FEDERAL RECLAMATION AND RELATED LAWS ANNOTATED

VOLUME I OF THREE VOLUMES
THROUGH 1942

UNITED STATES DEPARTMENT OF THE INTERIOR
Rogers C. B. Morton, *Secretary*

OFFICE OF THE SOLICITOR
Mitchell Melich, *Solicitor*

BUREAU OF RECLAMATION
Ellis L. Armstrong, *Commissioner*

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PREFACE

The Federal Reclamation program authorized by the Reclamation Act of 1902 was initially designed to reclaim the desert lands of the western United States by conserving and supplying irrigation water to make them productive.

Over nearly three-quarters of a century, Congress has enlarged the Bureau of Reclamation's mission to include multi-purpose water development to meet the diverse water needs of a maturing economy and an expanding population.

This publication contains a comprehensive legal history of that program evolution. It provides an invaluable reference to what has transpired in the past, as well as a vital foundation for what is yet to come.

ROGERS C. B. MORTON,
Secretary of the Interior.

FOREWORD

These volumes replace the familiar "green books" heretofore published by the Bureau of Reclamation entitled "Federal Reclamation Laws" which consist of Volume I, annotated (laws through 1946), Volume II (laws 1947–1958), and the 1965 supplement. The annotations in Volume I, however, have been relied upon as the basic source for interpretative material prior to 1947.

This publication has been designed as a convenient reference work for administrators, lawyers, and others interested in the Federal reclamation laws and related statutes. Although it deals primarily with matters affecting the program responsibilities of the Bureau of Reclamation, it also includes a broad selection of materials involving other Federal water and power programs.

The basic order of appearance is chronological. Acts of Congress are shown by date of enactment, interstate compacts by the date of the Act giving Congressional consent thereto, and Treaties by the date of signing. The Appendix, however, sets forth certain administrative statutes of general application as they appear in the United States Code. All citations to the United States Code are to the 1964 edition.

All amendments have been incorporated into statutes under the date of original enactment except in a few instances where convenience or popular usage have indicated other treatment. For example, the Act of September 19, 1890, relating to structures on navigable waters, was superseded by the Act of March 3, 1899, and is noted under the latter; although Title I of the Federal Power Act appears under the date of June 10, 1920, the remaining titles are shown under the Act of August 26, 1935; the Fish and Wildlife Coordination Act appears under the date of August 14, 1946, rather than the Act of March 10, 1934; extracts from the Federal Tort Claims Act appear as codified by the Act of June 25, 1948, rather than as originally enacted in 1946; and the Federal Water Pollution Control Act is shown under the date of July 9, 1956, rather than under the original Act of June 30, 1948.

Amending acts are also reproduced for those statutes dealing primarily with activities of the Bureau of Reclamation, but not for secondarily related laws. Provisions which are repeated in annual appropriation acts are shown under the date of first appearance.

The Index appears in Volume III.

In order to hold down the size of this work within manageable limits, it has been necessary to exclude a number of categories of statutes (except to the extent included in the Appendix) and interpretative material, such as those dealing

with personnel, contracting authority and the interpretation of individual contracts, budgeting and accounting, appropriations, Congressional investigations, and State law. References to administrative actions and policy determinations, as distinguished from the strictly legal construction of Federal law, have been omitted except in isolated cases. Annotations of decisions and opinions have been included only to the extent deemed relevant to activities of the Bureau of Reclamation.

For access to some of the omitted material the reader is referred to the following sources published by the Bureau of Reclamation: "Reclamation Project Feasibilities and Authorizations" (1957), "Supplement" (1968); "Bureau of Reclamation Appropriations Acts and Allotments" (1960), "Statistical Supplement" (1966); "Reclamation Project Data" (1961), "Supplement" (1966); and "Reclamation Repayments and Payout Schedules" (1965).

In a work of this magnitude errors and omissions are unavoidable. Suggestions for corrections and additions are invited and should be submitted to the Solicitor, Department of the Interior, Washington, D.C. 20240.

Copies of unpublished material that is annotated may be obtained for a nominal charge in most cases by writing the Solicitor at the above address.

The cut-off date for the statutory and interpretative material included in the main text is December 31, 1966; for the Appendix, it is the end of the 90th Congress in 1968. The issuance of regular supplements is planned which, together with the initial three volumes, will provide a complete up-to-date reference work.

RICHARD K. PELZ,
Editor.

Washington, D.C.
July 1971.

Secretaries of the Interior Since 1902

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Solicitors, Department of the Interior, Since 1902 [1]

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John C. Page	1937	Ellis L. Armstrong	1969

[1] Title of the Solicitor prior to 1914 was Assistant Attorney General.

[2] Mr. Fowler H. Harper was Solicitor during the military service of Mr. Warner W. Gardner.

[3] The Reclamation Service was established within the Geological Survey of the Department of the Interior in July, 1902, headed by a Chief Engineer. In March, 1907, the Service was given bureau status under a Director. The name of the Reclamation Service was changed to Bureau of Reclamation on June 20, 1923, and the position of Commissioner of Reclamation was established.

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CONSTITUTION OF THE UNITED STATES

Editor's Note: For the convenience of the reader interested in constitutional law relating to reclamation and other Federal water programs, there are included here key extracts from the Constitution together with brief annotations of judicial decisions dealing with constitutional aspects of the reclamation program and a handful of the leading cases involving conflicts between Federal and State jurisdiction over water resources.

ARTICLE I

Section 1. [Legislative powers.]—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

* * * * *

Section 8. [Powers of Congress—General welfare clause.]—The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Notes of Opinions

1. Reclamation projects

The Boulder Canyon Project Act was passed in exercise of Congressional power to control navigable water for purposes of flood control, navigation, power generation, and other objects, and is equally sustained by power of Congress to promote the general welfare through projects for reclamation, irrigation, and other internal improvements. *Arizona v. California,* 373 U.S. 546, 587 (1963).

There can be no doubt of the federal government's general authority to construct projects for reclamation and other internal improvements under the general welfare clause, article I, section 8, of the Constitution as well as article IV, section 3, relating to the management and disposal of federal property. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 294 (1958).

In conferring power upon Congress to tax "to pay the Debts and provide for the common Defence and general Welfare of the United States," the Constitution delegates a power separate and distinct from those later enumerated, and one not restricted by them; thus Congress has a substantive power to tax and appropriate for the general welfare, limited only by the requirement that it shall be exercised for the common benefit as distinguished from some mere local purpose. It is now clear that this includes the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement. *United States v. Gerlach Live Stock Co.,* 339 U.S. 725, 738 (1950).

* * * * *

[Commerce clause.]—To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Notes of Opinions

Interstate transmission 3
Navigable waters 2
Reclamation projects 1

1. Reclamation projects

The Boulder Canyon Project Act was passed in exercise of Congressional power to control navigable water for purposes of flood control, navigation, power generation, and other objects, and is equally sustained by power of Congress to promote the general welfare through projects for reclamation, irrigation, and other internal improvements. *Arizona* v. *California,* 373 U.S. 546, 587 (1963).

Inasmuch as the grant of authority under the Boulder Canyon Project Act to build the dam and reservoir is valid as the constitutional power of Congress to improve navigation, it is not necessary to decide whether the authority might constitutionally be conferred for other purposes. *Arizona v. California,* 283 U.S. 423, 457 (1931).

2. Navigable waters

Under its broad powers to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, § 3, of the Constitution, the United States has power to reserve water rights for its reservations and its property. *Arizona v. California,* 373 U.S. 546, 597–98 (1963).

It was the intention of Congress in enacting the Federal Power Act to secure comprehensive development of national resources and not merely to prevent obstructions to navigation. The detailed provisions of the Act providing for the Federal plan of regulation leave no room or need for conflicting state controls. Where the Federal Government supersedes the state government, there is no suggestion that the two agencies both shall have final authority. Therefore, since a state permit is not required, there is no justification for the Federal Power Commission, as a condition precedent to considering an application for a license for a water power project on navigable waters, to require that the applicant first obtain a permit for the project under state law. The securing of a state permit is not in any sense a condition precedent or an administrative procedure that must be exhausted before securing a Federal license. *First Iowa Cooperative v. Federal Power Commission,* 328 U.S. 152 (1946).

The title of the riparian owner to the bed of a navigable stream is a qualified one, and subordinate to the public right of navigation and subject to the absolute power of Congress over the improvement of navigable rivers. The judgment of Congress expressed in the Act of March 3, 1909, that a public necessity exists for absolute control of all waters of the St. Marys River is an exercise of legislative power wholly within its control and not subject to judicial review. *United States v. Chandler-Dunbar Water Power Co.,* 229 U.S. 53 (1913).

The jurisdiction of the General Government over interstate commerce and its natural highways vests in that Government the right to take all needed measures to preserve the navigability of the navigable water courses of the country even against any state action. However, until in some way the Congress asserts its superior power and the necessity of preserving the general interests of the people of all the States, it is assumed that state action, although involving temporarily an obstruction to the free navigability of a stream, is not subject to challenge. *United States v. Rio Grande Dam and Irr. Co.,* 174 U.S. 690, 703 (1899).

The Act of September 19, 1890 [See Act of March 3, 1899, herein] prohibiting "the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect of which the United States has jurisdiction," applies to any action taken with respect to nonnavigable streams, including the appropriation of the waters thereof under state law, which substantially interferes with the navigable capacity of one of the navigable waters of the United States, *United States v. Rio Grande Dam and Irr. Co.,* 174 U.S. 690, 707–10 (1899).

3. Interstate transmission

The City of Altus, Oklahoma, obtained a declaratory judgment decreeing that a Texas statute forbidding the extraction of underground water in Texas for exportation outside of the State was unconstitutional. The city had purchased the subsurface water rights in approximately 5,663 acres of privately owned land in northern Texas from which it intended to supplement its annual water allotment of 4,800 acre feet from the W. C. Austin project. Relying on *Commonwealth of Pennsylvania v. State of West Virginia,* 262 U.S. 553 (1923) and *West v. Kansas Natural Gas Co.,* 221 U.S. 229 (1911), cases involving interstate transmission of natural gas, the Court held the Texas statute to constitute an unreasonable burden upon and interference with interstate commerce and therefore void as being in violation of the Commerce Clause of the United States Constitution. *City of Altus, Oklahoma v. Carr,* 255 F. Supp. 828 (W. D. Tex. 1966), aff'd per curiam, 385 U.S. 35 (1966).

A State has an obvious public interest in maintaining the rivers that are wholly within it substantially undiminished except by such drafts as may be authorized for a more perfect use; and a statute prohibiting the transportation through pipes or ditches of such waters for use in another State is a valid exercise of the police power of the State to protect such public interest. *Hudson County Water Co. v. McCarter,* 209 U.S. 349 (1908).

* * * * *

[**Exclusive jurisdiction clause.**]—To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And

NOTE OF OPINION

1. Reclamation projects

Neither the Boulder Canyon Project Act nor the Reclamation laws generally authorize the Secretary of the Interior to establish a Federal reservation, in connection with the construction of the dam and powerplant, over which the United States would have exclusive jurisdiction pursuant to a Nevada statute generally ceding jurisdiction over lands acquired by the United States for public buildings. *Six Companies, Inc. v. DeVinney, County Assessor,* 2 F. Supp. 693 (D. Nev. 1933).

[**Necessary and proper clause.**]—To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

* * * * *

Section 10. [**Interstate compacts.**]— * * * No State shall, without the Consent of the Congress, * * * enter into any agreement or compact with another State, * * *

EXPLANATORY NOTES

Reference Source. A valuable reference work on interstate water compacts is *Documents on the Use and Control of the Waters of Interstate and International Streams—Compacts, Treaties, and Adjudications,* U.S. Department of the Interior (Witmer, editor), Government Printing Office (1956).

Editor's Note, Compacts. Interstate compacts affecting rivers in reclamation states, and the Delaware River Basin Compact, are found herein under the date of the act of Congress consenting thereto. Acts consenting to the negotiation of such compacts are not included prior to 1945.

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ARTICLE II

Section 1. [**Executive power.**]—The executive Power shall be vested in a President of the United States of America.

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ARTICLE IV

* * * * *

Section 3. [**Property clause.**]—The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

NOTES OF OPINIONS

Reclamation projects 1
Water rights 2

1. Reclamation projects

There can be no doubt of the federal government's general authority to construct projects for reclamation and other internal improvements under the general welfare clause, article I, section 8, of the Constitution as well as article IV, section 3, relating to the management and disposal of federal property. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 294 (1958).

The authority to impose excess land limitation conditions in repayment contracts comes from the power of the Congress to condition the use of federal funds, works, and projects on compliance with reasonable requirements. Conversely, a State cannot compel use of federal property on terms other than those prescribed or authorized by Congress. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 291, 295 (1958).

The United States has constitutional authority to organize and maintain an irrigation project within a State where it owns arid lands whereby it will associate with itself other owners of like lands for the purpose of reclaiming and improving them, and for that purpose it exercises the right of eminent domain against other land owners to obtain land necessary to carry the proposed project into effect. *Burley v. United States, et al.,* 179 F. 1, 102 C.C.A. 429 (Ida. 1910), affirming 172 F. 615 (1909). See also *Magruder v. Belle Fourche Valley Water Users' Association,* 219 F. 72, 133 C.C.A. 524 (S. Dak. 1914).

The Reclamation Act is within the power of Congress as to lands within the States as well as Territories, under Constitution, article IV, section 3, giving it power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and is not in violation of the Constitution on the ground that it authorizes the expenditure of public money without an appropriation, since it is in itself an appropriation of the proceeds of land sold, nor as delegating legislative authority to the Secretary of the Interior. *United States v. Hanson,* 167 F. 881, 93 C.C.A. 371 (Wash. 1909).

2. Water rights

Under its broad powers to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, § 3, of the Constitution, the United States has power to reserve water rights for its reservations and its property. *Arizona v. California,* 373 U.S. 546, 597–98 (1963).

The Congress has the same power under the Property Clause of the Constitution to grant exclusive regulatory authority to the Federal Power Commission to issue licenses for water power projects on a non-navigable stream on lands in the ownership or control of the United States, as it does under the Commerce Clause with respect to navigable waters. *Federal Power Commission v. Oregon,* 349 U.S. 435, 441–46 (1955).

In a suit for the equitable apportionment of the waters of the interstate non-navigable North Platte River among three States, it is not necessary to pass upon the contention of the United States that it owns all the unappropriated water in the river by virtue of its original ownership of the water as well as the land in the basin, where the rights to the waters required for the reclamation projects on the river have been appropriated under State law pursuant to the directive of section 8 of the Reclamation Act, where the individual landowners have become the appropriators of the water rights appurtenant to their land, and where the decree in the case is limited to natural flow, not storage water, and does not involve a conflict between a Congressionally provided system of regulation for Federal projects and an inconsistent State system. *Nebraska v. Wyoming, et al.,* 325 U.S. 589, 611–16, 629–30 (1945).

Where Indian tribes, under an agreement approved by an act of Congress, ceded to the United States part of a large tract of arid lands in the Territory of Montana, which by an earlier act of Congress had been set aside and reserved for their benefit, and retained a smaller portion for settlement and cultivation, it must be implied that they reserved the right to the use of water necessary for that purpose. And this reservation was not repealed by the subsequent admission of Montana into the Union, for the power of the Government to reserve the waters and exempt them from appropriation under the state laws cannot be denied. *Winters v. United States,* 207 U.S. 564 (1908).

* * * * *

ARTICLE VI

* * * * *

[**Supremacy clause.**]—This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary, notwithstanding.

* * * * *

FIFTH ARTICLE OF AMENDMENT

[**Due process clause—Just compensation clause.**]—No person shall be * * * deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Explanatory Note

Editor's Note, Claims Against the United States for Property Loss. Persons who believe they have suffered a loss of or damage to their property as the result of reclamation activities have three courses of action open to them for compensation. Damage claims based on negligence may be brought under the Federal Tort Claims Act, extracts from which, with selected annotations, appear herein as codified by the Act of June 25, 1948. A provision repeated in the annual appropriations act authorizes departmental officials, on a discretionary basis, to pay damage claims not based on negligence; selected cases are annotated herein under the Sundry Civil Expenses Appropriation Act for 1916, approved March 3, 1915. Thirdly, where the government activity causes a "taking" of property, there is a right to just compensation under the Fifth Amendment. Selected recent cases involving reclamation projects are annotated below, together with three of the leading cases dealing generally with the claimed taking of water power rights in connection with Federal activities.

Notes of Opinions

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1. Due process—Generally

The Central Valley project is a subsidy, the cost of which will never be paid in full, and it is hardly lack of due process for the government to regulate that which it subsidizes. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 295–6 (1958).

2. —Excess lands

The excess acreage limitation does not constitute an unconstitutional discrimination between the non-excess and the excess landowner. The limitation is a reasonable classification to carry out the purpose of the project, which is to benefit people, not land, and it prevents the use of the Federal reclamation service for speculative purposes. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 297 (1958).

