178r-458, dated August 7, 1952, as amended, between the Vermejo Conservancy District, located in the State of New Mexico, and the United States for the construction, operation, and maintenance of the Vermejo reclamation project, to defer payments on the remaining repayment obligation of the Vermejo Conservancy District under such contract, until such time or times as the Secretary determines additional repayment to be reasonably feasible, to relieve the district of such other penalties, assessments, or costs, including interest, which have accrued or may become due under the existing contract prior to enactment of this Act, and to transfer all right, title, and interest in or to the project facilities serving the Vermejo Conservancy District: *Provided*, That the Vermejo Conservancy District shall, to the extent practicable, continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries, including the Maxwell National Wildlife Refuge, and in accordance with the authorized project purposes: *Provided further*, That with the exception of assistance, if needed, under the Disaster Relief Act of 1974, as amended, the Federal Government shall incur no further expense on behalf of the Vermejo project or the Vermejo Conservancy District for the operation and maintenance or rehabilitation of existing facilities or for the development of any new facilities related to the delivery or impoundment of water, and further Federal expenditures related to the Vermejo Federal reclamation project shall be limited to administration of such amended contract for the purpose of determining and obtaining such reasonable repayment as may be feasible, and to necessary expenses for fish and wildlife purposes. Effective as of the date of the written

consent of the Vermejo Conservancy District to amend contract 178r-458, all facilities are hereby transferred to the district. The transfer to the district of project facilities shall be without any additional consideration in excess of the existing repayment contract of the district and shall include all related lands or interest in lands acquired by the Federal Government for the project, but shall not include any lands or interests in land, or interests in water, purchased by the Federal Government from various landowners in the district, consisting of approximately two thousand eight hundred acres, for the Maxwell Wildlife Refuge and shall not include certain contractual arrangements, namely Contract Number 14-06-500-1713 between the Bureau of Reclamation and the Bureau of Sport Fisheries and Wildlife, and concurred in by the district, dated December 5, 1969, and the lease agreement between the district and the Secretary dated January 17, 1992, and expiring January 17, 1995, for 468.38 acres under the district's Lakes 12 and 14, which contractual arrangements shall be maintained consistent with the terms thereof. The Secretary, acting through the United States Fish and Wildlife Service, shall retain the right to manage Lake 13 for the conservation, maintenance, and development of the area as a component of the Maxwell National Wildlife Refuge in accordance with Contract Number 14-06-500-1713 and in a manner that does not interfere with operation of the Lake 13 dam and reservoir for the primary purposes of the Vermejo Reclamation Project. Any amended contract which provides for deferral of the district's repayment obligation shall provide that the obligation shall continue in effect until repaid or for the useful life of the existing facilities, and the Secretary shall provide for a flexible plan of repayment of the remaining obligation of the district according to the district's ability to repay as determined by the Secretary. Determinations of ability to repay shall include water deliveries achieved in a given year, as well as such other factors as the Secretary considers to be pertinent. (94 Stat. 3226, 106 Stat. 4662).

EXPLANATORY NOTES

1992 Amendment. Title XIV of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4662) amended section 401 by striking the text that previously read: "Transfer of project facilities to the district shall be without any additional consideration in excess of the existing repayment obligation of the district, and shall include any related lands or interest in lands acquired by the Federal Government for the project, except that any lands or interests in land, or interests in water, or other contractual arrangements which may be held by the Secretary for management of the Maxwell National Wildlife Refuge, for wildlife enhancement purposes, shall not be transferred and shall be maintained consistently with existing arrangements." and inserting in lieu thereof "Effective as of the date of the written consent . . . primary purposes of the Vermejo Reclamation Project." as it appears above.

Title XIV of the 1992 Act appears in Volume V at page 3873.

Reference in the Text. The Disaster Relief Act of 1974, Act of May 22, 1974, Public Law 93-288 (88 Stat. 143) appears in Volume IV at page 2843.

SOUTH DAKOTA PROJECTS; PICK-SLOAN PUMPING POWER

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Sec. 3. [Feasibility studies-Report to Congress required.]- The Secretary is authorized, in cooperation with the State of South Dakota and all Indian tribes residing on reservations within the State of South Dakota, to conduct a feasibility investigation of the alternate uses of facilities constructed for use in conjunction with the Oahe Unit, initial stage, James Division, Pick-Sloan Missouri Basin Program, South Dakota, and to report to the Congress the findings of such study along with his recommendations. (96 Stat. 1181, 102 Stat. 2572)

EXPLANATORY NOTES

1994 Amendment. Section 815 of the Act of October 31, 1994 (Public Law 103-434, 108 Stat. 4526) amended section 3 of Public Law 97-273 (96 Stat. 1181), as amended by section 12(b) of Public Law 100-516 (102 Stat. 2572), by striking "Dakota," and inserting "Dakota and all Indian tribes residing on reservations within the State of South Dakota,". Section 815 of the 1994 Act appears in Volume V at page 4034.

1988 Amendment. Subsection 12(b) of the Act of October 24, 1988 (Public Law 100-516, 102 Stat. 2566, as amended) deleted section 3 of the Act of September 30, 1982 (Public Law 97-273, 96 Stat. 1181) and substituted in lieu thereof the language above. Section 12(b) of the 1988 Act, as amended, appears in Volume V at page 3607. The 1982 Act in its original form appears on page 3327 in Volume IV.

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Sec. 5. [Secretary authorized to make available Pick-Sloan Missouri basin program pumping power.]- The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri basin program pumping power to the Crow Creek, Cheyenne River, Omaha Lower Brule, including the Clark Ranch irrigation development, and Standing Rock Indian Reservation irrigation developments. Such pumping power shall also be made available to such additional irrigation projects as may be subsequently authorized to receive such power by Act of Congress. (96 Stat. 1182, 102 Stat. 2435)

EXPLANATORY NOTE

1988 Amendment. Section 102 of the Act of October 14, 1988 (Public Law 100-490, 102 Stat. 2435) amended section 5 by inserting: (1) after "Omaha" the phrase "Lower Brule, including the Clark Ranch irrigation development," and (2) a period after the phrase "irrigation developments" and deleting the remainder of the sentence. Prior to amendment, the sentence read as follows: "The Secretary of the Interior, in cooperation with the Department of Energy, is authorized to make available the Pick-Sloan Missouri basin program pumping power to the Crow Creek, Cheyenne River, Omaha and Standing Rock Indian Reservation irrigation developments, and the Grass Rope Unit, Pick-Sloan Missouri basin program." Section 102 of the 1988 Act appears in Volume V at page 3577.