The "possible severance" of excess acreage under water supply and distribution system contracts does not constitute an unconstitutional lack of due process, particularly in view of the fact that excess land will benefit from the project through improvement of underground water level, which is not chargeable to the owner of such excess acreage under the contract. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 296–7 (1958).

Provisions of contract between irrigation district and the United States for sale by district of its irrigation system to the United States and purchase of water supply by district from the United States, that any

land owner owning more than 160 acres, as condition precedent to right to receive water for lands in excess of 160 acres, must dispose of excess lands are not invalid on ground that they constituted a taking of property without due process of law. *Application of Frenchman Valley Irrigation District,* 167 Neb. 78, 91 N.W. 2d 415 (1958).

3. —Repayment contracts

A repayment contract is not invalid because of absence of provision that the district will obtain title to the distribution system when its obligation therefor has been totally discharged. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 298–9 (1958).

6. Just compensation—Generally

A claim against the United States under the Tucker Act for compensation for the physical taking of land resulting from construction of a water resources project, is founded upon the Fifth Amendment and does not require, as stated in earlier Supreme Court cases, an implied promise to pay. Therefore, it is not necessary to find that the Government's agents were aware that their acts would result in the taking of property so that their performance of the acts can be regarded as a somewhat tenuous promise to pay. *Cotton Land Co. v. United States,* 75 F. Supp. 232, 109 Ct. Cl. 816 (1948) (flooding attributable to silt deposited in Colorado River after construction of Parker Dam), citing, inter alia, *United States v. Causby,* 328 U.S. 256 (1946) (overflight by Government airplanes), *United States v. Dickinson,* 331 U.S. 745 (1947) (permanent and intermittent flooding and erosion of lands bordering reservoir of Winfield Dam, Kanawha River, West Virginia), and *Jacobs v. United States,* 290 U.S. 13 (1933) (increase in intermittent floods above reservoir of Widow's Bar Dam, Jones Creek, Alabama). Accord: *Richard v. United States,* 282 F. 2d 901, 152 Ct. Cl. 225 (1960) (seepage from Friant Canal).

(**Editor's Note:** The Tucker Act is the Act of March 3, 1887, 24 Stat. 505. It authorized suits to be brought in the Court of Claims against the United States in certain cases, including claims founded upon the Constitution. This includes claims based upon the Fifth Amendment provision that private property shall not be taken for public use without just compensation. 28 U.S.C. § 1346 relates to the jurisdiction of the Federal District Courts in such cases, and 28 U.S.C. § 1491 relates to the jurisdiction of the Court of Claims. These sections appear herein in the Appendix.)

Where the plaintiff's land is flooded by underground waters as the natural consequence of the construction of O'Sullivan Dam, Columbia Basin project, the United States is liable to pay just compensation notwithstanding the care that was taken to prevent such result. *Pashley v. United States,* 156 F. Supp. 737, 140 Ct. Cl. 535 (1957).

7. —Taking, what constitutes

Where the owner's property has not diminished in value as the result of the Government's action in increasing the salinity of the waters flowing on the plaintiff's land, there has been no taking. *Gustine Land & Cattle Co., Inc. v. United States,* 174 Ct. Cl. 556 (1966).

Where on the basis of the record as a whole, the natural consequence of the Government's activities in connection with the Columbia Basin project was the raising of the piezometric surface waters located beneath plaintiff's diatomite deposits to such an extent that the moisture content of the crude was so increased as to make it uneconomical to process into finished products, there had been a taking for which the owner is entitled to just compensation. *Kenite Corp. v. United States,* 157 Ct. Cl. 721 (1962), cert. denied 372 U.S. 912 (1963).

The substantial reduction in the natural flow of the San Joaquin River as the result of the impoundment and diversion of the flow at Friant Dam upstream constitutes a seizure or taking, in whole or in part, of rights which may exist in the continued flow and use of the water; it does not constitute a trespass against such rights. This seizure was authorized by Congress when it authorized the project, and any relief to which claimants of the rights may be entitled by reason of such taking is by suit against the United States under the Tucker Act. *Dugan v. Rank,* 372 U.S. 609 (1963).

Where seepage from the Friant-Kern Canal is found to be the substantial and controlling cause of the rise in the ground water level which inundated the soil in the root and agricultural zone, rendering the land unsuitable for the cultivation and growth of plaintiff's orange grove, the United States has taken a seepage easement under and through the property and must compensate the plaintiff for it. *Richard v. United States,* 282 F. 2d 901, 152 Ct. Cl. 225 (1960), amended on other grounds, 285 F. 2d 129, 152 Ct. Cl. 266 (1961).

Where riparian rights of landowners along branch channel of San Joaquin River were subordinate to water rights of corporation which, with its subsidiary and affiliated companies, owned rights to use very substantial portion of flow of San

Joaquin River, and United States, which, in carrying out Central Valley Project for irrigation purposes, formulated plan whereby waters of San Joaquin River were diverted and waters of Sacramento River were substituted therefor, entered into contract with corporation and its subsidiaries for such substitution, and United States faithfully and fully delivered substitute waters, and landowners suffered no actual damage because of substitution, any impairment of landowners' rights because of substitution was at most a technicality, for which landowners could not recover from United States, since United States could not with impunity take away substitute waters. *Wolfsen v. United States,* 162 F. Supp. 403, 142 Ct. Cl. 383 (1958), cert. denied 358 U.S. 907.

In order to constitute a taking of property within the Fifth Amendment by flooding because of construction of a dam, there must be a direct invasion of plaintiff's property by waters of the government, and the invasion must be permanent so that the lands of the plaintiff are practically destroyed or the invasion must be a recurrent one amounting to an easement; otherwise the damage, if any, is consequential and amounts to a tort only. *North v. United States,* 94 F. Supp. 824 (D. Utah 1950).

Where the United States constructs a drain across a portion of a parcel of land which drains subsurface percolating water from the remainder of such parcel, the United States must compensate the owner for damage to such remainder. *United States v. 31.07 Acres of Land, etc.,* 189 F. Supp. 845, 849–53 (D. Mont. 1960). However, there is no right of recovery where there is no direct physical invasion of the complainant's land, as in the case where the drain is at least a quarter of a mile away from plaintiff's land and from the springs which are the source of the plaintiff's water right. *McGowan v. United States,* 206 F. Supp. 439 (D. Mont. 1962).

8. —Natural consequence

Where, as the natural consequence of the construction of Parker Dam on the Colorado River, silt was deposited where the river collided with the still water, this filling up of the bed of the river raised the level of the water, which in turn overflowed its banks and flooded and isolated portions of adjacent lands, the landowner is entitled to just compensation under the Fifth Amendment. *Cotton Land Co. v. United States,* 75 F. Supp. 232, 109 Ct. Cl. 816 (1948).

9. —Consequential damages

Permanent damage to plaintiff's orchard which is not the direct, natural or probable result of the government's activity in constructing a storage reservoir, but rather the incidental and consequential result of such activity, forms no basis for a recovery under the Fifth Amendment. *Columbia Basin Orchard v. United States,* 132 F. Supp. 707, 140 Ct. Cl. 535 (1957).

In an action to halt work on the enlargement of the Pine View Dam and Reservoir, the Ogden River Water Users' Association contention, that it was in danger of being deprived of its rights and properties without just compensation or any compensation, in violation of the Fifth Amendment, was not supported by facts or allegation that irreparable damages would ensue. Any prospective damages to the Ogden River Water Users' Association appeared to be adequately compensable in damages and in such case an injunction will not lie nor does the Fifth Amendment entitle one to anticipatory compensation. *Ogden River Water Users' Ass'n v. Weber Basin Water Conservancy, et al.,* 238 F. 2d 936 (1956).

10. —Statute of limitations

The statute of limitations began to run on a claim for deprivation of floodwaters and high flows in the San Joaquin River, resulting from construction of Friant Dam, when the situation became sufficiently stabilized so that the consequences of the invasions have so manifested themselves that a final amount may be struck. *Gustine Land and Cattle Co., Inc. v. United States,* 174 Ct. Cl. 556 (1966), citing *United States v. Dickinson,* 331 U.S. 745 (1947).

Where the United States in 1908 appropriated all the water of the Rio Grande River above lands in Hudspeth County Conservation and Reclamation District No. 1, riparian rights of owners of land in Hudspeth District were destroyed in 1908, and their alleged right of action against the United States for the taking of riparian rights was barred by limitations in 1958. *Bean v. United States,* 163 F. Supp. 838, 143 Ct. Cl. 363 (1958), cert. denied 358 U.S. 906.

11. —Water power rights

The United States, by constructing the Fort Gibson dam on the non-navigable Grand River, a tributary of the navigable Arkansas River, is not required to compensate a government agency of the State of Oklahoma for the loss of its franchise under Oklahoma law to construct a hydroelectric power project at the site. *United States v. Grand River Dam Authority,* 363 U.S. 229 (1960).

In a suit brought by the United States for the condemnation of private land adjoining a navigable river above the high

water mark as part of a project for the improvement of the Savannah River basin, the just compensation which the Fifth Amendment requires to be paid does not include the value of the water power in the flow of the stream. *United States v. Twin-City Power Co.,* 350 U.S. 222 (1956).

The owner of fast land on the banks of a navigable river who had, under revocable permit from the United States, constructed facilities in the river for the production of water power, is not entitled to compensation for water power rights when, pursuant to an act of Congress, the permit is revoked and the land and facilities are taken by the United States for navigation improvement. *United States v. Chandler-Dunbar Water Power Co.,* 229 U.S. 53 (1913).

RECOGNITION OF VESTED WATER RIGHTS

Sec. 2339, R. S. [Vested rights to use of water—Right of way for canals—Liability for injury.]—Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

Explanatory Notes

Derivation. The foregoing section 2339 of The Revised Statutes of the United States is taken from section 9 of the Act of July 26, 1866, ch. 262, 14 Stat. 251, 253, entitled "An Act granting the Right-of-Way to Ditch and Canal Owners over the Public Lands, and for other Purposes." It was enacted as substantive law, as part of the first edition of the Revised Statutes, by the Act approved June 22, 1874.

Codification. R.S. § 2339 is codified both in 30 U.S.C. § 51 and in 43 U.S.C. § 661. The latter also includes R.S. § 2340, taken from the Act of July 9, 1870, which appears herein in chronological order.

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

Popular Name. The Act of July 26, 1866, is sometimes referred to as the Mining Act of 1866, and section 9 is sometimes referred to as the Water Rights Act of 1866.

Notes of Opinions

Rights of way 2
Water rights 1

1. Water rights

In reviewing a license issued by the Federal Power Commission for a water power project on a non-navigable stream on reserved lands of the United States, it is not necessary for the court to pass upon the contention of the State of Oregon that the Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877 constitute an express Congressional delegation or conveyance to the State of the power to regulate the use of such waters because those Acts do not apply to reserved lands. *Federal Power Commission v. Oregon,* 349 U.S. 435, 446–48 (1955).

By section 9 of the Act of July 26, 1866, section 1 of the Desert Land Act of 1877, and section 18 of the Act of March 3, 1891, Congress recognized and assented to the appropriation of water under State laws in contravention of the common law rules of riparian rights; but it is not to be inferred that Congress thereby meant to confer on any State the right to appropriate all the waters of the tributary streams which unite into a navigable watercourse, and so destroy the navigability of that watercourse in derogation of the interests of all the people of the United States. *United States v. Rio Grande Dam and Irr. Co.,* 174 U.S. 690, 704–07 (1899).

2. Rights of way

R.S. § 2339 has been superseded by later acts, particularly the Act of March 3, 1891, 26 Stat. 1101–02, and the Act of February 15, 1901, 31 Stat. 790, insofar as it acknowledges and confirms rights of way "for the construction of ditches and canals." Acting Solicitor Cohen Opinion, 58 I.D. 29 (1942).

PATENTS SUBJECT TO VESTED WATER RIGHTS

Sec. 2340, R.S. [Patents, preemption, and homesteads subject to vested and accrued water rights.]—All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section.

EXPLANATORY NOTES

Derivation. The foregoing section 2340 of The Revised Statutes of the United States is taken from section 17 of the Act of July 9, 1870, ch. 235, 16 Stat. 217, 218, entitled "An Act to Amend 'An Act Granting the Right-of-Way to Ditch and Canal Owners over the Public Lands, and for other Purposes.' " It was enacted as substantive law, as part of the first edition of the Revised Statutes, by the Act approved June 22, 1874.

Codification. R.S. § 2340 is codified both in 30 U.S.C. § 52 and in 43 U.S.C. § 661. The latter also includes R.S. § 2339, taken from the Act of July 26, 1866, which appears herein in chronological order.

Editor's Note, Annotations. Annotations of opinions are not included because this statute does not relate primarily to activities of the Bureau of Reclamation.

TREATY WITH GREAT BRITAIN

Treaty for an amicable settlement of all causes of differences between the United States and Great Britain. (Signed at Washington May 8, 1871; ratifications exchanged June 17, 1871; proclaimed July 4, 1871; 17 Stat. 863)

* * * * *

ARTICLE XXVI

[**Navigation of St. Lawrence.**]—The navigation of the river St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the dominion of Canada, not inconsistent with such privilege of free navigation.

[**Navigation of Yukon, Porcupine and Stikine.**]—The navigation of the rivers Yukon, Porcupine, and Stikine, ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of her Britannic Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation. (17 Stat. 872).

EXPLANATORY NOTES

Popular Name. This treaty is sometimes referred to as the Treaty of Washington.

Effective Date. This treaty became effective June 17, 1871.

NOTE OF OPINION

1. Rampart Dam

Any construction of the projected Rampart Dam must give effect to the right of Canada under the 1871 treaty to free access and passage up and down the Yukon River to and from the Bering Sea. The United States may, however, provide such access by the inclusion of navigation facilities in Rampart Dam. Opinion of Associate Solicitor Hogan, July 5, 1963.

DESERT LAND ACT

An act to provide for the sale of desert lands in certain States and Territories. (Act of March 3, 1877, ch. 107, 19 Stat. 377)

[**Sec. 1. Desert land entries and patent—Water rights—Proof of reclamation—320 acres.**]—It shall be lawful for any citizen of the United States, or any person of requisite age "who may be entitled to become a citizen, and who has filed his declaration to become such" and upon payment of twenty five cents per acre—to file a declaration under oath with the register and the receiver of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one-half section, by conducting water upon the same, within the period of three years thereafter, *Provided, however,* that the right to the use of water by the person so conducting the same, on or to any tract of desert land of three hundred and twenty acres shall depend upon bona fide prior appropriation; and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation; and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said one-half section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the register and receiver of the reclamation of said tract of land in the manner aforesaid, and upon the payment to the receiver of the additional sum of one dollar per acre for a tract of land not exceeding three hundred and twenty acres to any one person, a patent for the same shall be issued to him. Except as provided in section 3 of the Act of June 16, 1955 (69 Stat. 138), as amended, no person may make more than one entry under this Act. However, in that entry one or more tracts may be included, and the tracts so entered need not be contiguous. The aggregate acreage of desert land which may be entered by any one person under this section shall not exceed three hundred and twenty acres, and all the tracts entered by one person shall be sufficiently close to each other to be managed satisfactorily as an economic unit, as determined under rules and regulations issued by the Secretary of the Interior. (19 Stat. 377; § 1, Act of August 30, 1890, 26 Stat. 391; § 1, Act of August 14, 1958, 72 Stat. 596; 43 U.S.C. § 321)

Explanatory Notes

1958 Amendment. Section 1 of the Act of August 14, 1958, 72 Stat. 596, inserted the last two sentences as a substitute for the original requirement that the tract of land covered by the entry had to be in compact form. For legislative history of the 1958 Act see S. 359, Public Law 85-641 in the 85th Congress; S. Rept. No. 270; H.R. Rept. No. 2324.

1890 Amendment. The Act of August 30, 1890, 26 Stat. 391, provided generally that no person entering public lands thereafter

shall be permitted to acquire title to more than 320 acres in the aggregate. The original Act allowed entry and patent for 640 acres.

Reference in the Text. Section 3 of the Act of June 16, 1955, referred to in text, permits an additional desert land entry on certain mineral lands up to a total of 320 acres. Prior law had limited desert land entries on such lands to 160 acres.

Sec. 2. [Desert lands defined—Proof.]—All lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of this act, which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated. (19 Stat. 377; 43 U.S.C. § 322)

EXPLANATORY NOTE

Codification. 43 U.S.C. § 322 also includes the reference from section 3 to the administrative determination of what constitutes desert land.

Sec. 3. [States to which applied.]—This Act shall only apply to and take effect in the States of California, Oregon, Nevada, Colorado, Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and North and South Dakota, and the determination of what may be considered desert land shall be subject to the decision and regulation of the Secretary of the Interior or such officer as he may designate. (19 Stat. 377; Act of March 3, 1891, 26 Stat. 1097; § 403, 1946 Reorganization Plan No. 3, 60 Stat. 1100; 43 U.S.C., §§ 322, 323)

EXPLANATORY NOTES

Codification. The reference to States is codified in section 323, title 43, U.S. Code. The reference to administrative determination of what constitutes desert lands is codified in section 322.

States; 1891 Amendment. The State of Colorado was included by the Act of March 3, 1891, 26 Stat. 1097. The Territories referred to in the original act have now become states, and are so listed.

1946 Amendment. "Secretary of the Interior or such officer as he may designate" was substituted by section 403 of 1946 Reorganization Plan No. 3, which also established the Bureau of Land Management.

Additional Provisions Omitted. The original 1877 Act consisted of the three sections set forth above. A number of additional sections and supplementary provisions have been enacted by Congress through the years, but are omitted here. They are codified generally as 43 U.S.C. §§ 324–39.

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.

NOTES OF OPINIONS

Availability of water 2
Reclamation law 1
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1. Reclamation law

Under departmental regulations (May 31, 1910, 38 L.D. 646, para. 78; currently 43 CFR 2226.4–6), a desert land entryman who owns a water right can rely on his own efforts to convey his water to his entry without assistance from a government project, thereby avoiding the requirements of the reclamation law, or he can participate in the project. In the latter case he must observe requirements of the reclamation law, including land limitations. Solicitor Barry Opinion, 71 I.D. 496, 513 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

Where land in a desert-land entry is withdrawn under the Reclamation Act and the entry is subsequently cancelled, the withdrawal becomes effective as to such land upon the cancellation of the entry. *George B. Willoughby,* 60 I.D. 363 (1949).

2. Availability of water

In exercise of the discretionary authority vested in the Secretary under section 7 of the Taylor Grazing Act, as amended, 49 Stat. 1976 (1936), public land in the Imperial Valley, California, may be classified

as not proper for disposition under the Desert Land Act, 19 Stat. 377, as amended, on the grounds that it would be contrary to the public interest at this time to increase the pressure on the inadequate water supply available for use in California from the Colorado River. *Hugh S. Ritter, Thomas M. Bunn,* 72 I.D. 111 (1965). See also *Stephan H. Clarkson,* 72 I.D. 138 (1965).

By a notice of December 2, 1965, the Secretary of the Interior repealed the suspension of a large number of desert land entries in Imperial and Riverside Counties, California, that had been pending for a number of years in anticipation of obtaining irrigation water from the Colorado River. The suspensions had been granted under the decision in *Maggie L. Havens,* A–5580 (October 11, 1923). The Secretary stated in the notice that it would be contrary to the public interest to increase the pressure on the inadequate water supply available for use in California from the Colorado River by permitting additional federally owned lands to be developed under the desert land laws unless clear eligibility exists or unless clear grounds for relief are shown.

In certain circumstances desert land entries in Imperial and Riverside Counties affected by the notice of December 2, 1965, repealing the suspension under *Maggie L. Havens,* A–5580 (October 11, 1923), which have been reclaimed or are in the process of being reclaimed, will be considered in accordance with the principles of equity and justice as authorized by 43 U.S.C. § 1161, even though development was not completed within the statutory life remaining in the entry after March 4, 1952. *Clifton O. Myll,* A–29920 (Supp. II), 72 I.D. 536 (1965), *vacating* 71 I.D. 458 (1964), as supplemented by 71 I.D. 486 (1964).

3. Water rights

In reviewing a license issued by the Federal Power Commission for a water power project on a non-navigable stream on reserved lands of the United States, it is not necessary for the court to pass upon the contention of the State of Oregon that the Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877 constitute an express Congressional delegation or conveyance to the State of the power to regulate the use of such waters because those Acts do not apply to reserved lands. *Federal Power Commission v. Oregon,* 349 U.S. 435, 446–48 (1955).

The Federal Government, as owner of the public domain, had the power to dispose of the land and water composing it together or separately; and by the Desert Land Act of 1877, if not before, Congress had severed the land and waters constituting the public domain and established the rule that for the future the lands should be patented separately. Acquisition of the Government title to a parcel of land was not to carry with it a water-right, but all non-navigable waters were reserved for the use of the public under the laws of the various arid-land states. *Ickes v. Fox,* 300 U.S. 82, 95 (1937).

By section 9 of the Act of July 26, 1866, section 1 of the Desert Land Act of 1877, and section 18 of the Act of March 3, 1891, Congress recognized and assented to the appropriation of water under State laws in contravention of the common law rules of riparian rights; but it is not to be inferred that Congress thereby meant to confer on any State the right to appropriate all the waters of the tributary streams which unite into a navigable watercourse, and so destroy the navigability of that watercourse in derogation of the interests of all the people of the United States. *United States v. Rio Grande Dam and Irr. Co.,* 174 U.S. 690, 704–07 (1899).

IRRIGATION SURVEYS; RESERVOIR SITES

[Extract from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1889, and for other purposes. (Act of October 2, 1888, ch. 1069, 25 Stat. 505)

* * * * *

[Irrigation survey of arid region—Report of expenses—Withdrawal of lands—Opening of lands by proclamation.]—[There is appropriated] For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation, and the segregation of the irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees in field and in office, the cost of all instruments, apparatus, and materials, and all other necessary expenses connected therewith, the work to be performed by the Geological Survey, under the direction of the Secretary of the Interior, the sum of $100,000 or so much thereof as may be necessary. And the Director of the Geological Survey under the supervision of the Secretary of the Interior shall make a report to Congress on the first Monday in December of each year, showing in detail how the said money has been expended, the amount used for actual survey and engineer work in the field in locating sites for reservoirs and an itemized account of the expenditures under this appropriation. And all the lands which may hereafter be designated or selected by such United States surveys [for sites for reservoirs * * * for irrigation purposes * * * shall be segregated and reserved from entry or settlement from the date of location or selection by the United States until further provided by law: *Provided,* That such sites shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs, excluding so far as practicable, lands occupied by actual settlers at the date of the location of said reservoirs.] (25 Stat. 526)

Explanatory Notes

Editor's Note. The bracketed material represents an editorial interpretation of the 1888 law as amended by the Acts of August 30, 1890, and March 3, 1891, which are set forth below.

Original Text. The last sentence of the paragraph as originally enacted reads as follows: "And all the lands which may hereafter be designated or selected by such United States surveys for sites for reservoirs, ditches, or canals for irrigation purposes and all the lands made susceptible of irrigation by such reservoirs, ditches, or canals are from this time henceforth hereby reserved from sale as the property of the United States, and shall not be subject after the passage of this act, to entry, settlement, or occupation until further provided by law: *Provided,* That the President may at any time in his discretion by proclamation open any portion or all of the lands reserved by this provision to settlement under the homestead laws."

1890 Amendment. The Act of August 30, 1890, 26 Stat. 391, provides in part: "* * * so much of [the Act of October 2, 1888] as provides for the withdrawal of the public lands from entry, occupation, and settlement, is hereby repealed, and all entries made or claims initiated in good faith and valid but for said act, shall be recognized and may be perfected in the same manner as if said law had not been enacted except that reservoir sites heretofore located

or selected shall remain segregated and reserved from entry or settlement as provided by said act, until otherwise provided by law, and reservoir sites hereafter located or selected on public lands shall in like manner be reserved from the date of the location or selection thereof."

1891 Supplementary Provision. Section 17 of the Act of March 3, 1891, 26 Stat. 1101, provides in part: "SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of [the Act of October 2, 1888], and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs. * * *"

Codification. An interpretation of the 1888 law, as amended by the 1890 and 1891 Acts, appears as 43 U.S.C. §§ 662, 663.

Legislative History, 1890 Amendment. Congressional debate on the question of repeal of the 1888 provision can be found at 21 Cong. Rec. 7269–7987, 8270–9156 (1890).

1897 Supplementary Provision. The Act of February 26, 1897, 29 Stat. 599, provides: "All reservoir sites reserved or to be reserved shall be open to use and occupation under the right-of-way Act of March third, eighteen hundred and ninety-one. And any State is hereby authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this Act shall always be subject to the control and regulation of the respective States and Territories in which such reservoirs are in whole or part situate." (43 U.S.C. § 664)

1899 Supplementary Provision. The Act of March 3, 1899, 30 Stat. 1214, 1233, provides in part: "That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby." (43 U.S.C. § 665, 43 U.S.C. § 958, and 16 U.S.C. § 525)

Prior Authorization. The surveys for which this act appropriated funds were authorized by the Joint Resolution of March 20, 1888, No. 7, 25 Stat. 618.

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.

NOTES OF OPINIONS

Construction with other laws 2
Effect of 1888 Act 1

1. Effect of 1888 Act

The provision reserving from sale or entry lands designated or selected for reservoirs, ditches, or canals for irrigation purposes, and also lands made susceptible of irrigation by such reservoirs, ditches, or canals, operates as an immediate withdrawal of the lands thus described from entry and settlement. 19 Op. Atty. Gen. 564 (May 24, 1890).

2. Construction with other laws

The provisions of section 18 of the Act of March 3, 1891, 26 Stat. 1101, granting a right-of-way through the public lands and reservations of the United States to canal and ditch companies, do not contemplate the allowance of such rights over lands reserved by the Government for reservoir sites under the Acts of October 2, 1888, and August 30, 1890. *Blue Water Land and Irrigation Co.,* 23 I.D. 275 (1896).

RIGHTS OF WAY RESERVED TO UNITED STATES FOR CANALS AND DITCHES

[Extract from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1891, and for other purposes. (Act of August 30, 1890, ch. 837, 26 Stat. 371)

* * * * *

[Land patents shall reserve right of way for Government canals and ditches.]—* * * In all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States. (26 Stat. 391; 43 U.S.C. § 945)

Explanatory Notes

1964 and 1966 Modifications. The 1890 Act reservation of rights-of-way for canals and ditches was substantially modified insofar as the Department of the Interior is concerned by the Act of September 2, 1964, 78 Stat. 808, which directs the Secretary of the Interior to pay just compensation for private land utilized for canals or ditches in connection with any reclamation project if the construction of the ditches or canals began after January 1, 1961. The Act of October 4, 1966, extended the same remedy to rights-of-way reserved under State statute, and gave district courts jurisdiction in suits for compensation. Both the 1964 and 1966 Acts appear herein in chronological order.

Popular Name. This provision is sometimes referred to as the Canal Act.

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. Debate in Congress as to right-of-way provision of Act of August 30, 1890: 21 Congressional Record, 51st Congress, 1st Sess., pages 7774, 7877, 7930, 8275, 8323, 8329, 9139, 9151, 9152, 9154, 9155. Executive Document No. 136, Senate, 51st Cong., 1st Sess.

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1. Purpose of Act

By a series of acts and resolutions beginning as early as 1888, Congress unmistakably declared a purpose to reclaim arid lands. *United States v. Van Horn,* 197 Fed. 611 (D. Colo. 1912).

This provision must be construed in the light of the known purpose of the Government to reclaim its arid lands by conducting water upon them, and it is not void for indefiniteness because the right of way reserved is not specifically described, but is within the undoubted powers of Congress and valid. *Ibid.*

Under the provisions of the Act of August 30, 1890, it was the evident intention of Congress to reserve perpetually to the Government an easement and right of way through and over any and all lands west of the one hundredth meridian that the Government might grant to settlers and purchasers subsequent to the passage of the act, and to thereby reserve the easement and right of way for the construction, maintenance, and operation of any ditches and canals the Government may construct at any time in the future for the irrigation and reclamation of arid lands. *Green v. Wilhite,* 14 Idaho 238, 93 Pac. 971 (1908).

A contract for sale of land subject to a

canal right-of-way to the United States under the 1890 Act may be rescinded where the purchaser had neither actual nor constructive notice of the reservation, *Cosby v. Danziger,* 38 Cal. App. 204, 175 Pac. 809 (1918), but may not be rescinded where the original patent containing the reservation was placed in record in the county long before the contract was entered into. *Dopps v. Alderman,* 12 Wash. 2d 290, 121 P. 2d 388 (1942).

2. Time of construction of canals and ditches

The Act of August 30, 1890, 26 Stat. 391, in providing that, in all patents issued under the public land laws for lands west of the one hundredth meridian, there should be expressly reserved rights of way "for ditches or canals constructed by the authority of the United States," is to be construed, in the light of the circumstances that prompted it, as including canals and ditches constructed after issuance of patent as well as those constructed before. *Ide v. United States,* 263 U.S. 497 (1924), *affirming United States v. Ide,* 277 Fed. 373 (C.C.A. Wyo. 1921)

The word "constructed," as used in the Act of August 30, 1890, has a general reference and application to ditches or canals constructed by authority of the United States, without reference to the time of such construction. *Green v. Wilhite,* 14 Idaho 238, 93 Pac. 971 (1908)

The word "constructed" as so used does not limit the reservation to a right of way for ditches already constructed, but extends as well to those "to be constructed" by the Government in furtherance of its irrigation scheme for the reclamation of arid lands. *Green v. Wilhite,* 160 Fed. 755 (C.C. Ida. 1906)

3. Purpose of canals and ditches

So long as the Reclamation Service can apply surplus water appropriated for a project to a beneficial use, although on lands outside the project, and thus lessen the cost to lands within the project, it is within the scope of its authority and the service may acquire rights of way under the Act of August 30, 1890, 26 Stat. 391. *Griffiths v. Cole,* 264 Fed. 369 (D. Idaho 1919).

A right-of-way reserved under the Canal Act may be used by the National Park Service for the construction of a pipe line to convey water for domestic purposes. Acting Solicitor Cohen Opinion, 58 I.D. 490 (1943).

4. Drainage ditches and wells

The expression "ditches or canals constructed by the authority of the United States" as used in the right of way Act of August 30, 1890, 26 Stat. 391, includes the necessary waste and drainage ditches upon a Federal reclamation project. Opinion Chief Counsel, June 10, 1918, Grand Valley project. See *Reclamation Record,* July, 1918, p. 328.

The 1890 Act makes sites for drainage wells available. Teletype of Associate Solicitor Fisher to Regional Solicitor, Los Angeles, October 8, 1959, in re Wellton-Mohawk division, Gila project.

Although a right-of-way reserved to the United States under the 1890 Act would not extend to the drilling of a well to develop a new supply of underground water, it would permit the drilling of a well to prevent seepage loss from the canal. Memorandum of Deputy Solicitor Fisher to Regional Solicitor, Los Angeles, May 24, 1961.

5. Lands affected—General

This provision applies only to entries under the public or general land laws. Instructions, 32 L.D. 147 (1903).

All subsequent entrymen take their land subject to the right of the United States to construct ditches and canals over it whenever and wherever required in carrying out any of its reclamation projects. *United States v. Van Horn,* 197 Fed. 611 (D. Colo. 1912).

Under this provision the Government has full authority to construct canals or ditches over any such lands in connection with reclamation projects. Instructions, 36 L.D. 482 (1908).

If the actual disposition occurred after the passage of the act, the land was undoubtedly "taken up" within the meaning of those words as used in the act, and this would be so whether the disposition occurred through allotment, sale, homestead, or other manner of disposition. *Clement Ironshields,* 40 L.D. 28 (1911).

6. —Indian lands

Where, however, in certain reservations set apart for Indian occupancy, particular tracts have been set apart, actually occupied, or improved under some usage or custom, with a view to ultimate allotment to an Indian prior to the passage of the act, the tracts being afterwards allotted, such tracts must be considered as having been "taken up" prior to the passage of the act. *Clement Ironshields,* 40 L.D. 28 (1911).

The Act of June 15, 1880, ch. 223, sec. 3, 21 Stat. 203, providing for allotment in severalty of lands of the Ute Indian Reservation in Colorado, further provides that "all lands not so allotted shall be held and

deemed to be public lands of the United States and subject to disposal under the laws providing for the disposal of the public lands at the same price and on the same terms as other lands of like character, * * * provided that * * * said lands * * * shall be subject to cash entry only in accordance with existing law." *Held,* that it was competent for Congress to change the manner of disposition of such lands insofar as third parties were concerned, and that persons taking preemptions thereon after the passage of the Act of August 30, 1890, ch. 837, sec. 1, 26 Stat. 391, reserving from all public lands thereafter taken up right of way for ditches and canals constructed by the authority of the United States, took them subject to such provision. *United States v. Van Horn,* 197 Fed. 611 (D. Colo. 1912).

The provisions of this act do not operate to reserve a right-of-way across the tribal lands of the Flathead Indians since the lands were by statute in tribal status in 1890 and such lands do not become subject to such rights-of-way by being allotted; however, a contrary past administrative interpretation of this statute does not give rise to a redressible claim against the Government. Solicitor Gardner Opinion, 58 I.D. 319 (1943).

The Canal Act does not apply to tribal lands of Indian reservations established by treaty prior to August 30, 1890, because such lands were not subject to disposal under the land laws; and although past practice has reserved rights-of-way in lands from such reservations allotted to individual Indians after 1890, under revised concepts of Indian rights, compensation should be paid to such allottees in the future when rights-of-way are taken. Solicitor Gardner Opinion, 58 I.D. 319 (1943).