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BUFFALO BILL DAM AND RESERVOIR MODIFICATIONS RECLAMATION REFORM ACT OF 1982 SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982

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TITLE I

Sec. 101. [Buffalo Bill Dam and Reservoir modifications, Shoshone Project, Wyoming–Authorized as part of Pick-Sloan Missouri Basin program–Powerplant not to affect releases to satisfy existing water rights or contracts.]– The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is hereby authorized to construct, operate, and maintain modifications to the Buffalo Bill Dam and Reservoir, Shoshone project, Pick-Sloan Missouri Basin program, Wyoming, for the purposes of providing approximately seventy-four thousand acre-feet of additional water annually for irrigation, municipal and industrial use, increased hydroelectric power generation, outdoor recreation, fish and wildlife conservation and development, environmental quality, and other purposes. The principal modifications to the Buffalo Bill Dam and Reservoir shall include raising the height of the existing Buffalo Bill Dam by twenty-five feet, enlarging the capacity of the existing Buffalo Bill Reservoir by approximately two hundred and seventy-one thousand acre-feet, constructing power generating facilities with a total installed capacity of 25.5 megawatts, enlarging a spillway, construction of a visitor's center, dikes and impoundments, and necessary facilities to effect the aforesaid purposes of the modifications. These modifications are hereby authorized as part of the Pick-Sloan Missouri Basin program: *Provided*, That the powerplant authorized by this section shall be designed, constructed, and operated in such a manner as to not limit, restrict, or alter the release of water from any existing reservoir, impoundment, or canal adverse to the satisfaction of valid existing water rights or water delivery to the holder of any valid water service contract. (96 Stat. 1261, 106 Stat. 4605)

EXPLANATORY NOTE

1992 Amendment. Section 101(a) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600) amended section 101 of this Act as follows: (a) In the second sentence of section 101, by striking "replacing the existing Shoshone Powerplant," and inserting

"constructing power generating facilities with a total installed capacity of 25.5 megawatts,".

Section 101(a) of the 1992 Act appears in Volume V at page 3812.

Sec. 102. [Recreational facilities, conservation, and fish and wildlife.]- The conservation and development of the fish and wildlife resources and the enhancement of recreation opportunities in connection with the modification of Buffalo Bill Dam and Reservoir shall be in accordance with the Federal Water Project Recreation Act (79 Stat. 213), as amended. The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act. (96 Stat. 1261, 106 Stat. 4605)

EXPLANATORY NOTES

1992 Amendment. Section 101(b) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600) amended section 102 of this Act as follows: (b) In section 102, amend the heading to read "recreational facilities, conservation, and fish and wildlife", and add at the end "The construction of recreational facilities in excess of the amount required to replace or relocate existing facilities is authorized, and the costs of such construction shall be borne equally by the United States and the State of Wyoming pursuant to the Federal Water Project Recreation Act.". Section 101(b) of the 1992 Act appears in Volume V at page 3812.

Reference in the Text. The Federal Water Project Recreation Act (Act of July 9, 1965, Public law 89-72), referred to in the text, appears in Volume III at page 1820. Amendments and annotations appear in Volume IV at page 2838 and in Supplement I at S389-S395.

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Sec. 103. [Modifications shall be integrated physically and financially with other Pick-Sloan Missouri Basin program works- Repayment contracts prerequisite to construction of M&I facilities- Environmental quality costs nonreimbursable.]- The modifications of the Buffalo Bill Dam and Reservoir shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Revenues for the return of costs allocated to power shall be determined by power rate and repayment analysis of the Pick-Sloan Missouri Basin program. Repayment contracts for the return of costs allocated to municipal and industrial water and irrigation water supplies exclusive of State participation pursuant to section 107 shall be negotiated under provisions of the Reclamation Project Act of 1939 (53 Stat. 1198) or the Water Supply Act of 1958

(72 Stat. 320), as amended, and shall be prerequisite to the initiation of construction of facilities for this purpose. Costs allocated to environmental quality shall be nonreimbursable and nonreturnable under Federal reclamation law. (96 Stat. 1261)

EXPLANATORY NOTE

References in the Text. The Flood Control Act of 1944 (Act of December 22, 1944), the Reclamation Project Act of 1939 (Act of August 4, 1939), and the Water Supply Act of 1958 (Act of July 3, 1958), referred to in the text, appear in Volume II (page 796), Volume I (page 634), and Volume II (page 1426), respectively. Amendments and annotations of the Reclamation Projects Act of 1939 appear in Supplement I at page S124. Amendments and annotations of the Flood Control Act appear at pages S147-160 and 5861. Amendments and annotations of the Water Supply Act appear at pages S284 and S884.

* * * * *

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Sec. 106. [Authorization for appropriations.]- (a) There is hereby authorized to be appropriated beginning October 1, 1982, for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels) plus or minus such amounts, if any, as may be required by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein and, in addition thereto, such sums as may be required for operation, maintenance, and replacement of the works of said modifications.

(b) There is also authorized to be appropriated beginning October 1, 1982, such sums as may be required by the Secretary of Energy to accomplish interconnection of the powerplant authorized by this title, together with such sums as may be required for operation and maintenance of the works authorized by section 104(a). (96 Stat. 1261, 106 Stat. 4605)

EXPLANATORY NOTE

1992 Amendment. Section 101(c) of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600) amended section 106(a) of this Act as follows: (c) In section 106(a), strike "for construction of the Buffalo Bill Dam and Reservoir modifications the sum of $106,700,000 (October 1982 price levels)" and insert "for the Federal share of the construction of the Buffalo Bill Dam and Reservoir modifications and recreational facilities the sum of $80,000,000 (October 1988 price levels)", and strike "modifications" and all that follows and insert "modifications." in lieu thereof. The language struck read as follows: ". . . modifications: *Provided,* That, such sums

authorized to be appropriated for construction, operation, maintenance, and replacement shall be reduced by the amounts contributed to the project under the provisions of section 107." Section 101(c) of the 1992 Act appears in Volume V at page 3813.

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TITLE II

RECLAMATION REFORM ACT OF 1982

Editor's Note: The Reclamation Reform Act of 1982 was initially published in two volumes, (1) Reclamation Reform Act Compilation, 1982- 1988 and (2)Volume IV at page 3334. It is re-published herein in as amended to date.

Sec. 201. [Amendment and supplement to "Federal reclamation law- Short title."]- This title shall amend and supplement the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. § 371), hereinafter referred to as "Federal reclamation law". This title may be referred to as the "Reclamation Reform Act of 1982". (96 Stat. 1263; 43 U.S.C. § 390aa.)