The Department is not required as a matter of law to reserve a right-of-way for ditches or canals in patenting to an individual Indian or his successor an allotment out of an Indian reservation created from the public domain after August 30, 1890. Solicitor White Opinion, 59 I.D. 461 (1947).

The allottees of the Yuma Reservation are entitled to compensation for interceptor drains across their lands in connection with the All-American Canal even though construction was completed in 1941. An exception will be recognized in this case from the conclusion in Solicitor's Opinion M–31156, 58 I.D. 319 (1943) that allowance of compensation should not be applied retroactively because final settlement with the Yuma Indians had been expressly held in abeyance pending a decision by the Department. Solicitor White Opinion, M–34842 (January 22, 1947).

7. —Railroad lands

This act does not apply to railroad rights-of-way acquired under the provisions of the Act of March 3, 1875, ch. 152, 18 Stat. 482. *Minidoka and S.W.R. Co. v. Weymouth,* 19 Idaho 234, 113 Pac. 455 (1911).

In referring to lands "taken up" and land "entries" and lands "patented" it does not refer to or include easements and rights of way granted for specific purposes where the fee does not pass and where no patents are issued, and where the amount of land covered by the easement is not limited in area or extent. *Minidoka and S.W.R. Co. v. Weymouth,* 19 Idaho 234, 113 Pac. 455 (1911).

The United States may in the future reasonably acquire rights of way for ditches in furthering a reclamation project, in addition to those now occupied by existing canals, and that it may be entitled to reserve land therefor under this act, does not prevent a railroad company from occupying lands *in praesenti* legally conveyed to it within a reclamation reservation by a homestead entryman. *United States v. Minidoka & S.W.R. Co.* 176 Fed. 762 (C.C. Idaho 1910); *reversed* 190 Fed. 491 (1911); *affirmed* 235 U.S. 211 (1914).

The reservation of rights-of-way for canals and ditches required by this act to be inserted in patents for public lands west of the one hundredth meridian need not be inserted in patents issued for lands granted to railroad companies to which the grant of right of the company attached prior to the date of said act, but should be inserted in patents for lands covered by indemnity selections made by railroad companies, and in selections made by the Northern Pacific Railway Co., under the provisions of the Act of July 1, 1898, in all cases where such indemnity or other selections are approved subsequent to August 30, 1890. Instructions, 42 L.D. 396 (1912).

The Southern Pacific Company in 1916 filed a general map of the station grounds at Mohawk, Ariz., adjoining its rights-of-way and in 1936 filed for approval a map giving the exact location points. In 1929 the Bureau withdrew the land under a first form reclamation withdrawal for the Gila project. The General Land Office as a condition precedent to approval of the map, requested that a stipulation be signed making certain reservations to the United States. The First Assistant Secretary in decision A–20886 (July 24, 1937) held that the execution of the stipulation could not lawfully be required since the station grounds were private property at the time of the reclamation withdrawal and were not affected thereby. The station grounds were

held to be subject to the provisions of the Act of August 30, 1890, 26 Stat. 391, making reservations for ditch and canal rights-of-way.

Certain lands in the primary lists and limits of the grant of July 1, 1862, 12 Stat. 489, as amended July 2, 1864, 13 Stat. 356, to the Central Pacific Railroad Company and patented to the Company September 6, 1896, under said grant without reservation of rights-of-way for canals and ditches under the provisions of the proviso in the Act of August 30, 1890, may not be taken under authority of said proviso for a right-of-way for the Hyrum-Mendon canal, Utah, but must be acquired by purchase. Solicitor's Opinion, M–27871 (February 2, 1935).

8. Subsurface estate excluded

The Act of August 30, 1890, concerns itself solely and exclusively with easements or surface rights-of-way for ditches and canals constructed by the United States, and such easement or surface right does not include title to the oil and gas underlying the land constituting the right-of-way. *Northern Pac. Ry. v. United States*, 277 F. 2d 615 (10th Cir. 1960), *reversing* 169 F. Supp. 735 (D. Wyo. 1959).

9. Compensation

[**Editor's Note.** Compensation is now payable for canals and ditches constructed after January 1, 1961, as provided by the Act of September 2, 1964, as amended.]

Compensation must be made for gravel taken from a right-of-way acquired under this section for use off the right-of-way where found. Reclamation decision (July 26, 1913) in Belanger, Lower Yellowstone.

When the United States utilizes a right-of-way under this act, the landowner may be compensated for the actual value of his improvements on the right-of-way, but no allowance can be made for the resultant damages to the land. *Albert W. C. Smith*, 47 L.D. 158 (1919).

Where work under the Rio Grande canalization project on land entered or patented subject to canal right-of-way retained by the United States under the act of August 30, 1890, 26 Stat. 391, involves not only construction of irrigation ditches and canals, but also levees located several hundred feet on either side of the straightened channel of the river for the conveyance of floodwaters, payment of a reasonable price, not in excess of the appraised value, may be made for the additional area required for flood control purposes, but no payment may be made for the lands required purely for irrigation purposes, the right-of-way reserved under the act of August 30, 1890, 26 Stat. 391, in the patents for the lands involved being with reference only to ditches and canals to convey water for the reclamation of arid lands by irrigation. Dec. Comp. Gen., A–95123 (May 31, 1938).

There is no authority for the assumption by the United States of one-half of the cost of removing and replacing a high-powered transmission line from across a right-of-way reserved to the United States, under the provisions of the Act of August 30, 1890, 26 Stat. 391, where such line interfered with the construction of a part of an irrigation system. 7 Comp. Gen. 217 (1927).

If the use by the government of a road sought to be condemned across defendant's land is reasonable and necessary for the construction, operation and maintenance of a government conduit constructed across the land, and such use will not increase the burden already imposed on the servient land by the government's right-of-way under the 1890 Act, then the owner has no compensable interest. *United States v. 5.61 Acres of Land, More or Less, in El Dorado County, California*, 148 F. Supp. 467 (N.D. Cal. 1957).

Where the United States utilizes a right-of-way under the 1890 Act, the landowner may be compensated for the actual value of improvements on the right-of-way, but no allowance can be made for severance or other resultant damages to the land itself. Consequently, there is no authority to construct a farm bridge over a canal that bisects a landowner's farm. Letter of Commissioner Dexheimer to Senator Mansfield, December 9, 1958.

It is the policy of the Bureau of Reclamation to compensate for crop damages occasioned by non-tortious activities of the Bureau during operation and maintenance under transmission line and pipe line easements no matter what the method of acquisition of the easement; and the fact that an easement for a tile drainage system was acquired under the 1890 Act poses no different problem. Memorandum of Associate Solicitor Hogan to Regional Solicitor, Los Angeles, May 19, 1964.

The Government in constructing the Cross Cut Canal on the Upper Snake River storage project, Idaho, lowered the water table, causing damage to the crops of Arthur Winters, the water level under whose land was held at the optimum level for subirrigation, partly by seepage from irrigated lands above, and partly by the use of an irrigation water supply. The United States had canal right-of-way under the Act of August 30, 1890. He made a claim for his crop loss. The Department held that the canal right-of-way belonging to the United

States could not be used in such a way as to injure the rights or property of the claimant, unless the claimant is compensated by the repayment of damages. Assistant Secretary decision, A–21167 (January 31, 1938).

10. Injunction suits

An injunction issued by a State court in a suit brought against the engineer in charge of a Government irrigation project and his foreman, as individuals, restraining the defendants and all persons under their control from entering upon certain lands and constructing a Government canal across the same, is not a bar to a suit in a Federal court by the United States to establish its right to construct such canal under the reservation of right-of-way therefor contained in the Act of August 30, 1890, 26 Stat. 391, ch. 837, sec. 1, and to enjoin the owners of said lands, which were acquired under the public land laws after the passage of said act, from interfering with such construction. *United States v. Van Horn,* 197 Fed. 611 (D. Colo. 1912).

Equity has jurisdiction of a suit by the United States against the owners of lands acquired under the public land laws after the passage of this act to enjoin them from interfering with its construction of an irrigation canal over such lands under the reservation of right-of-way therefor contained in said act. *United States v. Van Horn,* 197 Fed. 611 (D. Colo. 1912).

GRANT OF RIGHTS OF WAY FOR RESERVOIRS AND CANALS

[Extracts from] An act to repeal timber-culture laws, and for other purposes. (Act of March 3, 1891, ch. 561, 26 Stat. 1095)

* * * * *

Sec. 18. [Rights of way to canal companies and irrigation and drainage districts for reservoirs, canals, and laterals for irrigation and drainage purposes.]—The right of way through the public lands and reservations of the United States is hereby granted to any canal ditch company, irrigation or drainage district formed for the purpose of irrigation or drainage, and duly organized under the laws of any State or Territory, and which shall have filed, or may hereafter file, with the Secretary of the Interior a copy of its articles of incorporation or, if not a private corporation, a copy of the law under which the same is formed and due proof of its organization under the same, to the extent of the ground occupied by the water of any reservoir and of any canals and laterals and fifty feet on each side of the marginal limits thereof, and, upon presentation of satisfactory showing by the applicant, such additional right of way as the Secretary of the Interior may deem necessary for the proper operation and maintenance of said reservoirs, canals, and laterals; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided,* That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation; and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories. (26 Stat. 1101; § 1, Act of March 4, 1917, 39 Stat. 1197; Act of May 28, 1926, 44 Stat. 668; 43 U.S.C. § 946)

Explanatory Notes

1926 Amendment. The Act of May 28, 1926, 44 Stat. 668, substituted "canal ditch company, irrigation or drainage district" for "canal or ditch company or drainage district" and inserted "or, if not a private corporation, a copy of the law under which the same is formed" following "articles of incorporation" and ", and, upon presentation of satisfactory showing by the applicant, such additional right of way as the Secretary of the Interior may deem necessary for the proper operation and maintenance of said reservoirs, canals, and laterals" following "marginal limits thereof."

1917 Amendment. The Act of March 4, 1917, 39 Stat. 1197, inserted the words "or drainage district," after "any canal ditch company," and "or drainage," after "for the purpose of irrigation".

1897 Supplementary Provisions: Use of Reserved Reservoir Sites; State laws. The Act of February 26, 1897, ch. 335, 29 Stat. 599, 43 U.S.C. § 664 provides:

"All reservoir sites reserved or to be reserved shall be open to use and occupation under the right-of-way Act of March third, eighteen hundred and ninety-one. And any State is hereby authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this Act shall always be subject to the control and regulation of the respective States and Ter-

ritories in which such reservoirs are in whole or part situate."

1898 Supplementary Provisions: Subsidiary Purposes. Section 2 of the Act of May 11, 1898, 30 Stat. 404, as amended by the addition of the words "or drainage" at the end by section 2 of the Act of March 4, 1917, 39 Stat. 1197, provides:

"Rights of way for ditches, canals or reservoirs heretofore or hereafter approved under the provisions of [sections 18, 19, 20, and 21 of the Act of March 3, 1891] may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation or drainage." (43 U.S.C. § 951)

1921 Supplementary Provisions: Sites for Auxiliary Buildings. The Act of March 1, 1921, 41 Stat. 1194, provides:

"In addition to the rights of way granted by sections 18, 19, 20 and 21 of the [Act of March 3, 1891, as amended], and, subject to the conditions and restrictions therein contained, the Secretary of the Interior is authorized to grant permits or easements for not to exceed five acres of ground adjoining the right of way at each of the locations, to be determined by the Secretary of the Interior, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by said sections: *Provided,* That this section shall not apply to lands within national forests." (43 U.S.C. § 950)

Cross Reference. The Act of February 15, 1901, authorizes permits for the use of rights of way for canals, ditches, and other water facilities. The Act appears herein in chronological order.

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.

Notes of Opinions

Limitations 2
Relation to reclamation program 1
Water rights 3

1. Relation to reclamation program

The provisions of section 18 of the Act of March 3, 1891, 26 Stat. 1101, granting a right-of-way through the public lands and reservations of the United States to canal and ditch companies, do not contemplate the allowance of such rights over lands reserved by the Government for reservoir sites under the Acts of October 2, 1888, and August 30, 1890, *Blue Water Land and Irrigation Co.,* 23 L.D. 275 (1896).

A withdrawal under the Reclamation Act will not bar the allowance of an application for right-of-way for private irrigation canal under the Act of March 3, 1891, over the withdrawn lands, where the allowance of the application will not interfere with the use of the lands by the United States in connection with the administration of the reclamation act and where the water proposed to be conveyed over such right-of-way has not been appropriated and is not claimed by the United States. *Boughner v. Magenheimer, et al.,* 42 L.D. 595 (1913).

Under the Act of February 8, 1905, and the Act of March 3, 1891, as amended, the Bureau may issue a permit to an irrigation district to remove clay without charge from public lands to be used in connection with the operation and maintenance of drainage facilities of a federal reclamation project. This authority is not repealed by section 10(a) of the Reclamation Project Act of 1939. Memorandum of Acting Associate Solicitor Coulter, August 11, 1966, in re request of Yuma Mesa Irrigation and Drainage District.

For the purpose of carrying out the provisions of the reclamation act, the Government may avail itself of the privileges conferred by this act to the same extent that individuals, corporations, or associations may exercise such privileges, and subject to the same conditions and limitations. Op. Asst. Atty. Gen., 33 L.D. 563 (1905).

2. Limitations

The Secretary of the Interior has the discretion to deny an application for a right of way for a reservoir in Colorado that would store Rio Grande water for irrigation purposes, until a determination can be made that such a development would not interfere with the treaty obligation to deliver Rio Grande water to Mexico and with the Engle Dam project. *Francis W. Bosco,* 39 L.D. 104 (1910).

The provisions of section 18 of the Act of March 3, 1891, 26 Stat. 1101, granting a right-of-way through the public lands and reservations of the United States to canal and ditch companies, do not contemplate the allowance of such rights over lands reserved by the Government for reservoir sites under the Acts of October 2, 1888, and August 30, 1890. *Blue Water Land and Irrigation Co.,* 23 L.D. 275 (1896).

3. Water rights

By section 9 of the Act of July 26, 1866, section 1 of the Desert Land Act of 1877, and section 18 of the Act of March 3, 1891,

Congress recognized and assented to the appropriation of water under State laws in contravention of the common law rules of riparian rights; but it is not to be inferred that Congress thereby meant to confer on any State the right to appropriate all the waters of the tributary streams which unite into a navigable watercourse, and so destroy the navigability of that watercourse in derogation of the interests of all the people of the United States. *United States v. Rio Grande Dam and Irr. Co.*, 174 U.S. 690, 704–07 (1899).

Sec. 19. [Map—Damages to settlers.]—Any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage. (26 Stat. 1102; 43 U.S.C. § 947)

Sec. 20. [Application to existing and future canals—Forfeiture of rights not completed in five years after location.]—The provisions of this act shall apply to all canals, ditches, or reservoirs, heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps therein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior, and with the register of the land office where said land is located, a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed thereunder: *Provided,* That if any section of said canal, or ditch, shall not be completed within five years after the location of said section, the rights herein granted shall be forefeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture. (26 Stat. 1102; 43 U.S.C. § 948)

Sec. 21. [Use for canal or ditch only.]—Nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch. (26 Stat. 1102; 43 U.S.C. § 949)

EXPLANATORY NOTE

Legislative History. H.R. 7254 in the 51st Congress. Reported by Senate with amendment—no number. 21 Congr. Rec. 10085, 10454; 22 Congr. Rec. 3545; 3611.

CAREY ACT

[Extract from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes. (Act of August 18, 1894, ch. 301, 28 Stat. 372)

* * * * *

Sec. 4. [**Grant of desert land to States for State-supported reclamation projects.**]—To aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation and sale thereof in small tracts to actual settlers, the Secretary of the Interior with the approval of the President is, as of August 18, 1894, authorized and empowered, upon proper application of the State to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the Act approved March 3, 1877, and the Act amendatory thereof, approved March 3, 1891, binding the United States to donate, grant and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty acre tract cultivated by actual settlers, as thoroughly as is required of citizens who may enter under the said desert-land law, within ten years from the date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if actual construction of reclamation works is not begun within three years after the segregation of the lands or within such further period not exceeding three years, as shall be allowed by the Secretary of the Interior, the said Secretary of the Interior, in his discretion, may restore such lands to the public domain; and if the State fails, within ten years from the date of such segregation, to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period not exceeding five years, or may, in his discretion, restore such lands not irrigated and reclaimed to the public domain upon the expiration of the ten-year period or of any extension thereof.

Before the application of any State is allowed or any contract or agreement executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved.

Any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settle-

ment and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement.

As fast as any State may furnish satisfactory proof according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: *Provided,* That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. (28 Stat. 422; 43 U.S.C. § 641)

EXPLANATORY NOTES

Miscellaneous Amendments. The above text is taken from 43 U.S.C. § 641. It includes miscellaneous amendments not deemed relevant to explain herein.