Sec. 202. [Definitions: "contract"; "district"; "full cost"; "individual"; "irrigation water"; "landholding"; "limited recipient"; "project"; "qualified recipient"; "recordable contract"- Interest rates- Operation, maintenance and replacement costs shall be collected.]- As used in this title:

(1) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal reclamation law.

(2) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water.

(3)(A) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment of this Act on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment of this Act: *Provided*, That operation, maintenance, and replacement charges required under Federal

reclamation law, including this title, shall be collected in addition to the full cost charge.

(B) The interest rate used for expenditures made on or before the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing, marketable issues sold by the Treasury during the fiscal year in which the expenditures by the United States were made, but shall not be less than 7-1/2 per centum per annum.

(C) The interest rate used for expenditures made after the date of enactment of this Act shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of-

(i) the rate as of the beginning of the fiscal year in which expenditures are made on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(ii) the weighted average yield on all interest-bearing, marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(4) The term "individual" means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. § 152).

(5) The term "irrigation water" means water made available for agricultural purposes from the operation of reclamation project facilities pursuant to a contract with the Secretary.

(6) The term "landholding" means total irrigable acreage of one or more tracts of land situated in one or more districts owned or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(7) The term "limited recipient" means any legal entity established under State or Federal law benefitting more than twenty-five natural persons.

(8) The term "project" means any reclamation or irrigation project, including incidental features thereof, authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(9) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits twenty-five natural persons or less.

(10) The term "recordable contract" means a contract between the Secretary and a landowner in writing capable of being recorded under State law providing for the sale or disposition of lands held in excess of the ownership limitations of Federal reclamation law including this title.

(11) The term "Secretary" means the Secretary of the Interior. (96 Stat. 1263; 43 U.S.C. § 390bb.)

EXPLANATORY NOTE

Reference in the Text. The Internal Revenue Code of 1986 (Public Law 99-514; 26 U.S.C. § 152) substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954". The section in the Code referred to in section 202(4) of the text defines the term "dependent" and prescribes rules and tests relating to that definition concerning, among other things, citizenship, adoption, students, children of divorced parents, and multiple support agreements. The Internal Revenue Code does not appear herein.

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Sec. 203. [Applicability to districts which enter into new or amended contracts- Deliveries to districts which do not enter into amended contracts within 4-1/2 years of date of enactment- Irrevocable election by qualified or limited recipients.]- (a) The provisions of this title shall be applicable to any district which-

(1) enters into a contract with the Secretary subsequent to the date of enactment of this Act;

(2) enters into any amendment of its contract with the Secretary subsequent to the date of enactment of this Act which enables the district to receive supplemental or additional benefits; or

(3) which amends its contract for the purpose of conforming to the provisions of this title.

(b) Any district which has an existing contract with the Secretary as of the date of enactment of this Act which does not enter into an amendment of such contract as specified in subsection (a) shall be subject to Federal reclamation law in effect immediately prior to the date of enactment of this Act, as that law is amended or supplemented by sections 209 through 230 of this title. Within a district that does not enter into an amendment of its contract with the Secretary within four and one-half years of the date of enactment of this Act, irrigation water may be delivered to lands leased in excess of a landholding of one hundred and sixty acres only if full cost, as defined in section 202(A) of this title,

is paid for such water as is assignable to those lands leased in excess of such landholding of one hundred and sixty acres: *Provided,* That the interest rate used in computing full cost under this subsection shall be the same as provided in section 205(a)(3).

(c) In the absence of an amendment to a contract, as specified in subsection (a), a qualified recipient or limited recipient may elect to be subject to the provisions of this title by executing an irrevocable election in a form approved by the Secretary to comply with this title. The district shall thereupon deliver irrigation water to and collect from such recipient, for the credit of the United States, the additional charges required by this title and assignable to the recipient making the election.

(d) Amendments to contracts which are not required by the provisions of this title shall not be made without the consent of the non-Federal party. (96 Stat. 1264; 43 U.S.C. § 390cc.)

Sec. 204. [Acreage ownership limitations.]- Except as provided in section 209 of this title, irrigation water may not be delivered to-

(1) a qualified recipient for use in the irrigation of lands owned by such qualified recipient in excess of nine hundred and sixty acres of class I lands or the equivalent thereof; or

(2) a limited recipient for the use in the irrigation of lands owned by such limited recipient in excess of six hundred and forty acres of class I lands or the equivalent thereof;

whether situated in one or more districts. (96 Stat. 1265; 43 U.S.C. § 390dd.)

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Sec. 205. [Full cost pricing- Interest rate- Less than full cost pricing- Deliveries to lands under recordable contract.]- (a) Notwithstanding any other provision of law, any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water at full cost as defined in section 202(3) to:

(1) a landholding in excess of nine hundred and sixty acres of class I lands or the equivalent thereof for a qualified recipient,

(2) a landholding in excess of three hundred and twenty acres of class I land or the equivalent thereof for a limited recipient receiving irrigation water on or before October 1, 1981; and

(3) the entire landholding of a limited recipient not receiving irrigation water on or before October 1, 1981: *Provided,* That the interest rate used in computing full cost under this paragraph shall be determined by the Secretary of the Treasury on the basis of the arithmetic average of-

(A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issuance; and

(B) the weighted average of market yields on all interest-bearing, marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made, or the date of enactment of this Act for expenditures made before such date of enactment.

(b) Any contract with a district entered into by the Secretary as specified in section 203, shall provide for the delivery of irrigation water to lands not in excess of the landholdings described in subsection (a) upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, or, in the case of an amended contract, upon the terms and conditions established by such contract prior to the date of its amendment. However, the portion of any price established under this subsection which relates to operation and maintenance charges shall be established pursuant to section 208 of this title.

(c) Notwithstanding any extension of time of any recordable contract as provided in section 209(e) of this title, lands under recordable contract shall be eligible to receive irrigation water at less than full cost for a period not to exceed ten years from the date such recordable contract was executed by the Secretary in the case of contracts existing prior to the date of enactment of this Act, or five years from the date such recordable contract was executed by the Secretary in the case of contracts entered into subsequent to the date of enactment, or the time specified in section 218 for lands described in that section: *Provided,* That in no case shall the right to receive water at less than full cost under this subsection terminate sooner than eighteen months after the date on which the Secretary again commences the processing or the approval of the disposition of such lands. (96 Stat. 1265; 43 U.S.C. § 390ee.)