Additional Provisions Omitted. The original 1894 Act consisted of the above section. A number of additional sections and supplementary provisions have been enacted by Congress through the years, but are omitted here. They are codified generally as 43 U.S.C. §§ 641a–647.

Editor's Note, Annotations. Annotations of opinions are not included because this statute does not relate primarily to activities of the Bureau of Reclamation.

Popular Name. This section is popularly known as the Carey Act.

STRUCTURES ON NAVIGABLE WATERS

[Extracts from] An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes. (Act of March 3, 1899, ch. 425, 30 Stat. 1121)

* * * * *

Sec. 9. [**Consent of Congress required for bridges, dams, etc. on navigable waters—State legislature may authorize such structures on wholly intrastate navigable waters—Approval by Chief of Engineers required.**]—It shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of the Army: *Provided,* That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of the Army before construction is commenced: *And provided further,* That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of the Army, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of the Army. (30 Stat. 1151; 33 U.S.C. § 401)

Sec. 10. [**Other structures obstructing navigation—Approval of Chief of Engineers required.**]—The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same. (30 Stat. 1151; 33 U.S.C. § 403)

Explanatory Notes

Prior Law. Similar provisions were contained in sections 7 and 10 of the Act of September 19, 1890, 26 Stat. 454, but were omitted from the U.S. Code presumably on the grounds that they were superseded by the 1899 Act. But see *United States v.*

Wishkah Boom Co., 136 Fed. 42, 68 C.C.A. 592 (Wash. 1905), appeal dismissed 202 U.S. 613 (1906).

Cross Reference, Federal Power Act. Section 9(e) of the Federal Power Act (Federal Water Power Act, approved June 10, 1920), authorizes the Federal Power Commission to issue licenses for hydroelectric power facilities in bodies of water over which Congress has jurisdiction.

The Act appears herein in chronological order.

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

Legislative History. H.R. 11795, in the 55th Congress. H.R. Rept. No. 1826. S. Rept. No. 1686. Conference report (unnumbered).

NOTES OF OPINIONS

Reclamation projects 1
Water rights 2

1. Reclamation projects

Section 9 of the Act of March 3, 1899, applies to acts of government officers as well as to acts of private persons. Therefore, the United States is without authority to build Parker Dam on the Colorado River unless the same has been authorized by or pursuant to an Act of Congress, and no such authority is found. *United States v. Arizona*, 295 U.S. 174 (1935).

2. Water rights

Act of September 19, 1890 [superseded by Act of March 3, 1899] prohibiting "the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect of which the United States has jurisdiction," applies to any action taken with respect to non-navigable streams, including the appropriation of the waters thereof under state law, which substantially interferes with the navigable capacity of one of the navigable waters of the United States. *United States v. Rio Grande Dam and Irr. Co.*, 174 U.S. 690, 707–10 (1899).

PERMITS FOR POWER, TELEGRAPH AND WATER FACILITIES

An act relating to rights-of-way through certain parks, reservations, and other public lands. (Act of February 15, 1901, ch. 372, 31 Stat. 790)

[Use of rights of way permitted for power, telegraph, and water facilities—Fifty feet on each side—No interest in land conferred.]—The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him, to permit the use of rights-of-way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe-lines, flumes, tunnels, or other water conduits and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided,* That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further,* That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights-of-way for telegraph companies over the public domain: *And provided further,* That any permission given by the Secretary of the Interior under the provisions of this Act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation or park. (31 Stat. 796; 43 U.S.C. § 959)

Explanatory Notes

Earlier Provisions Probably Superseded. Section 1 of the Act of January 21, 1895, 28 Stat. 635, authorized permits for tramroads, canals and reservoirs for mining and lumbering purposes, and section 1 of the Act of May 11, 1898, 30 Stat. 404, added the purpose of furnishing water for domestic, public and other beneficial uses. These statutory provisions are codified as 43 U.S.C. § 956. The Act of May 14, 1896, 29 Stat. 120, similarly authorized permits for power facilities; this provision is codified as 43 U.S.C. § 957. The Supreme Court in *Utah Power and Light Co.* v. *United States,* 243 U.S. 389, 407 (1917), stated that the Act of February 15, 1901, above, "obviously superseded and took the place of the law of May 14, 1896," with respect to permits for power facilities. It also has been held that the 1901 Act similarly superseded the

1895 Act, as amended, relating to tramroads, canals and reservoirs. Acting Solicitor Cohen Opinion, 58 I.D. 29 (1942).

Cross Reference, Reservoirs and Canals. Section 18 of the Act of March 3, 1891, 26 Stat. 1101, as amended, grants rights of way to canal companies and irrigation and drainage districts for reservoirs, canals and laterals. The referenced section of the 1891 Act appears herein in chronological order.

Cross Reference, Forest Reserves. Section 4 of the Act of February 1, 1905, 33 Stat. 628, 16 U.S.C. § 524, grants rights of way for dams, reservoirs, water plants, ditches, etc., across the forest reserves.

Cross Reference, National Forest Lands. Authority generally to execute laws affecting forest reserves was transferred to the Secretary of Agriculture under section 1 of the Act of February 1, 1905, 33 Stat. 628.

Cross Reference, 50-year Easements. The Act of March 4, 1911, 36 Stat. 1253, as amended, authorizes the head of any agency to grant 50-year easements for rights of way for power and communication facilities. The Act appears herein in chronological order.

Cross Reference, Federal Power Act. The following statement appears in 43 C.F.R. § 2234.4–1(3) (1965): "(3) the applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D.C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2."

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.

Reference in the Text. General Grant National Park. The Act of March 4, 1940, 54 Stat. 41, abolished the General Grant National Park and included the lands thereof in the Kings Canyon National Park, to be known as the General Grant grove section of that park.

Reference in the Text. Title 65, Revised Statutes. Title 65 of the Revised Statutes, referred to in the text, was repealed by the Act of July 16, 1947, 61 Stat. 327. It was codified as 47 U.S.C. §§ 1–6, 8.

Legislative History. H.R. 11973 in the 56th Congress. House Report No. 1850 and Senate Report without amendment. 33 Cong. Rec. 6762; 34 Cong. Rec. 2075.

NOTE OF OPINION

1. Acquired lands

Lands acquired by the United States, by purchase or otherwise, are reservation lands within the meaning of the Acts of February 15, 1901, and March 4, 1911. Solicitor's Opinion, M–30846 (November 1, 1940).

THE RECLAMATION ACT

An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands. (Act of June 17, 1902, ch. 1093, 32 Stat. 388)

[**Sec. 1. Reclamation fund established from public land receipts except 5 percent for educational and other purposes.**]—All moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June thirtieth, nineteen hundred and one, including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures provided for in this act. (32 Stat. 388; 43 U.S.C. § 391)

Explanatory Notes

Codification. The text of this section as it appears in 43 U.S.C. § 391 differs from the above in the following substantive respects: (1) the phrase "officers designated by the Secretary of the Interior" is substituted for "registers and receivers" in view of the Acts of March 3, 1925, 43 Stat. 1145, and October 28, 1921, 42 Stat. 208, which consolidated the offices of register and receiver and provided for a single officer to be known as register; and (2) the phrase "and in the State of Texas" is added after "said States and Territories," in view of the Act of June 12, 1906, which is discussed below.

Proviso Relating to Support for Land-Grant Colleges. As originally enacted, the above section also contained a proviso to the effect that, if receipts from the sales of public lands were insufficient to fulfill the annual appropriations authorized by the Act of August 30, 1890, 26 Stat. 417, 7 U.S.C. § 322, for the support of land-grant colleges, the deficiency could be supplied from any moneys in the Treasury not otherwise appropriated. This provision was superseded by the Act of March 4, 1907, 34 Stat. 1281, which removed the requirement that the funds appropriated by the 1890 Act, as amended, are limited to those "arising from the sale of public lands." See 43 U.S.C. § 391 note and 7 U.S.C. §§ 321 note, 322.

Supplementary Provisions: Extension to Texas. The Act of February 25, 1905, extended the Reclamation Act to a portion of the State of Texas bordering the Rio Grande, and the Act of June 12, 1906, extended the Reclamation Act to the entire State. The 1905 and 1906 Acts appear herein in chronological order.

Supplementary Provisions: Advances to Reclamation Fund. The original concept of the 1902 Act was that the entire reclamation program would be financed from the reclamation fund. It became apparent, however, that receipts to the fund were not adequate to finance completely a program of the scope desired. The Act of June 25, 1910, and the Act of March 3, 1931, authorized $20,000,000 and $5,000,000, respectively, to be advanced to the reclamation fund from the general funds of the Treasury. The so-called Hayden-O'Mahoney amendment to the Act of May 9, 1938, effected a complete reimbursement of these advances. Beginning with appropriations in 1930 for the Boulder Canyon project, the annual program has been financed by appropriations in part from the reclamation fund and in part from the gen-

eral fund of the Treasury. The 1910, 1931 and 1938 Acts appear herein in chronological order.

Supplementary Provisions: Additional Receipts to Reclamation Fund. The following Acts, all of which appear herein in chronological order, authorize additional receipts to the Reclamation Fund as follows: (1) Section 5 of the Reclamation Act, all moneys received from entrymen or applicants for water rights; (2) Act of March 3, 1905, proceeds from sale of certain property and refunds from reclamation operations; (3) Section 2, Act of April 16, 1906, and section 3, Act of June 27, 1906, proceeds from sale of town lots; (4) Section 5, Act of April 16, 1906, and Hayden-O'Mahoney Amendment to Act of May 9, 1938, proceeds from power operations; (5) Act of October 2, 1917, receipts from lease of potassium deposits; (6) Act of July 19, 1919, proceeds from lease of, and sale of products from, withdrawn lands; (7) Section 35, Act of February 25, 1920, proceeds under Mineral Leasing Act; (8) Act of May 20, 1920, proceeds from sale of surplus lands; (9) Section 17, Act of June 10, 1920, charges arising from licenses for occupancy and use of withdrawn public lands; (10) Act of March 4, 1921, and Act of January 12, 1927, contributions and advances; (11) Act of June 6, 1930, money collected from defaulting contractors or their sureties; and (12) Hayden-O'Mahoney amendment to Act of May 9, 1938, all moneys received from reclamation projects including incidental power features thereof.

Editor's Note, Annotations. Miscellaneous annotations of opinions dealing with the Reclamation Act generally are found at the end of the Act.

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1. Reclamation fund—Generally

The official reports show that, in 1902, there were in 16 States and Territories 535,486,731 acres of public land still held by the Government and subject to entry. A large part of this land was arid, and it was estimated that 35,000,000 acres could be profitably reclaimed by the construction of irrigation works. The cost, however, was so stupendous as to make it impossible for the development to be undertaken by private enterprise, or, if so, only at the added expense of interest and profit private persons would naturally charge. With a view, therefore, of making these arid lands available for agricultural purposes by an expenditure of public money, it was proposed that the proceeds arising from the sale of all public lands in these 16 States and Territories should constitute a trust fund to be set aside for use in the construction of irrigation works, the cost of each project to be assessed against the land irrigated, and as fast as the money was paid by the owners back into the trust it was again to be used for the construction of other works. Thus the fund, without diminution except for small and negligible sums not properly chargeable to any particular project, would be continually invested and reinvested in the reclamation of arid land. *Swigart v. Baker,* 229 U.S. 187, 193–94 (1913).

The reclamation fund is a special fund, but not a trust fund. 14 Comp. Dec. 361, 364 (1907).

Since, in the absence of specific statutory authority, one department or branch of the Government is not authorized to enter into contracts with another such department or branch and to make payments thereunder, the General Land Office may not lawfully pay rent to the Reclamation Service for the use of a part of a warehouse when the reclamation fund is not depleted by such use. However, any cost of maintenance of the warehouse may be apportioned properly between the Reclamation Service and the General Land Office. 22 Comp. Dec. 684 (1916).

2. —Construction with other laws

The Act of June 27, 1906, 34 Stat. 518, granting to the State of California 5 per cent of the net proceeds of cash sales of public lands in that State, including sales made prior to its passage and since the admission of the State, does not authorize the withdrawal of any part of the proceeds of public lands of said State carried to the reclamation fund prior to its passage. Five per cent of the net proceeds of cash sales of public lands in the State of California made after the passage of the Act of June 27, 1906, is set aside by that act for educa-

tional purposes and excepted from moneys appropriated after its passage to the reclamation fund. 13 Comp. Dec. 289 (1906).

It is not the intent of Congress by the Acts of April 16 and June 27, 1906, 34 Stat. 116 and 520, to take away the right of the State of Idaho to the 5 per cent of the net proceeds of sale from public lands for the support of the common schools of the State lying within said State. If, however, the whole proceeds of said sales have been covered into the "reclamation fund" and the 5 per cent paid to the State out of the permanent indefinite appropriation therefor, the reclamation fund should be charged therewith. 20 Comp. Dec. 365 (1913).

Moneys paid to the Treasurer of the United States in accordance with the provisions of section 4 of the Act of August 20, 1912, 37 Stat. 321, authorizing the Attorney General to compromise suits involving lands purchased from the Oregon & California Railroad Co., are not "moneys received from the sale and disposal of public lands" within the purview of the reclamation act, but are "miscellaneous receipts." Effecting a compromise of a suit does not constitute a sale of public lands. Where a conveyance by a grantee of public lands is decreed void or is set aside if found voidable only, a forfeiture to the United States does not *ipso facto* result, and lands once granted by the United States cannot thereafter be classed as public lands so long as any unextinguished right or title therein under or through said grant exists. 20 Comp. Dec. 397 (1913).

Moneys received from royalties and rentals under the Act of October 2, 1917, 40 Stat. 297, which authorizes exploration for and disposition of potassium on public lands, should not first be deposited to the credit of sales of public lands, but should be credited directly to the reclamation fund. Comp. Dec., December 5, 1918.

3. —States covered

Because the emergency fund, established by the Act of June 26, 1948, is derived from the reclamation fund, it is limited in its application to the states named in section 1 of the Reclamation Act. Consequently, it is not available for use in Alaska. Memorandum of Deputy Solicitor Weinberg, April 14, 1964.

6. Deposits to fund—Leases

The full 100 percent of the proceeds of the lease is appropriated, without deduction, to the reclamation fund by section 1 of the Reclamation Act. Departmental decision, in re Owl Creek Coal Co., August 31, 1912.

Moneys derived by the Reclamation Service from the lease of lands in the Uintah Indian Reservation should be covered into the Treasury to the credit of the reclamation fund, the liability of the Reclamation Service to compensate the Indians for the use of such lands not affecting the disposition of the proceeds derived from their use. 14 Comp. Dec. 285 (1907).

The First Assistant Secretary, in modifying departmental instructions of Sept. 14, 1936, with reference to leases of land under the Taylor Grazing Act, held that the Secretary's authority to lease lands withdrawn in connection with a reclamation project, was recognized by the Congress in subsection I of the Act of Dec. 5, 1924, and that all leases of land withdrawn for reclamation purposes should be made under the authority of subsection I; that all such leases should be made in the form approved June 18, 1934; and that whatever moneys may yet be received from leases of withdrawn reclamation lands made in accordance with prior instructions of September 14, 1936, should be disposed of in accordance with subsection I. Instructions, M-29482 (October 8, 1937).

7. —Mineral leases

Lands withdrawn for a reservoir site or similar reclamation purposes which are essential to the project, and lands acquired by purchase or condemnation for the exclusive use of the project, may be developed for their mineral resources only by temporary leases for periods not inconsistent with the needs of the project, and the proceeds therefrom must be placed in the reclamation fund to the credit of the project. *J. D. Mell et al.*, 50 L.D. 308 (1924)

8. —Refunds

The amount of purchase money refunded in reclamation States, in cases of erroneous sales of public land, under the provisions of sections 2362 and 3689, Revised Statutes, should be deducted from the total sums received in said States in computing the amounts to be transferred to the reclamation fund by appropriation warrants. This section does not authorize the transfer to the reclamation fund of moneys paid to a receiver by an intended purchaser of public lands unless the sale is confirmed and the lands are actually conveyed by the United States to the purchaser. 20 Comp. Dec. 415 (1913).

Moneys erroneously paid to a receiver of public moneys by a would-be purchaser of public lands and which are required by law to be refunded are not moneys received from the sale or disposal of public lands within the meaning of this act. 20 Comp. Dec. 597 (1914).

9. —Advances

Where necessary canals, laterals, and structures properly a part of a Federal irrigation system cannot be constructed by the United States because funds are not available, a landowner may advance the needed moneys to the United States, and he may be later reimbursed, without interest, by credits upon his water charges as they become due. Departmental decision, October 8, 1919, Milk River.