Sec. 206. [Certification of compliance; a condition of receipt of water.]– As a condition to the receipt of irrigation water for lands in a district which has a contract as specified in section 203, each landowner and lessee within such district shall furnish the district, in a form prescribed by the Secretary, a certificate that they are in compliance with the provisions of this title including a statement of the number of acres leased, the term of any lease, and a certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require any lessee to submit to him, for his examination, a complete copy of any such lease executed by each of the parties thereto. (96 Stat. 1266; 43 U.S.C. § 390ff.)

Sec. 207. [Equivalency.]– Upon the request of any district, the ownership and pricing limitations imposed by this title shall apply to the irrigable lands classified

within such district by the Secretary as having class I productive potential, as determined by the Secretary, taking into account all factors which significantly affect productivity, including but not limited to topography, soil characteristics, length of growing season, elevation, adequacy of water supply, and crop adaptability. (96 Stat. 1266; 43 U.S.C. § 390gg.)

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Sec. 208. [Recovery of operation and maintenance charges- Amendment of contracts to reflect changes in operation and maintenance costs.]- (a) The price of irrigation water delivered by the Secretary pursuant to a contract or an amendment to a contract with a district, as specified in section 203, shall be at least sufficient to recover all operation and maintenance charges which the district is obligated to pay to the United States.

(b) Whenever a district enters into a contract or requests that its contract be amended as specified in section 203, and each year thereafter, the Secretary shall calculate such operation and maintenance charges and shall modify the price of irrigation water delivered under the contract as necessary to reflect any changes in such costs by amending the district's contract accordingly.

(c) This section shall not apply to districts which operate and maintain project facilities and finance the operation and maintenance thereof from non-Federal funds. (96 Stat. 1267; 43 U.S.C.§ 390hh.)

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Sec. 209. [Deliveries to excess lands- Time periods for disposal of lands under recordable contract- Disposal by the Secretary- Extension of time period for disposal- Eligibility of **excess lands disposed of in compliance with reclamation law to receive irrigation water.]-** (a) Irrigation water made available in the operation of reclamation project facilities may not be delivered for use in the irrigation of lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, unless and until the owners thereof shall have executed a recordable contract with the Secretary, in accordance with the terms and conditions required by Federal reclamation law, requiring the disposal of their interest in such excess lands within a reasonable time to be established by the Secretary. In the case of recordable contracts entered into prior to the date of enactment of this Act, such reasonable time shall not exceed ten years after the recordable contract is executed by the Secretary. In the case of recordable contracts entered into after the date of enactment of this Act, except as provided in section 218, such reasonable time shall not exceed five years after the recordable contract is executed by the Secretary.

(b) Lands held in excess of the ownership limitations imposed by Federal reclamation law, including this title, which, on the date of enactment of this Act, are, or are capable of, receiving delivery of irrigation water made available by the operation of existing reclamation project facilities may receive such deliveries only-

(1) if the disposal of the owner's interest in such lands is required by an existing recordable contract with the Secretary, or

(2) if the owners of such lands have requested that a recordable contract be executed by the Secretary.

(c) Recordable contracts existing on the date of enactment of this Act shall be amended at the request of the landowner to conform with the ownership limitations contained in this title: *Provided*, That the time period for disposal of excess lands specified in the existing recordable contract shall not be extended except as provided in subsection (e).

(d) Any recordable contract covering excess lands sales shall provide that a power of attorney shall vest in the Secretary to sell any excess lands not disposed of by the owners thereof within the period of time specified in the recordable contract. In the exercise of that power, the Secretary shall sell such lands through an impartial selection process only to qualified purchasers according to such reasonable rules and regulations as the Secretary may establish: *Provided*, That the Secretary shall recover for the owner the fair market value of the land unrelated to irrigation water deliveries plus the fair market value of improvements thereon.

(e) In the event that the owner of any lands in excess of the ownership limitations of Federal reclamation law has heretofore entered into a recordable contract with the Secretary for the disposition of such excess lands and has been prevented from disposing of them because the Secretary may have withheld the processing or approval of the disposition of the lands (whether he may have been compelled to do so by court order or for other reasons), the period of time for the disposal of such lands by the owner thereof pursuant to the contract shall be extended from the date on which the Secretary again commences the processing or the approval of the disposition of such lands for a period which shall be equal to the remaining period of time under the recordable contract for the disposal thereof by the owner at the time the decision of the Secretary to withhold the processing or approval of such disposition first became effective.

(f) Excess lands which have been or may be disposed of in compliance with Federal reclamation law, including this title, shall not be considered eligible to receive irrigation water unless-

(1) they are held by nonexcess owners; and

(2) in the case of disposals made after the date of enactment of this Act, their title is burdened by a covenant prohibiting their sale, for a period of ten years

after their original disposal to comply with Federal reclamation law, including this title, for values exceeding the sum of the value of newly added improvements and the value of the land as increased by market appreciation unrelated to the delivery of irrigation water. Upon expiration of the terms of such covenant, the title to such lands shall be freed of the burden of any limitations on subsequent sale values which might otherwise be imposed by the operation of section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. § 423e). (96 Stat. 1267; 43 U.S.C. § 390ii.)

EXPLANATORY NOTE

Reference in the Text. The Act of May 25, 1926, referred to in subsection (f) of the text, is the Omnibus Adjustment Act of 1926 (44 Stat. 636). Section 46 thereof (43 U.S.C. § 423e) requires repayment contracts with irrigation districts to provide that privately owned excess lands shall be appraised in a manner prescribed by the Secretary on the basis of its actual bona fide value without reference to construction of the irrigation works, that no such excess lands shall receive water unless the owners execute recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, and that until one half the construction charges against said lands have been paid, no sale of such lands shall carry the right to receive water unless the purchase price involved is approved by the Secretary. Section 46 of the 1926 Act appears in Volume I at page 376.

Page 3340

Sec. 210. [Water conservation.]- (a) The Secretary shall, pursuant to his authorities under otherwise existing Federal reclamation law, encourage the full consideration and incorporation of prudent and responsible water conservation measures in the operations of non-Federal recipients of irrigation water from Federal reclamation projects, where such measures are shown to be economically feasible for such non-Federal recipients.

(b) Each district that has entered into a repayment contract or water service contract pursuant to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. § 390b), shall develop a water conservation plan which shall contain definite goals, appropriate water conservation measures, and a time schedule for meeting the water conservation objectives.

(c) The Secretary is authorized and directed to enter into memorandums of agreement with those Federal agencies having capability to assist in implementing water conservation measures to assure coordination of ongoing programs. Such memorandums should provide for involvement of non-Federal entities such as States, Indian tribes, and water user organizations to assure full

public participation in water conservation efforts. (96 Stat. 1268; 43 U.S.C. § 390jj.)

EXPLANATORY NOTE

Reference in the Text. The Water Supply Act of 1958 (Act of July 3, 1958, 43 U.S.C. § 390b), referred to in subsection (b) of the text, appears in Volume II at page 1426. Amendments and annotations of the Water Supply Act appear at pages S284 and S884.

Sec. 211. [Residency not required.]- Notwithstanding any other provision of law, irrigation water made available from the operation of reclamation project facilities shall not be withheld from delivery to any project lands for the reason that the owners, lessees, or operators do not live on or near them. (96 Stat. 1269; 43 U.S.C. § 390kk.)

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Sec. 212. [Applicability to projects constructed by the Corps of Engineers- Contract obligations to repay costs allocated to conservation or irrigation storage shall remain in effect.]- (a) Notwithstanding any other provision of law, neither the ownership or pricing limitation provisions nor the other provisions of Federal reclamation law, including this title, shall be applicable to lands receiving benefits from Federal water resources projects constructed by the United States Army Corps of Engineers, unless-

(1) the project has, by Federal statute, explicitly been designated, made part of, or integrated with a Federal reclamation project; or

(2) the Secretary, pursuant to his authority under Federal reclamation law, has provided project works for the control or conveyance of an agricultural water supply for the lands involved.

(b) Notwithstanding any other provision of this section to the contrary, obligations that require water users, pursuant to contracts with the Secretary, to repay the share of construction costs and to pay the share of the operation and maintenance and contract administrative costs of a Corps of Engineers project which are allocated to conservation storage or irrigation storage shall remain in effect. (96 Stat. 1269; 43 U.S.C. § 390*ll*.)

Sec. 213. [Ownership and full cost pricing limitations shall not apply after obligation to repay construction costs has been discharged- Certificate acknowledging freedom from limitations- Lump sum or accelerated repayment.]- (a) The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district after the obligation of a

district for the repayment of the construction costs of the project facilities used to make project water available for delivery to such lands shall have been discharged by a district (or by a person within the district pursuant to a contract existing on the date of enactment of this Act), by payment of periodic installments throughout a specified contract term, including individual or district accelerated payments where so provided in contracts existing on the date of enactment of this Act.

(b)(1) The Secretary shall provide, upon request of any owner of a landholding for which repayment has occurred, a certificate acknowledging that the landholding is free of the ownership or full cost pricing limitation of Federal reclamation law. Such certificate shall be in a form suitable for entry in the land records of the county in which such landholding is located.

(2) Any certificate issued by the Secretary prior to the date of enactment of this Act acknowledging that the landholding is free of the acreage limitation of Federal reclamation law is hereby ratified.

(c) Nothing in this title shall be construed as authorizing or permitting lump sum or accelerated repayment of construction costs, except in the case of a repayment contract which is in effect upon the date of enactment of this Act and which provides for such lump sum or accelerated repayment by an individual or district. (96 Stat. 1269; 43 U.S.C. § 390mm.)

Page 3342

Sec. 214. [Trusts.]- (a) The ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provision of Federal reclamation law shall not apply to lands in a district which are held by an individual or corporate trustee in a fiduciary capacity for a beneficiary or beneficiaries whose interests in the lands served do not exceed the ownership and pricing limitations imposed by Federal reclamation law, including this title.

(b) Lands placed in a revocable trust shall be attributable to the grantor if-

(1) the trust is revocable at the discretion of the grantor and revocation results in the title to such lands reverting either directly or indirectly to the grantor; or

(2) the trust is revoked or terminated by its terms upon the expiration of a specified period of time and the revocation or termination results in the title to such lands reverting either directly or indirectly to the grantor. (96 Stat. 1270; 101 Stat. 1330-269; 43 U.S.C. § 390nn.)

EXPLANATORY NOTE

1987 Amendments. Section 5302(b) of the Act of December 22, 1987, Public Law 100-203, amended section 214 by inserting "(a)" after "214" and by adding the a new subsection (b) as it appears above. Section 5302(b) of the 1987 Act appears in Volume V at page 3572.

Sec. 215. [Temporary supply of water.]- (a) Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which receive only a temporary, not to exceed one year, supply of water made possible as a result of-

(1) an unusually large water supply not otherwise storable for project purposes; or

(2) infrequent and otherwise unmanaged flood flows of short duration.

(b) The Secretary shall have the authority to waive payments for a supply of water described in subsection (a). (96 Stat. 1270; 43 U.S.C. § 390oo.)

Sec. 216. [Lands acquired by involuntary process of law, conveyance in satisfaction of debt, inheritance or devise.]- Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands when the lands are acquired by involuntary foreclosure, or similar involuntary process of law, by bona fide conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), by inheritance, or by devise: *Provided*, That such lands were eligible to receive irrigation water prior to such transfer of title or the mortgaged lands became ineligible to receive water after the mortgage is recorded but before it is acquired by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of mortgage: *Provided further*, That if, after acquisition, such lands are not qualified under Federal reclamation law, including this title, they shall be furnished temporarily with an irrigation water supply for a period not exceeding five years from the effective date of such an acquisition, delivery of irrigation water thereafter ceasing until the transfer thereof to a landowner qualified under such laws: *Provided further*, That the provisions of section 205 of this title shall be applicable separately to each acquisition under this section if the lands are otherwise subject to the provisions of section 205. (96 Stat. 1270; 43 U.S.C. § 390pp.)

Sec. 217. [Isolated tracts.]- Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which are isolated tracts found by the Secretary to be economically farmable only if they are included in a larger farming operation but which may, as a result of their inclusion in that operation, cause it to exceed such ownership limitations. (96 Stat. 1270; 43 U.S.C. § 390qq.)

Sec. 218. [Central Arizona Project- Eligibility of lands placed under recordable contract.]- Lands receiving irrigation water pursuant to a contract with the Secretary as authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. §1521 et seq.) which are placed under recordable contract shall be eligible to receive irrigation water upon terms and conditions related to pricing established by the Secretary pursuant to Federal reclamation law in effect immediately prior to the date of enactment of this Act, for a period of time not to exceed ten years from the date such lands are capable of being served with irrigation water, as determined by the Secretary. (96 Stat. 1271; 43 U.S.C. § 390rr.)