16. Expenditures authorized—Generally

The authority of the Secretary respecting the use of the reclamation fund is to make preliminary investigations to determine the feasibility of any contemplated irrigation project, to construct reservoirs and irrigation works, and operate and maintain those thus constructed, and to acquire "for the United States by purchase or condemnation under judicial process" rights or property necessary for these purposes. *California Development Co.*, 33 L.D. 391 (1905).

In a decision rendered July 18, 1924 (A–2537), in connection with work under article 6 of the treaty with Great Britain regarding St. Mary and Milk Rivers, the Comptroller General ruled that the appropriation of $100,000 for investigations of secondary projects from the reclamation fund made by Act of January 24, 1923 (42 Stat. 1207), could not be used on work under said treaty, as the proposed work was not in connection with "examination and survey for the construction and maintenance of irrigation works, etc.," and not within the purpose for which the reclamation fund was established.

If a grantor of land to the United States for a nominal consideration pays the stamp taxes provided for deeds of conveyance under the "Revenue act of 1918," approved February 24, 1919 (40 Stat. 1057), he may properly be reimbursed therefor from the reclamation fund as a part of the consideration for the land conveyed. Comp. Dec., April 22, 1919.

17. —Research

The Bureau of Reclamation has basic authority to conduct weather modification research. This authority stems from the provisions of section 1 of the Reclamation Act of 1902 that the reclamation fund may be used "for the * * * development of waters for the reclamation of arid and semiarid lands." Letter of Solicitor Barry to Senator Jackson, June 11, 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 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.

18. —Litigation expenses

In view of the fact that the Reclamation Service must proceed in many cases in conformity with State laws, and it is necessary to institute cases in State courts or intervene in those brought by others, the expense of such proceedings in State courts in payment of lawful costs, including expenses of necessary printing and costs of appeal bonds, should be charged to the reclamation fund. It is understood, of course, that such proceedings on behalf of the United States will be instituted by or with the authority of the Attorney General, and that it is not intended by this decision to include compensation to attorneys or counsel. Comp. Dec., June 30, 1914, and December 6, 1916.

Costs in an action against an employee of the Reclamation Service which is defended for said employee by the United States are payable out of the reclamation fund. Comp. Dec., in re *Marley v. Cone* (Salt River), December 6, 1916.

19. —Rewards

The reclamation fund may not be used as a reward for the apprehension of an employee of the Reclamation Service who may have been guilty of a breach of trust. Departmental decision, January 28, 1910.

If, in the judgment of the Secretary of the Interior, the offering of a reward for the return of horses belonging to the Reclamation Service which have strayed away would be an appropriate means to be used to secure their return, he is authorized to make the offer under section 10 of the reclamation act. Comp. Dec., May 19, 1911.

If it is deemed necessary to operate a telephone line in connection with the work authorized under the reclamation act, the Secretary of the Interior unquestionably has the authority to take such action as may be necessary and proper to protect such telephone line from damage or interference while in the possession of the United States. The means to be employed for such protection is left largely in the discretion of the

Secretary. If, in his judgment, the offering of a reward for information leading to the conviction of any person willfully damaging or interfering with such telephone line would be a necessary and proper means to protect it from such damage or interference, payment from the reclamation fund of the reward so offered would be authorized when satisfactory proof of the earning thereof has been presented. Comp. Dec., March 7, 1913.

Sec. 2. [Authority to study, locate and construct irrigation works.]—The Secretary of the Interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters, including artesian wells. (32 Stat. 388; Act of August 7, 1946, 60 Stat. 866; 43 U.S.C. § 411)

EXPLANATORY NOTES

Provisions Repealed. The Act of August 7, 1946, 60 Stat. 866, which appears herein in chronological order, repealed those provisions of section 2 requiring annual reports to Congress. Before repeal of the reporting provisions, the section read as follows: "The Secretary of the Interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed."

Editor's Note, Special Authorizations for Studies. From time to time Congress has authorized the Secretary of the Interior to undertake special studies of water resources developments involving reclamation. Although some of these Acts are included herein in chronological order and others are noted below, no systematic effort has been made to include all such authorizations.

Tri-County Project, Nebraska. The Act of Sept. 22, 1922, ch. 430, 42 Stat. 1057, authorized an additional investigation of the Tri-county project in Nebraska and an extension of the investigations into Adams County to ascertain whether it is practicable to convey for irrigation purposes flood waters from the Platte River onto the lands in the counties comprising the project.

Palo Verde and Cibola Valleys. Engineering and economic investigations in Palo Verde and Cibola valleys on the Colorado River were authorized by the Act of April 19, 1930, ch. 192, 46 Stat. 222.

Gila River Above San Carlos Reservoir. The Act of May 25, 1928, ch. 742, 45 Stat. 739, authorized an appropriation of $12,500 for surveys and investigations to determine the best methods and means of utilizing the waters of the Gila River and its tributaries above San Carlos reservoir in New Mexico and Arizona, provided the States of Arizona and New Mexico cooperated by appropriating an equal amount. Arizona by Act of its legislature November 28, 1926, appropriated $6,250 and New Mexico by Act of March 8, 1929, appropriated $6,250. The work was covered by contract dated August 12, 1929, with the States of Arizona and New Mexico, $12,500 having been appropriated by the Second Deficiency Act of March 4, 1929, 45 Stat. 1643.

Cabinet Gorge. An authorization of $25,000 to be appropriated to provide for studies for the development of a hydroelectric power project at Cabinet Gorge on the Clark Fork of the Columbia River, for irrigation pumping or other uses was made by the Act of August 14, 1937, ch. 619, 50 Stat. 638.

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1. Examinations authorized—Generally

The Reclamation Service cannot, while construction of a project is in progress, and prior to the laying out of its canals, undertake to reexamine, at the instance of individual claimants, particular tracts falling within the project, to ascertain whether or not such tracts are capable of service from

its projected canals. *Lewis Wilson,* 42 L.D. 8 (1913). See also 48 L.D. 153, amending paragraph 13 of general reclamation circular of May 18, 1916.

When the Secretary of the Interior in the exercise of a reasonable discretion determines as to the validity of title to and as to the value of a right to appropriate water for irrigation purposes to be acquired by him under the provisions of the Act of June 17, 1902, his decision is conclusive upon the accounting officers. 14 Comp. Dec. 724 (1908).

The drilling of wells for the purpose of determining whether underground water exists that may be made available in connection with a project comes within the power conferred by this section "to make examinations and surveys * * * for the development of waters." Op. Asst. Atty. Gen., 34 L.D. 533 (1906).

2. —Research

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.

3. —Contributed funds

For some years prior to 1922 the Reclamation Service had been carrying on investigations on the Colorado River in the vicinity of Black and Boulder Canyons. Funds appropriated for fiscal year 1922 not being sufficient to continue these investigations, an arrangement was worked out whereby the City of Los Angeles and three other public bodies in Southern California interested in the proposed development on the Colorado River advanced the funds necessary to permit the investigation to continue.

The City of Los Angeles sued the United States to recover the sum of $55,000, contributed by it for that purpose under a contract dated February 16, 1922. Article 18 of the contract provided that, if the Congress, within two years of the date of the contract, authorized similar investigations by and on behalf of the United States and should make sufficient appropriations therefor and for reimbursement of funds advanced, then the Bureau would refund to the city such advanced funds or the appropriate share thereof. The sum of $50,283.35, from appropriations by Congress for the fiscal years 1923 and 1924, for continued investigations on the Colorado River, was not spent and reverted to the Reclamation Fund. The city petitioned the Court of Claims for reimbursement of its proportionate share of this money. The court held that the agreement was illegal and unenforceable since it violated Sections 3679 and 3732 of the Revised Statutes (31 U.S.C. 665, 41 U.S.C. 11). *City of Los Angeles v. United States.* 107 Ct. Cl. 315, 68 F. Supp. 974 (1946).

6. Works authorized—Generally

The general statutory authority of the Secretary for construction of irrigation works is sufficiently broad to authorize preparatory work, such as land leveling, roughing in of farm distribution systems, and the planting of cover crops on public lands within an irrigation project. Solicitor White Opinion, 59 I.D. 299 (1946).

7. —Drainage works

It is well settled that the United States may construct drainage works as a part of its irrigation system; the necessity for drainage and the methods of conducting the work are in the sound discretion of the Secretary of the Interior, and such discretion cannot be reviewed by the courts. *United States v. Ide,* 277 Fed. 373 (8th Cir. 1921), *affirmed* 263 U.S. 497 (1924). See also *Weymouth v. Lincoln Land Co.,* 277 Fed. 384 (8th Cir. 1921).

The Secretary of the Interior has authority to provide for drainage as part of an irrigation project in order to prevent damage to property from the operation of the irrigation system. *Nampa & Meridian Irr. Dist. v. Bond,* 283 Fed. 569 (D. Idaho 1922), 288 Fed. 541 (9th Cir. 1923), 268 U.S. 50 (1925).

The drainage system authorized by reclamation law is that which will provide drainage necessary to the successful operation of the complete project, and as a general matter the acreage limitations of the law do not apply to it. Memorandum of Chief Counsel Fix to Commissioner, May 12, 1948.

8. —Artesian wells

The phrase "including artesian wells" is used to describe one class of irrigation works to be constructed in carrying out the scheme for reclaiming arid lands provided for in

the act, and it is not contemplated by this section that such wells may be sunk as a part of the preliminary examinations authorized therein, nor is it permissible to sink an artesian well where it is believed that if water is found it will not be suitable or needed or used for irrigation purposes. Instructions, 32 L.D. 278 (1903).

Sec. 3. [Withdrawal of lands for irrigation works—Withdrawal of lands susceptible of irrigation—Homestead entries—Determination whether project is practicable—Restoration and entry—Commutation.]—The Secretary of the Interior shall, before giving the public notice provided for in section 4 of this act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: *Provided,* That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said lands to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: *Provided,* That the commutation provisions of the homestead laws shall not apply to entries made under this act. (32 Stat. 388; 43 U.S.C. §§ 416, 432, 434)

EXPLANATORY NOTES

Codification. The first part of this section through the first proviso and ending with the words "and if determined to be impracticable or unadvisable he shall thereupon restore said lands to entry" is codified as section 416, title 43, U.S. Code. The balance of the section, except for the words "in tracts of not less than forty nor more than one hundred and sixty," is codified as section 432. The reference to the size of the tracts is incorporated in section 434.

Supplementary Provision: Entries of Units Less than Forty Acres; Additional Entries, Desert Land Entries. Section 1 of the Act of June 27, 1906, authorizes the Secretary of the Interior, under certain conditions, to establish a unit of less than forty acres as the minimum entry. Section 2 authorizes one who has relinquished lands covered by a bona fide unperfected entry to make an additional entry. Section 5 deals with the case of a desert land entry on lands subsequently withdrawn under the Reclamation Act. The Act appears herein in chronological order.

Supplementary Provision: Entries of Irrigable Lands Prohibited Until Certain Actions Taken. Section 5 of the Act of June 25, 1910, 36 Stat. 836, provides that no entry shall thereafter be permitted on lands withdrawn for irrigation purposes until the Secretary has established the unit of acreage, fixed the water charges and the date when the water can be applied, and made public announcement of the same. The Act appears herein in chronological order.

Additional Supplementary Provisions. Additional supplementary provisions relating to the subjects of withdrawals, entries and farm units are referenced in the index.

Cross Reference, Homestead Laws. Relevant extracts from the homestead laws are included in the appendix.

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I. WITHDRAWALS

1. Withdrawals, generally—Purpose of

The authority to withdraw lands for irrigation purposes conferred upon the Secretary of the Interior is a special authority to make withdrawals for a particular purpose and is limited to the specific uses provided for in the Act, or to uses incident to and in the furtherance thereof. Op. Asst. Atty. Gen., 33 L.D. 415 (1905).

The Secretary of the Interior has no authority under this Act to withdraw lands for reservoir sites with a view to the use of the waters impounded therein for domestic purposes. Op. Asst. Atty. Gen., 33 L.D. 415 (1905).

Public lands adjacent to reclamation withdrawn lands bordering Lake Havasu may be withdrawn pursuant to the Reclamation Act and leased to the State of Arizona where the withdrawal will implement in part the Lower Colorado Land Use Plan with its concomitant reclamation benefits such as facilitating the Bureau's control over the use of the lake waters and shores. Memorandum of Associate Solicitor Hogan, October 9, 1964.

The Reclamation Act authorizes the withdrawal of public lands from entry to provide pasture for Government animals used in carrying on operations under the act. Departmental decision, March 21, 1910, Lower Yellowstone.

2. —Discretion of Secretary

The discretion of the Secretary of the Interior in making first-form withdrawals of lands cannot be questioned, and no application to enter can be allowed on the ground that the land is not needed. *Ernest Woodcock*, 38 L.D. 349 (1909).

The withdrawal of land for irrigation purposes under this section is a matter that was committed to the Land Department exclusively, and, in the absence of fraud on the part of the officials of that Department, could not be reviewed by the courts. *Donley v. West*, 189 Pac. 1052 (Cal. App. 1920), reversed on rehearing on other grounds, 193 Pac. 519 (Cal. App. 1920), error dismissed, 260 U.S. 697 (1922).

3. —First and second form withdrawals

There are two classes of withdrawals authorized by the Act, one commonly known as "withdrawals under the first form," which embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other, commonly

known as "withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works but which may possibly be irrigated from such works. General Land Office Circular, June 6, 1905, 33 L.D. 607.

Two classes of withdrawals are provided for by this section, and the exception of homestead entry from the second does not apply to the first; withdrawals and reservations thereunder being necessarily absolute. *United States v. Hanson,* 167 Fed. 881, 93 C.C.A. 371 (Wash. 1909).

The proviso of section 5 of the Act of June 25, 1910, as amended, making lands reserved for irrigation purposes and relinquished from prior entries subject to entry under this section, applies only to lands withdrawn under this section as susceptible of irrigation under a proposed project, and not to lands withdrawn as required for the construction of irrigation works. *United States v. Fall,* 276 Fed. 622, 57 App. D.C. 100 (1921).

Where the Secretary of the Interior by approval of farm unit plats under the provisions of the Act of June 17, 1902, heretofore or hereafter given, has determined, or may determine, that the lands designated thereon are irrigable, the filing of such plats in the office of the Commissioner of the General Land Office and in the local land offices shall be regarded as equivalent to an order withdrawing such lands under the second form under said Act, and as an order changing to the second form any withdrawal of the first form then effective as to any such tracts. Department decision, 37 L.D. 27 (1908).

The distinction between "forms of withdrawals," that is, between "first form withdrawals" (for irrigation works) and "second form withdrawals" (for irrigable land), was made administratively to recognize the distinction that in the latter case, irrigable lands so withdrawn under section 3 of the Reclamation Act could be entered under the homestead laws in advance of the availability of water from the project. This distinction was no longer pertinent after the enactment of section 5 of the Act of June 25, 1910, 36 Stat. 835, which precluded entry until after the Secretary had established the unit of acreage, fixed the water charges and the date of water availability, and made public announcement of the same. For this reason, the Bureau of Reclamation has abandoned the use of second form withdrawals. Associate Solicitor Fisher Opinion, M-36433 (April 12, 1957), in re disposal of lands, Guernsey Reservoir, North Platte Project.

4. —Procedures

Any withdrawal otherwise valid shall not be affected by failure to note same on tract book or otherwise follow the usual procedure. Instructions, 42 L.D. 318 (1913). See 48 L.D. 153, amending paragraphs 13, 14, and 16, and revoking paragraph 15 of general reclamation circular of May 18, 1916.

Under existing departmental procedures and regulations approved by the President, orders withdrawing public lands for reclamation purposes are effective when approved by the Commissioner of Reclamation and concurred in by the Bureau of Land Management, and are effective to constitute valid notice as to persons not having actual knowledge thereof when filed with the Division of the Federal Register, National Archives. Associate Solicitor Soller Opinion, M-36382 (October 24, 1956).

6. Lands and interests affected by withdrawal—Generally

Under this section, the Secretary of the Interior had authority to withdraw from public entry lands constituting a reservoir site sought to be appropriated by a water and power company, and the laws of the United States in reference to the disposition of public lands of the United States being paramount and exclusive, a water and power company could not acquire an easement on lands of a reservoir site, withdrawn from entry by the Secretary of the Interior, by virtue of any compliance with Civ. Code 1913, para. 5337, 5338. *Verde Water & Power Co. v. Salt River Valley Water Users' Assn.,* 197 Pac. 227, 22 Ariz. 305, *cert. denied,* 257 U.S. 643.

The withdrawal authority of section 3 of the Reclamation Act must be construed broadly. Accordingly, withdrawal orders are effective as to public lands which were not technically open to "public entry" at the time of the order, such as forest reserves and school lands reserved for the benefit of a Territory but not granted to it. Assistant Secretary Davidson Opinion, 59 I.D. 280 (1946).