EXPLANATORY NOTE

Reference in the Text. Title III of the Colorado River Basin Project Act (Act of September 30, 1968), referred to in the text, authorized the Central Arizona Project for the purposes of furnishing irrigation water and municipal water supplies to the water-deficient areas of Arizona and Western New Mexico, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes. Title III of the 1968 Act appears in Volume IV at page 2398.

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Sec. 219. [Religious or charitable organizations.]- An individual religious or charitable entity or organization (including but not limited to a congregation, parish, school, ward, or chapter) which is exempt from taxation under section 501 of the Internal Revenue Code of 1986, as amended, and which owns, operates, or leases any lands within a district shall be treated as an individual under the provisions of this title regardless of such entity or organization's affiliation with a central organization or its subjugation to a hierarchical authority of the same faith and regardless of whether or not the individual entity is the owner of record if-

(1) the agricultural produce and the proceeds of sales of such produce are directly used only for charitable purposes;

(2) said land is operated by said individual religious or charitable entity or organization (or subdivision thereof); and

(3) no part of the net earnings of such religious or charitable entity or organization (or subdivision thereof) shall inure to the benefit of any private shareholder or individual. (96 Stat. 1271; 43 U.S.C. § 390ss.)

EXPLANATORY NOTE

Reference in the Text. The Internal Revenue Code of 1986 (Public Law 99-514; 26 U.S.C. § 152) substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954". The 1986 law does not appear herein.

Sec. 220. [Water temporarily made available- Contract required.]- Irrigation water temporarily made available from reclamation facilities in excess of ordinary quantities not otherwise storable for project purposes or at times when such irrigation water would not have been available without the operations of those facilities, may be used for irrigation, municipal, or industrial purposes only to the extent covered by a contract requiring payment for the use of such irrigation water, executed in accordance with the Reclamation Project Act of 1939, or other applicable provisions of Federal reclamation law. (96 Stat. 1291; 43 U.S.C. § 390tt.)

EXPLANATORY NOTE

Reference in the Text. The Reclamation Project Act of 1939 (Act of August 4, 1939, 53 Stat. 1187; 43 U.S.C. § 485 et seq.), referred to in the text, appears in Volume I at page 634.

Page 3344

Sec. 221. [Suits to adjudicate, confirm, validate, or decree contractual rights- Waiver of sovereign immunity.]- Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated. (96 Stat. 1271; 43 U.S.C. § 390uu.)

Sec. 222. (a) [Production of surplus crops- Secretary of Agriculture shall transmit report to Congress- Existing restrictions prohibiting delivery of water.]- Within one year of the date of enactment of this Act, the Secretary of Agriculture, with the cooperation of the Secretary of the Interior, shall transmit to the Congress a report on the production of surplus crops on acreage served by irrigation water. The report shall include-

(1) data delineating the production of surplus crops on lands served by irrigation water.

(2) the percentage of participation of farms served by irrigation water in set-aside programs, by acreage, crop, and State;

(3) the feasibility and appropriateness of requiring the participation in acreage set-aside programs of farms served by irrigation water and the costs of such a requirement; and

(4) any recommendations concerning how to coordinate national reclamation policy with agriculture policy to help alleviate recurring problems of surplus crops and low commodity prices.

(b) In addition, notwithstanding any other provision of law, in the case of any Federal reclamation project authorized before the date of enactment of this Act, any restriction prohibiting the delivery of irrigation water for the production of excess basic agricultural commodities shall extend for a period no longer than ten years after the date of the initial authorization of such project. (96 Stat. 1272; 43 U.S.C. § 390vv.)

Pages 3345, 1336-1338, S273

Sec. 223. [Amendment to Small Reclamation Projects Act.]- Section 5(c)(2) of the Act of August 6, 1956 (43 U.S.C. § 422e), is amended by striking out "by any one owner in excess of one hundred and sixty irrigable acres;" and inserting in lieu thereof "by a qualified recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of nine hundred and sixty irrigable acres, or by a limited recipient, as such term is defined in section 202 of the Reclamation Reform Act of 1982, in excess of three hundred and twenty irrigable acres;". (96 Stat. 1272)

EXPLANATORY NOTE

Reference in the Text; Editor's Note, Annotations. The Act of August 6, 1956 (70 Stat. 1044), referred to above and amended by section 223 of the text, is the Small Reclamation Projects Act of 1956. Section 5(c)(2) of the 1956 Act appears in Volume II at page 1336. Annotations of opinions concerning the Small Reclamation Projects Act are found in Volume II at page 1332, 1336 and 1338 and in Supplement I at page S268. Amendments pursuant to the Act of October 27, 1986 (Public Law 99-546, 100 Stat. 3050) to the 1956 Act appears in Supplement II at page S875.

Sec. 224. [Existing law and statutory exemptions preserved- Regulations and data collection- Removal of 25-year limitation on receipt of water by lessees of State-owned lands not subject to recordable contract- Nonexcess land involuntarily acquired into excess

status- Repeal of cost limitation requirements for new projects for Indian lands.]- (a) The provisions of Federal reclamation law shall remain in full force and effect, except to the extent such law is amended by, or is inconsistent with, this title.

(b) Nothing in this title shall repeal or amend any existing statutory exemptions from the ownership or pricing limitations of Federal reclamation law.

(c) The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

(d) Section 3 of the Act of July 7, 1970 (43 U.S.C. § 425b) is amended by striking the phrase "for a period not to exceed twenty-five years" following the term "project water".

(e) Any nonexcess land which is acquired into excess status pursuant to involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, may be sold at its fair market value without regard to any other provision of this title or to section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. § 423e): *Provided,* That if the status of mortgaged land changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law, by bona fide conveyance in satisfaction of the mortgage, such land may be sold at its fair market value.

(f) The first proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 269, 270), as amended by the Act of August 7, 1946 (60 Stat. 866, 867), is hereby repealed.

(g) In addition to any other audit or compliance activities which may otherwise be undertaken, the Secretary of the Interior, or his designee, shall conduct a thorough audit of the compliance with the reclamation law of the United States, specifically including this title, by legal entities and individuals subject to such law. At a minimum, the Secretary shall complete audits of those legal entities and individuals whose landholdings or operations exceed 960 acres within 3 years.

(h) The provisions of section 205(c) of this title are and have been applicable to all recordable contracts executed prior to October 12, 1982, and any decision, rule, or regulation promulgated by the Department of the Interior to the contrary is hereby revoked: *Provided,* That notwithstanding the provisions of subsection (i) of this section, the Secretary shall not seek reimbursement for any amounts due under this subsection or section 205(c) of this title which was due prior to December 22, 1987.

(i) When the Secretary finds that any individual or legal entity subject to reclamation law, including this title, has not paid the required amount for irrigation water delivered to a landholding pursuant to reclamation law, including this title, he shall collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing marketable issues sold by the Treasury during the period of underpayment. (96 Stat. 1272; 101 Stat. 1330-268; 108 Stat. 4594; 109 Stat. 721; 43 U.S.C. § 390ww.)

EXPLANATORY NOTES

1995 Amendment. Section1081(d) of the Act of December 21, 1995 (Public Law 104-66, 109 Stat. 707) amended subsection 224(g) by striking the last two sentences that read as follows, "The Secretary shall submit an annual written report to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources. Such report shall summarize the legal entities and individuals audited, the results of such audits, and the actions taken by the Secretary to correct any instances of noncompliance with the reclamation law." Section 1081(d) of the 1995 Act appears in Volume V at page 4071.

1996 Amendment. Subsection 16(a)(3) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4581) amended subsection 224(g) by striking, "Interior and Insular Affairs" each place it appears and substituting "Natural Resources". Section 16 of the 1994 Act appears in Volume V at page 4061.

1987 Amendment. Section 5302 (a) of the Act of December 22, 1987 (Public Law 100-203, 101 Stat. 1330) amended section 224 by adding new subsections (g), (h), and (i). Section 5302 of the 1987 Act appears in Volume V at page 3571.

Reference in the Text. The Act of July 7, 1970 (84 Stat. 411), referred to in subsection (d) of the text, provides for differentiation between private and public ownership of lands in the administration of the acreage limitation provisions of Reclamation law. The 1970 Act appears in Volume IV at page 2528.

Reference in the Text. The Act of May 25, 1926, referred to in subsection (e) of the text, is the Omnibus Adjustment Act of 1926 (44 Stat. 636). Section 46 thereof (43 U.S.C. § 423e) requires repayment contracts with irrigation districts to provide that privately owned excess lands shall be appraised in a manner prescribed by the Secretary on the basis of its actual bona fide value without reference to construction of the irrigation works, that no such excess lands shall receive water unless the owners execute recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed by the Secretary, and that until one-half the construction charges against said lands have been paid, no sale of such lands shall carry the right to receive water unless the purchase price involved is approved by the Secretary. Section 46 of the 1926 Act appears in Volume I at page 376.

Reference in the Text. The Act of April 4, 1910 (36 Stat. 269), referred to in subsection (f) of the text, appropriated funds for the Bureau of Indian Affairs for the fiscal year ending June 30, 1911. The first proviso of the third paragraph of section 1 of that Act was repealed by section 224(f). Prior to repeal of the first proviso, the third paragraph of section 1 read as follows:

> "For the construction, repair and maintenance of ditches, reservoirs, and dams, purchase and use of irrigation tools and appliances, water rights, lands necessary for canals, pipe lines and reservoirs for Indian reservations and allotments, and for drainage and protection of irrigable lands from damage by floods, two hundred and forty-

nine thousand one hundred dollars, of which twenty-five thousand dollars shall be immediately available, and the balance of the appropriation shall remain available until expended: *Provided,* That no part of this appropriation shall be expended on any irrigation system or reclamation project for which specific appropriation is made in this Act or for which public funds are or may be available under any other Act of Congress, and hereafter no new irrigation project on any Indian reservation, allotments or lands, shall be undertaken until it shall have been estimated for and a maximum limit of cost ascertained from surveys, plans, and reports submitted by the chief irrigation engineer in the Indian service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and such limit of cost shall in no case be exceeded without express authorization of Congress, and hereafter no new project to cost in the aggregate to exceed thirty-five thousand dollars shall be undertaken on any Indian reservation or allotment without specific authority of Congress; and the Secretary of the Interior shall transmit to Congress on the first Monday in December, nineteen hundred and ten, a statement, by systems or projects, showing the original estimated cost, the present estimated cost, and the total amount of all moneys, from whatever source derived, expended thereon for construction, extension, repair, or maintenance, of each irrigation system or reclamation project on Indian reservations, allotments or lands to and including June thirtieth, nineteen hundred and ten; and annually thereafter the Secretary of the Interior shall transmit to Congress a cost account of all moneys, from whatever source derived, expended on each such irrigation project for the preceding fiscal year . . . ."

The last clause of the proviso, requiring the Secretary to transmit an annual cost account to Congress for each irrigation project, had previously been repealed by Item 8 of the Act of August 7, 1946 (60 Stat. 866) also referred to in subsection (f) of the text. The third paragraph of section 1 of the Act of April 4, 1910, and Item 8 of the Act of August 7, 1946 do not appear herein.

Pages 3347, 655-656, S135

Sec. 225. [Validation of contract provisions concerning project or nonproject water and facilities.]- The provisions of any contract entered into prior to October 1, 1981, by the Secretary with a district, which define project or nonproject water, or describe the delivery of project water through nonproject facilities or nonproject water through project facilities to lands within the district, are hereby authorized and validated on the part of the United States. (96 Stat. 1273; 43 U.S.C. § 390xx)

Sec. 226. [Proposed contracts or amendments thereto- Public notice and participation.]- Section 9 of the Reclamation Project Act of 1939 (43 U.S.C. § 485h) is amended by adding at the end the following new subsection:

"(f) No less than sixty days before entering into or amending any repayment contract or any contract for the delivery of irrigation water (except any contract for the delivery of surplus or interim irrigation water whose duration is for one year or less) the Secretary shall-

"(1) publish notice of the proposed contract or amendment in newspapers of general circulation in the affected area and shall make reasonable efforts to otherwise notify interested parties which may be affected by such contract or amendment, together with information indicating to whom comments or inquiries concerning the proposed actions can be addressed; and

"(2) provide an opportunity for submission of written data, views and arguments so received.". (96 Stat. 1273; 43 U.S.C. § 485h.)

EXPLANATORY NOTE

Reference in the Text; Editor's Note, Annotations. Section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1193), referred to in and amended by the text, appears in Volume I at page 643. Annotations of opinions concerning the 1939 Act appear in Volume I at pages 644-651 and 654-663 and in Supplement I under "August 4, 1939- Reclamation Project Act of 1939" at page S135.

Sec. 227. [Leased lands- Perennial crops.]- Notwithstanding any other provision of Federal reclamation law, including this title, lands which receive irrigation water may be leased only if the lease instrument is-

(1) written; and

(2) for a term not to exceed ten years, including any exercisable options: *Provided, however*, That leases of lands for the production of perennial crops having an average life of more than ten years may be for periods of time equal to the average life of the perennial crop but in any event not to exceed twenty-five years. (96 Stat. 1273; 43 U.S.C. § 390yy.)