7. —National parks

The Secretary of the Interior has the same right to withdraw lands within the Yosemite National Park, created by the Act of October 1, 1890, 26 Stat. 650, for the uses and purposes contemplated by the Act of June 17, 1902, that he has to withdraw lands for such purposes within forest reservation created under authority of the Act of March 3, 1891, 26 Stat. 1095. Op. Asst. Atty. Gen., 33 L.D. 389 (1904).

8. —Forest reserves

Under the Act of February 15, 1901, 31 Stat. 790, lands in forest reserves created

under authority of the Act of March 3, 1891, 26 Stat. 1095, may be appropriated and used for irrigation works constructed under authority of the Act of June 17, 1902, as well as for works constructed by individuals. Op. Asst. Atty. Gen., 33 L.D. 389 (1904).

9. —Military reservations

Congress having by the Act of July 5, 1884, 33 Stat. 103, provided for the disposal of lands in abandoned military reservations, the Secretary of the Interior is without authority to dispose of such lands in any other manner or to segregate them for use in connection with an irrigation project. Instructions, 33 L.D. 130 (1904).

Lands formerly within the Fort Buford Military Reservation were by the Act of May 19, 1900, 31 Stat. 180, restored to the public domain and made subject to existing laws relating to disposal of the public lands, except such laws as are not specifically named therein, and are subject to withdrawal under the Reclamation Act as other portions of the public domain subject to entry under the general land laws; and a withdrawal of such lands for reclamation purposes is effective as to all of the lands for which entry was not made within three months from the filing of the township plat and prior to the withdrawal. Op. Asst. Atty. Gen., 34 L.D. 347 (1905).

The fact that the Act of April 18, 1896, 29 Stat. 95, provides that the lands in the abandoned portion of the Fort Assiniboine Military Reservation, thereby opened to entry, shall be disposed of only under the laws therein specifically named, does not prevent a withdrawal under the Act of June 17, 1902, of any of said lands as to which no vested right has attached. *Mary C. Sands,* 34 L.D. 653 (1906).

10. —Indian lands

Where under the Act of March 3, 1905, 33 Stat. 1069, lands of the Uintah Indian Reservation have been set apart and reserved as a reservoir site for general agricultural development and subsequently have been withdrawn, under section 3 of the Reclamation Act, from all forms of sale and entry, the United States is liable upon an implied contract to the Indians of said reservation for the occupancy and use of said lands to the extent that the use made of them is inconsistent with the rights of the Indians to use and occupy them or leave them open to sale and entry for their benefit, and the reclamation fund is applicable to the payment thereof. 14 Comp. Dec. 49 (1907).

The Secretary of the Interior, by departmental orders of January 31 and September 8, 1903, withdrew for flowage purposes under the Reclamation Act of June 17, 1902, land in sections 4, 6, 8, 16, 20, 22, 28 and 34, T. 16 N., R. 21 W., and in section 12, T. 16 N., R. 22 W., G. & S. R. M. Executive Order of February 2, 1911, subsequently withdrew these lands as an addition to the Fort Mohave Indian Reservation. Congress by Act of May 23, 1934, 48 Stat. 795, recognized Indian ownership of the lands and confirmed the Executive Order of February 2, 1911. The Department held that the reclamation withdrawals of January 31 and September 8, 1903, were ineffective and that title to said lands being in the Fort Mohave Indian Reservation, the Indians are entitled to compensation for land required by the Bureau of Reclamation for flowage purposes on account of the construction of Parker Dam, Arizona. Solicitor Margold Opinion, M-28589 (August 24, 1936).

The Chemehuevi Indians claimed compensation for lands to be flooded by the Parker Reservoir, Parker Dam project, but the Metropolitan Water District, which was acquiring the right of way for the reservoir under contract with the United States, contended that it was not necessary to purchase the lands since they had been withdrawn for reclamation purposes by departmental orders of July 2, August 26 and September 15, 1902, and February 5 and September 8, 1903. On February 2, 1907, the lands were withdrawn from settlement and entry pending action by Congress authorizing the addition of the lands to various mission Indian reservations. The Department held that at most the reclamation withdrawals established the right of the Bureau of Reclamation to utilize the land for reclamation purposes as and when the need arose, but that the Indians must be paid for the land, their occupation of which long antedated the reclamation withdrawals, and was subsequently recognized by the order of February 2, 1907. Solicitor Margold Opinion, M-30318 (December 15, 1939).

11. —Minerals and mineral lands

The right of the Government to appropriate public land for use in the construction and operation of irrigation works under the Act of June 17, 1902, is not affected by the fact that the land is mineral in character. Instructions, 35 L.D. 216 (1906). *Loney v. Scott,* 57 Or. 378, 112 Pac. 172 (1910).

The authority of the Secretary of the Interior to withdraw "lands" for reclamation purposes includes within its scope the authority to withdraw the minerals in lands where the surface has been patented by the Government but the title to the min-

erals is retained by the Government. Solicitor White Opinion, M-36142 (October 29, 1952), in re lands of Ute Indian Tribe.

12. —Mining claims

Unpatented mining claims were subject to order of the Secretary of the Interior pursuant to this section withdrawing certain land except any tract "title" to which had passed out of the United States, from public entry, and therefore the mining claims were not subject to relocation on alleged default by locators after the withdrawal order. *Walkeng Mining Co. v. Covey,* 352 P. 2d 768 (Ariz. 1960).

A mining claim as to which the claimant was in default in the performance of annual assessment work at the date of a withdrawal for the construction of irrigation works under the Reclamation Act does not except the land from the force and effect of the withdrawal. *E. C. Kinney,* 44 L.D. 580 (1916).

A mineral location founded on actual discovery of a valuable deposit of mineral within the limits of the claim, and maintained in accordance with the mining laws and local regulations, excepts the land from the operation of a withdrawal under this Act. Instructions, 32 L.D. 387 (1904).

13. —Settlers and entrymen

By the mere filing of an application to enter under the homestead law, upon which action is suspended, and tender of the necessary fees, the applicant acquires no vested right to or interest in the land applied for, nor does such application have the effect to segregate the land from the public domain, so as to prevent a withdrawal thereof for reclamation purposes. *John J. Maney,* 35 L.D. 250 (1906); *Charles G. Carlisle,* 35 L.D. 649 (1907). Decision modified; see 48 L.D. 153; C.L. 1013, June 15, 1921.

The Reclamation Act contains no provision for the recognition or protection of any right of a settler on unsurveyed public lands which may be withdrawn and reserved thereunder for use in the construction of irrigation works, nor is there any such provision in the Act of June 27, 1906, 34 Stat. 519, or other statute of the United States, and such settler has no right which he can oppose to the taking of the land for such purpose. *United States v. Hanson,* 167 Fed. 881, 93 C.C.A. 371 (Wash. 1909).

An application to make soldiers' additional entry, although filed prior to the passage of the act and pending at the date of an order withdrawing the lands covered thereby under the provisions of said act, is not effective to except the lands from such withdrawal. *Nancy C. Yaple,* 34 L.D. 311 (1905).

Even though approved by the Commissioner of the General Land Office, an application to make soldiers' additional entry will not, prior to the allowance of entry thereon, prevent a withdrawal of the land covered thereby. *Charles A. Guernsey,* 34 L.D. 560 (1906).

Order withdrawing land from entry under this section did not relieve entryman from the duty of claiming land and complying with Homestead Law as to residence and cultivation prior to amendment of 1912, where the land officials made a public announcement that the withdrawals of lands were not permanent, but were for the purpose of enabling preliminary investigations to be made as to the feasibility of irrigation project. *Bowen v. Hickey,* 200 Pac. 46, 53 Cal. App. 250 (1921), *cert. denied.* 257 U.S. 656.

By a successful contest against a desert-land entry the contestant does not acquire such a preference right of entry as will, prior to its exercise, except the land from the operation of a withdrawal made under this Act. *Emma H. Pike,* 32 L.D. 395 (1902.)

The regulations of 1909 purporting to extinguish a statutory preference right of entry to lands covered by a reclamation withdrawal are without force and effect. *Wells v. Fisher,* 47 L.D. 288 (1919).

Where homestead or desert-land entries are included within first-form reclamation withdrawals, they should not be suspended, but allowed to proceed to final proof, certificate, and patent, and the land, if thereafter needed by the United States for reclamation purposes, reacquired by purchase or condemnation. Instructions, 43 L.D. 374 (1914), overruling Op. Asst. Atty. Gen., 34 L.D. 421, and *Agnes C. Pieper,* 35 L.D. 459 (1907).

Upon the cancellation of a homestead entry covering lands embraced within a subsequent withdrawal made under the Act, the withdrawal becomes effective as to such lands without further order. *Cornelius J. MacNamara,* 33 L.D. 520 (1905).

No such rights are acquired by settlement upon lands embraced in the entry of another as will attach upon cancellation of such entry, where at that time the lands are withdrawn for use in connection with an irrigation project; nor is there any authority for purchase by the Government of the settler's claim or of the improvements placed upon the land by him. *George Anderson,* 34 L.D. 478 (1906).

Where lands subject to an existing homestead entry are withdrawn under the

Reclamation Act, the withdrawal becomes effective as to such land without any further order as soon as the existing entry is canceled, and the land is thereafter no longer subject to homestead entry while remaining so withdrawn. *James F. Rapp*, A-25284, 60 I.D. 217 (1948).

Where land in a desert-land entry is withdrawn under the Reclamation Act and the entry is subsequently canceled, the withdrawal becomes effective as to such land upon the cancellation of the entry. *George B. Willoughby*, 60 I.D. 363 (1949).

14. —Contests

Contests will be allowed of entries embracing lands within a reclamation withdrawal even though the successful contestant's preferred right of entry may be futile unless and until the withdrawal is revoked. Instructions, 41 L.D. 171 (1912).

A protest by one claiming under a placer location against a conflicting desert-land entry, will be allowed, even though the land was withdrawn under this section, in order to clear the record of one of the antagonistic claims. *New Castle Co. v. Zanganella*, 38 L.D. 314 (1909), overruling *Fairchild v. Eby*, 37 L.D. 362 (1908).

15. —Smith Act lands

A first form withdrawal is effective as to unentered public lands notwithstanding the fact that the lands previously were approved by the Secretary as being subject to the Smith Act. *McDonald*, 69 I.D. 181 (1962), *overruling Bill Fults*, 61 I.D. 437 (1954), in re desert land entries within Imperial Irrigation District.

Where assessments were levied by an irrigation district under the Smith Act of August 11, 1916, against unpatented land in an existing desert-land entry, the irrigation district can enforce the lien arising from such assessment by a sale of the land in accordance with the provisions of the act, despite the cancellation of the entry and the withdrawal of the land under the Reclamation Act during the intervening period, because the right of the district to enforce its lien by sale of the lands is a "valid existing right" not affected by the withdrawal. The purchaser of the land at such a sale may obtain a patent to the land only if he submits proof of the reclamation and irrigation of the land, as required by the Reclamation Act, and pays to the United States the amounts required under that act. *George B. Willoughby*, 60 I.D. 363 (1949).

16. —Water rights

There is no authority to make such executive withdrawal of public lands in a State as will reserve the waters of a stream flowing over the same from appropriation under the laws of the State, or will in any manner interfere with its laws relating to the control, appropriation, use, or distribution of water. Op. Asst. Atty. Gen. 32 L.D. 254 (1903). But cf. *Arizona v. California*, 373 U.S. 546, 595–601 (1963).

17. —School lands

Lands reserved for school purposes to the State of Arizona, even after survey, were subject to reclamation withdrawal under section 3 of this Act if withdrawn at the time of the admission of the Territory of Arizona to statehood. Assistant Secretary Davidson Opinion, 59 I.D. 280 (1946).

18. —Selected lands

Where the affidavit as to the character and condition of the land accompanying an application to make selection under the exchange provisions of the Act of June 4, 1897, 30 Stat. 36, is executed before the selector acting as notary public, such affidavit is void, and the application can therefore have no effect to except the lands covered thereby from a subsequent withdrawal embracing the same in accordance with the provisions of section 3 of this Act. *Peter M. Collins*, 33 L.D. 350 (1904).

A first-form withdrawal under the Reclamation Act does not defeat the equitable title of the selector acquired under an indemnity school selection if the selection was legal and completed prior to withdrawal. *State of California and Overland Trust & Realty Company*, 48 L.D. 614 (1921).

The location of Valentine scrip upon unsurveyed public land in conformity with the law and departmental regulations is such an appropriation of the land as cannot be defeated by a subsequent reclamation withdrawal, notwithstanding the selection had not been adjusted to an official survey, and the selector cannot thereafter be deprived of his rights thus acquired except in the manner prescribed by the Reclamation Act. *Edward F. Smith*, et al., 51 L.D. 454 (1926).

19. —Timber and stone laws

A withdrawal of lands under this Act will defeat a prior application to purchase the same under the timber and stone laws where, at the date of withdrawal, the applicant had acquired no vested right to the lands embraced in his application. *Board of Control, Canal No. 3, State of Colorado v. Torrence*, 32 L.D. 472 (1904).

20. —Railroad rights-of-way

No such right is acquired by virtue of an application for right-of-way for a railroad under the Act of March 3, 1875, 18 Stat.

482, before the approval thereof, and prior to the construction of the road, as will prevent the Secretary of the Interior from withdrawing the lands covered thereby for use as a reservoir under the Reclamation Act. Op. Asst. Atty. Gen., 32 L.D. 597 (1904).

The Southern Pacific Company in 1916 filed a general map of the station grounds at Mohawk, Ariz., adjoining its right-of-way and in 1936 filed for approval a map giving the exact location points. In 1929 the Bureau withdrew the land under a first form reclamation withdrawal for the Gila project. The General Land Office, as a condition precedent to approval of the map, requested that a stipulation be signed making certain reservations to the United States. The First Assistant Secretary in decision A–20886, of July 24, 1937, held that the execution of the stipulation could not lawfully be required since the station grounds were private property at the time of the reclamation withdrawal and were not affected thereby. The station grounds were held to be subject to the provisions of the act of August 30, 1890, 26 Stat. 391, making reservations for ditch and canal rights-of-way.

26. Withdrawn lands—Generally

Withdrawals made by the Secretary of the Interior under the first form, of lands which are required for irrigation works have the force of legislative withdrawals and are effective to withdraw from other disposition all lands within the designated limits to which a right has not vested. Instructions, 32 L.D. 387 (1904).

Reclamation withdrawn lands are "reserved lands" and therefore are not subject to Executive Order No. 6910 of November 26, 1934, and Executive Order No. 6964 of February 5, 1935. G.L.O. Circular No. 1351, 55 I.D. 247 (1935).

The State of Utah appealed from decision of the General Land Office, dated January 14, 1930, that the rights of the State of Utah did not attach to certain land in sec. 16, T. 3 S., R. 25 E., S. L. M., because of a phosphate reserve. The Department ruled that inasmuch as the lands were embraced in a reclamation withdrawal and later a phosphate reserve, they were not subject to section 6 of the Utah Enabling Act (granting, with other land, all sections 16 to the state, unless in a reservation) and would not be until the reservations, including the reclamation withdrawal, were extinguished and the lands restored to and become a part of the public domain. Decision of Assistant Secretary, April 18, 1931.

Accretions to withdrawn land became part of that land and subject to the withdrawal. Solicitor Barry Opinion 72 I.D. 409, 411 (1965), in re Palo Verde Valley color of title claims. Accord: *Beaver v. United States,* 350 F. 2d 4 (9th Cir. 1965), cert. denied 383 U.S. 937 (1966); *Myrtle White,* 56 I.D. 300 (1938).

Public lands on the east side of the Colorado River which were withdrawn for reclamation purposes remain subject to the withdrawal after artificial cuts in the river channel place them on the west side of the river. This follows from the rule of law that where the channel of a river changes by avulsion, title to the avulsed land is not lost by the former owner. Solicitor Barry Opinion, 72 I.D. 409 (1965), in re Palo Verde Valley color of title claims.

Land included in a reclamation withdrawal is subject to disposition under the Recreation and Public Purposes Act, 43 U.S.C. § 869 et seq. *Carl F. Murray and Clinton D. Coker,* A–28188, 67 I.D. 132 (1960).

27. —Settlement and entry (other than under Reclamation Act)

Withdrawal from entry of public lands required for irrigation works, under this section, is absolute, and, until its restoration to entry, land so withdrawn is not subject to entry, and no right thereto can be initiated by any settler thereon. *Donley v. West,* 189 Pac. 1052 (Cal. App. 1920), reversed on rehearing on other grounds, 193 Pac. 519, 49 Cal. App. 796 (1920), error dismissed, 260 U.S. 697 (1922); *Donley v. Van Horn,* 193 Pac. 514, 49 Cal. App. 383 (1920), *cert.* dismissed, 258 U.S. 634, error dismissed, 260 U.S. 697.

Occupancy by private individual of public lands during time order of withdrawal from entry under this section is in force constitutes trespass, and occupant's improvements are made at his own risk. *Capron v. Van Horn,* 258 Pac. 77, 201 Cal. 486 (1927).