Sec. 228. [Contracting entity shall compile and maintain records and information and provide annual reports to Secretary.]- Any contracting entity subject to the ownership or pricing limitations of Federal reclamation law shall compile and maintain such records and information as the Secretary deems reasonably necessary to implement this title and Federal reclamation law. On a date set by the Secretary following the date of enactment of this Act, and annually thereafter, every such contracting entity shall provide in a form suitable to the Secretary such reports on the above matters as the Secretary may require. (96 Stat. 1274; 43 U.S.C. § 390zz.)

* * * * *

Page 3348

Sec. 229. [Appointment of Commissioner of Reclamation subject to advice and consent of the Senate.]- The Act of May 26, 1926 (44 Stat. 657),

is amended by adding the words "by and with the advice and consent of the Senate" after the word "President". (96 Stat. 1274; 43 U.S.C. § 373a.)

EXPLANATORY NOTE

Reference in the Text. The Act of May 26, 1926 (43 U.S.C. § 373a), referred to in and amended by the text, provides for the appointment of the Commissioner of Reclamation by the President. The 1926 Act appears in Volume I at page 390.

Sec. 230. [Severability.]- If any provision of this title or the applicability thereof to any person or circumstances is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby. (96 Stat. 1274; 43 U.S.C. § 390zz-1)

TITLE III

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982

* * * * *

Page 3359

Sec. 311. [Statute of limitations.]- The provisions of section 2415 of title 28, United States Code, shall apply to any action relating to water rights of the Papago Indian Tribe or of any member of such Tribe which is brought-

(1) by the United States for, or on behalf of, such Tribe or member of such Tribe, or

(2) by such Tribe. (96 Stat. 1283, 98 Stat. 2703)

EXPLANATORY NOTES

1984 Amendment. Section 10 of the Act of October 19, 1984, Public Law 98-530, 98 Stat.2698) amended Section 311 to read as it appears above and provided that the amendment shall not apply with respect to any action filed prior to the date of enactment of 1984 Act. Section 10 of the 1984 Act appears in Volume V at page 3438.

Reference in the Text. Section 2415 of title 28 of the U.S. Code, referred to in the text, establishes statutes of limitations governing the commencement of various types of legal actions brought by the United States, including actions brought for or on behalf of individual Indians or Indian tribes. This provision does not appear herein.

* * * * *

Sec. 313. [Cooperative Fund- Establishment- Purposes- Composition of Fund- Authorization of appropriations to Fund- Only interest may be expended- Secretary of the Treasury shall be trustee- Termination- Payments for damages shall not exceed amounts available for expenditure.]- (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including-

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of-

(A) amounts appropriated to the Fund under paragraph (2) of this subsection;

(B) $5,250,000 to be contributed as follows:

(i) $2,750,000 which has been contributed by the State of Arizona;

(ii) $1,500,000 which has been contributed by the City of Tucson; and

(iii) $1,000,000 which has been contributed jointly by the Anamax Mining Company, the Cyprus-Pine [sic] Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c), including all interest which has accrued to the Fund since the Fund was established and all interest which accrued on contributions and appropriations to the Fund from October 12, 1985, to the date of the enactment of the Southern Arizona Water Rights Settlement Technical Amendments Act of 1992.

(2) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) $5,250,000; and

(B) Such sums up to $16,000,000 (adjusted as provided in [former] paragraph (2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of-

(A) 10 years and months after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(e) If, before the date three years after the date of the enactment of this title-

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed, the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.

(g)(1) Notwithstanding the provisions of subsection (e), if no funds contributed to the Cooperative Fund pursuant to subsection(b)(1)(B) (or accrued interest thereon) have been returned to any of the contributors, the Cooperative Fund shall not be terminated; except that, if the final judgment in the lawsuit referred to in section 307(a)(1)(C) does not dismiss all claims against the defendants named therein, the Cooperative Fund shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of the remaining accrued interest) to the respective contributors.

(2)(A) If the share contributed to the Cooperative Fund by the United States has been deposited in the General Fund of the Treasury pursuant to subsection (e), there is authorized to be appropriated to the Cooperative Fund the amount so deposited in the General Fund of the Treasury, adjusted to include an amount representing the additional interest which would have been earned by the Cooperative Fund if that portion had not been deposited in the General Fund of the Treasury.

(B) If the final judgment in the lawsuit referred to in section 307(a)(1)(C) does not dismiss all claims against the defendants named therein, the share of the Cooperative Fund contributed by the United States shall be deposited in the General Fund of the Treasury. (96 Stat. 1284, 106 Stat.3256)

EXPLANATORY NOTES

1992 Amendments. Section 8 of the Act of October 24, 1992 (Public Law 102-497, 106 Stat. 3255) amended The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1284) as follows:

(1) in section 313(b)(1)(A), delete "paragraph (3)" and insert in lieu thereof "paragraph (2)";

(2) in clauses (i), (ii) and (iii) of section 313(b)(1)(B), delete "(adjusted as provided in paragraph (2))" each place it appears and insert in lieu thereof "which has been";

(3) in section 313(b)(1)(C), immediately before the period at the end thereof, insert a comma and the following: "including all interest which has accrued to the Fund since the Fund was established and all interest which accrued on contributions and appropriations to the Fund from October 12, 1985, to the date of the enactment of the Southern Arizona Water Rights Settlement Technical Amendments Act of 1992";

(4) in subsection (b), delete paragraph (2) and renumber paragraph (3) as paragraph (2);

(5) amend section 313 by adding at the end thereof a new subsection "(g)(1)" as it appears above;

(6) in section 304(e)(2), delete ", as long as such water is used for irrigation of Indian Lands";

(7) in section 306(c), amend by adding at the end thereof a new paragraph "(3)" as it appears above; and

(8) in sections 313(c)(1))(A), 304(c)(1) and 305(d)(1), immediately after "10 years" each place it appears, insert "and months".

The original paragraph (2) read as follows: (2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period. Section 8 of the 1992 Act appears in Volume V at page 3800.

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[1] The citation "F. Reel. L." indicates that the source is a note in Volume I of *Federal Reclamation Laws, Annotated* (U.S. Department of the Interior 1958).

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The citation "F. Recl. L." indicates that the source is a note in Volume I of *Federal Reclamation Law, Annotated (U.9.* Department of the Interior 1958).

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The citation "F. Recl. L." indicates that the source is a note in Volume I *of Federal Reclamation Laws, Annotated (U.S.* Department of the Interior 1958).

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