No rights accrue from an alleged settlement on lands covered by a first-form withdrawal under section 3 of the Reclamation Act. *Noah Kesterson,* A–21260 (February 2, 1939).

A homestead application cannot be allowed on land covered by a first-form reclamation withdrawal at the time of entry. *John Dondero,* A–25582 (November 29, 1949).

An application to make homestead entry for land embraced within a first form withdrawal should not be allowed nor received and suspended to await the possible restoration of the lands to entry, but should be rejected. *Ernest Woodcock,* 38 L.D. 349 (1909).

Lands withdrawn from entry, except un-

der the homestead laws, in accordance with this act, are not, during the continuance of such withdrawal, subject to entry under the desert land laws. *James Page,* 32 L.D. 536 (1904).

By the provision that lands susceptible of irrigation under a project shall be withdrawn "from entry, except under the homestead laws", Congress intended to inhibit any mode of private appropriation of such lands except by such entry under the homestead laws as requires settlement, actual residence, improvement, and cultivation; hence such lands are not subject to soldiers' additional entry under section 2306, Revised Statutes. *Cornelius J. MacNamara,* 33 L.D. 520 (1905); *William M. Woodridge,* 33 L.D. 525 (1905); *Mary C. Sands,* 34 L.D. 653 (1906).

28. —Mining locations

Withdrawals under the first clause are not subject to location for mining purposes, being reserved for Government use, while lands withdrawn under the second clause are disposed of only for homesteads, and as all lands open to homestead entry are subject to mining location, lands withdrawn under the second clause are so subject. *Loney v. Scott,* 112 Pac. 172, 57 Or. 378 (1910).

Lands valuable for mineral deposits and embraced within a withdrawal of lands susceptible of irrigation by means of a reclamation project are not thereby taken out of the operation of the mining laws, but continue open to exploration and purchase under such laws. Instructions, 35 L.D. 216 (1906).

Lands covered by a first-form reclamation withdrawal are not open to mining locations where they have not been opened to mineral entry by the Secretary of the Interior. *Harry A. Schultz, et al.,* A–26917, 61 I.D. 259 (1953).

Neither the Atomic Energy Act of 1946, as amended, 42 U.S.C. §§ 2011, *et seq.,* nor the Mining Claims Restoration Act of 1955, 30 U.S.C. § 621, *et seq.,* open reclamation withdrawn land to location under the mining laws. *A. W. Kimball, et al.,* A–27526, 65 I.D. 166 (1958).

Where lands which are subject to a reclamation withdrawal appear to be of greater value for business purposes than for mineral development, an application to restore the lands to location and entry under the mining laws will be denied. *Arthur G. Klinger,* A–26195 (June 27, 1951).

Lands dedicated for public park purposes under section 3 of the Gila Project Act of July 30, 1947, subject to a mineral reservation to the United States, remain subject to the reclamation withdrawal, and the Department may properly decline, under the Act of April 23, 1932, to open them to mineral location. *M. W. Bobo, et al.,* A–26613 (July 13, 1953).

A petition for the restoration to mineral entry of land withdrawn for reclamation purposes under section 3 of the Reclamation Act and subsequently also withdrawn by Presidential Executive Order as part of the Imperial National Wildlife Refuge, is properly denied when mining operations would interfere with the purposes of the refuge, even though the Bureau of Reclamation has no objection to such restoration, and even though the Executive Order cites the Act of June 25, 1910, which extends the mining laws to lands withdrawn thereunder. The President has inherent authority to withdraw public lands for public purposes apart from the statutory authority vested in him by the 1910 Act. *P&G Mining Company,* A–27829, 67 I.D. 217 (1960).

29. —Mineral leasing

Withdrawals under the second form do not affect coal lands. *Albert M. Crafts,* 36 L.D. 138 (1907), overruling *John Hopkins,* 32 L.D. 560 (1904).

The Secretary of the Interior has discretionary authority under section 13 of the Mineral Leasing Act of February 25, 1920, to deny an application for oil and gas prospecting permit embracing lands within a reclamation withdrawal, which, though owned by the United States, have been dedicated to purposes authorized by law, if the permit may not be granted except at the risk of serious impairment or perhaps complete loss of their use for the purpose to which dedicated. *Martin Wolfe,* 49 L.D. 625 (1923).

Public lands withdrawn for a reservoir site, which cannot be restored to the public domain without damage to the project, or which have, because of improvements placed thereon, become lands that may be sold only for the benefit of the reclamation fund, are not subject to the operation of the Mineral Leasing Act of February 25, 1920. *J. D. Mell, Inc.,* 50 L.D. 308 (1924).

30. —Selection

Land withdrawn under this section cannot be selected as lieu land by the State of California under the Act of May 2, 1914, 38 Stat. 372, granting the right to select "vacant" and "unreserved" land in lieu of certain school lands. *Donley v. Van Horn,* 193 Pac. 514, 49 Cal. App. 383 (1920), cert. dismissed, 258 U.S. 634, error dismissed, 260 U.S. 697.

Lands withdrawn under the second form are not subject to selection under the ex-

change provisions of the Act of June 4, 1897, 30 Stat. 26. *Santa Fe Pacific R.R. Co.*, 33 L.D. 360 (1904).

Public land which is included in a first form reclamation withdrawal is not open. to selection and disposal under the private exchange provisions of section 8 of the Taylor Grazing Act. *Perley M. Lewis*, A-26748 (June 9, 1954).

31. —Leases and permits

The Secretary of the Interior may establish rules as to the use of withdrawn lands while not needed for the purpose for which they are reserved, and may lease them for grazing, the revenue going into the reclamation fund. *Clyde v. Cummings*, 101 Pac. 106, 35 Utah 461 (1909).

The Secretary of the Interior has authority to make temporary leases of lands reserved or acquired by purchase for use in connection with an irrigation project contemplated under the provisions of the Reclamation Act where use under the proposed lease will not interfere with the use and control of the lands when needed for the purposes contemplated by the reservation or purchase. Op. Asst. Atty. Gen., 34 L.D. 480 (1906).

Whenever it is reasonably necessary for the preservation of the buildings, works, and other property, or for the proper protection and efficiency of any reclamation project, or where special conditions make it advisable, first form withdrawn or purchased lands may be leased to the highest bidder for a term to be decided upon by the Reclamation Service as the conditions may arise. Reclamation decision, March 23, 1917.

On July 8, 1933, the Secretary of the Interior approved the leasing of lands until they were needed regardless of the form in which they were withdrawn.

Leases for grazing lands should be awarded to the high bidder, even if the previous lessee of the land is low. Decision of First Assistant Secretary, January 30, 1934.

The Secretary of the Interior has authority to lease first and second form withdrawn lands without advertisement, and to prescribe method of determining the lease value by such plan as he deems expedient and for the best interests of the United States and the project. Solicitor Opinion, M-27790 (December 18, 1934).

Both the National Park Service and the Bureau of Reclamation, in administering their respective areas withdrawn under the first form in connection with the Boulder Canyon project, may grant leases for land and permits to engage in business activities to private individuals without advertising for proposals or securing competitive bids. Solicitor Margold Opinion, M-28694 (October 13, 1936).

When a lease of grazing lands is canceled for failure to pay the agreed rental but the lessor still continues occupancy and later submits a bid for a new lease upon the same land, accompanied by a deposit of the first year's rent under the new lease, it is proper to apply such deposit against the indebtedness to the United States arising out of the old lease. Dec. Comp. Gen., A-58113 (December 3, 1934).

If land under first form reclamation withdrawal is leased under the Recreation and Public Purposes Act, 43 U.S.C. § 869 et seq., the Secretary may require, as a condition of the lease, that the lessee pay the annual water charges for the lands involved on account of the reclamation project. Memorandum of Associate Solicitor Soller, in re Worland Saddle Club application, Hanover Bluff Unit, Missouri River Basin Project, September 24, 1957.

All leases of lands withdrawn for reclamation purposes should be made under subsection I of the Act of December 5, 1924, as Congress by that subsection recognized the authority of the Secretary of the Interior to lease such lands. First Assistant Secretary Opinion, M-29482 (October 8, 1937).

On February 3, 1928, the Commissioner, Bureau of Reclamation, recommended to the Secretary of the Interior the adoption of a policy of permitting the water users on the projects transferred to them for operation, to lease for grazing and agricultural purposes, all withdrawn or acquired lands where such lease would not interfere with the purposes for which withdrawn or acquired, the water users to make the leases, collect the charges, and handle all details in connection with such transactions. The recommendation was returned to the bureau without approval by First Assistant Secretary E. C. Finney under date of February 21, 1928, with the statement that such procedure would be illegal.

32. —Rights of way

A withdrawal under the Reclamation Act will not bar the allowance of an application for right-of-way for private irrigation canal under the Act of March 3, 1891, over the withdrawn lands, where the allowance of the application will not interfere with the use of the lands by the United States in connection with the administration of the reclamation act and where the water proposed to be conveyed over such right-of-way has not been appropriated and is not claimed by the United States. *Boughner v. Magenheimer, et al.*, 42 L.D. 595 (1913).

The Under Secretary on December 10, 1938, held that the Federal Water Power

Act of June 10, 1920, as amended by section 201 of the Act of August 26, 1935, 49 Stat. 838, covers lands held or acquired in connection with reclamation projects, and applications for licenses for the transmission of hydroelectric power across the project lands should be made to the Federal Power Commission. Letter of Under Secretary, December 10, 1938, in re Yakima-Sunnyside project.

On December 18, 1941, the Under Secretary approved procedure for granting rights of way for electrical transmission, telegraph and telephone lines over lands acquired or withdrawn for reclamation purposes.

The General Railroad Right of Way Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. §§ 934, *et seq.*, does not apply to lands withdrawn through a first-form withdrawal. *Southern Pacific Railroad Company*, A–26143 (August 20, 1951).

33. —National forests

Reclamation withdrawals within the national forests are dominant, but until needed by the Reclamation Service, the lands will remain for administrative and protection purposes under control and direction of the Forest Service. Departmental decision, February 27, 1909.

While the Secretary of the Interior may determine what lands within national forests withdrawn for reclamation purposes are necessary for the proper protection of reservoirs constructed under the Reclamation Act, he has no power to lease such lands, since authority in that regard is specifically granted to the Secretary of Agriculture. But in recognition of the needs of the Reclamation Service and to forestall any contracts detrimental to a reclamation project, all leases should be subject to the prior approval of the Secretary of the Interior. 31 Op. Atty. Gen. 56 (1916). But see Act of July 19, 1919, conferring certain jurisdiction on the Secretary of the Interior.

34. —Sand and gravel

Removal of gravel from first form lands is unauthorized, as it contemplates a diminution in the freehold estate. Departmental decision, July 21, 1916, Huntley project.

The removal of surface rock on first-form lands may be permitted when such removal makes available for use of the service of the better class of rock in the interior of the deposit. Departmental decision, January 25, 1917, Rattlesnake Hill, Truckee-Carson.

The removal of sand and gravel for private purposes from land withdrawn under the first form is authorized, provided the privilege is granted under competitive conditions and on terms adequately protecting the rights of the United States. Departmental decision, April 13, 1929, Boulder Canyon project.

41. Revocation of withdrawals—Generally

A homestead entry, which was void when made, because the land was withdrawn as required for reclamation construction, is not validated by a subsequent order of the Secretary of the Interior declaring the land not needed for construction purposes. *United States v. Fall*, 276 Fed. 622 (App. D.C. 1921).

The Act of April 21, 1928, as amended, provides that the holder of a tax title on a reclamation homestead entry is entitled to the benefits of an assignee of such an entry under the Act of June 23, 1910; and the privileges under the Act of June 23, 1910, which are granted to the holder of a tax title under the Act of April 21, 1928, as amended, are not extinguished by the elimination of the entry from the reclamation withdrawal after the interest of the holder of the tax title was acquired. *Ralph O. Baird*, A–26773 (November 3, 1953).

A settlement upon public lands, withdrawn at date of settlement, is valid against everyone except the United States, and where one settles prior to survey, upon withdrawn lands embraced within a school section, the right of such settler to make entry upon approval of the survey and vacation of the withdrawal is paramount to the right of the State under its school land grant. *State of Idaho v. Dilley*, 49 L.D. 644 (1923).

Where revocation of order which withdrew land from entry in connection with reclamation project under this section, and approval of selection of patentee of part of such land in lieu of school land were simultaneous acts, approval of lieu selection took place before land became "unreserved" and "vacant" public land, subject to disposal under the Act of May 2, 1914, 38 Stat. 372, and gave patentee no rights therein except as against United States on expiration of period of limitation on patent under 43 U.S.C. § 1166. *Capron v. Van Horn*, 258 Pac. 77, 201 Cal. 486 (1927).

Though entry on public land was unauthorized, occupancy at time of revocation of order withdrawing land from entry under this section, became lawful, especially where occupant had applied for desert land entry, and made improvements, and land on revocation of withdrawal order ceased to be "vacant" or "unreserved" land under the Act of May 2, 1914, 38 Stat. 372. *Capron v. Van Horn*, 258 Pac. 77, 201 Cal. 486 (1927).

In action by patentee to quiet title against person who had possession and made im-

provements while land was withdrawn from entry under this section, and who had applied for desert land entry, evidence was insufficient to support finding that defendant's unauthorized possession was not in good faith. *Capron v. Van Horn,* 258 Pac. 77, 201 Cal. 486 (1927).

Where lands formerly in Ute Reservation, which were withdrawn under this section, were subsequently restored to public domain, the Indians were not deprived of their interest therein. *Confederated Bands of Ute Indians v. United States,* 112 Ct. Cl. 123 (1948).

Lands formerly in the Ute Reservation, listed in the Secretary's return to the call, which were withdrawn for public purposes prior to June 28, 1938, under authority of this section, and which remained so withdrawn on June 28, 1938, were held for disposal for the benefit of the Indians on that date, since under this section, the lands had not been assigned to use or actually used, and had been subsequently restored to public use. *Confederated Bands of Ute Indians v. United States,* 112 Ct. Cl. 123 (1948).

42. —When effective

Where lands which have been withdrawn from all disposition are restored to entry, no application will be received or any rights recognized as initiated by the tender of an application for any such lands until the order of restoration is received at the local land office. *George B. Pratt, et al.,* 38 L.D. 146 (1909).

43. —Contestant's preference right of entry

Under the Act of May 14, 1880, 21 Stat. 140, providing that where any person has contested and procured the cancellation of any homestead entry he shall be allowed 30 days to enter the lands, where the Department of the Interior entertained a contest while the land involved was withdrawn from entry under the Reclamation Act, it properly permitted the successful contestant to enter the lands within 30 days after restoration of such lands to entry. *Edwards v. Bodkin,* 241 Fed. 931 (D. Cal. 1917), affirmed 265 Fed. 621 (9th Cir. 1920). Accord: *McLaren v. Fleischer,* 185 Pac. 961, 181 Cal. 607 (1919), affirmed 256 U.S. 477 (1921); *Culpepper v. Ocheltree,* 185 Pac. 971 (Cal. 1919), affirmed 256 U.S. 483 (1921).

Any right under regulation 7 of June 6, 1905, issued by the Secretary of the Interior, which successful contestant of homestead entry on land withdrawn as susceptible of irrigation might have had, was lost by promulgation of regulation 6 of January 19, 1909, as land before termination of contest or entry by contestant was withdrawn for irrigation works. *Edwards v. Bodkin,* 249 Fed. 562, 161 C.C.A. 488 (Cal. 1918), overruling 42 L.D. 172; affirmed 267 Fed. 1004 (D. Cal. 1919), affirmed 265 Fed. 621 (9th Cir. 1920), affirmed 255 U.S. 221 (1921).

Where it did not appear that a contest was duly instituted, so as to give the land office jurisdiction to determine rights to the land, there being no question of fraud on the Government, the decision of the land office as to rights to arid land withdrawn after entry under this section, but later released, is not binding. *Edwards v. Bodkin,* 267 Fed. 1004 (D. Cal. 1919), affirmed 265 Fed. 621, affirmed 255 U.S. 221.

Where land embraced in a homestead entry was withdrawn for use in connection with a reclamation project pending a contest which resulted in cancellation of the entry, the successful contestant upon restoration of the land is entitled to a period of 30 days from the date of such restoration within which to exercise his preference right to entry. *Beach v. Hanson,* 40 L.D. 607 (1912); *Wright v. Francis,* et al., 36 L.D. 499 (1908).

A successful contestant cannot be permitted to make entry in exercise of his preference right while the lands he seeks to enter are embraced in a first form withdrawal under the Reclamation Act; but under the regulations of August 24, 1912, 41 L.D. 171, and September 4, 1912, 41 L.D. 421, he may exercise that right at any time within 30 days from notice that the lands involved have been released from withdrawal and made subject to entry. *John T. Slaton,* 43 L.D. 212 (1914).

44. —Desert land entries

In view of this section, section 5 of the Act of June 27, 1906, as amended, is applicable to a homestead entry, and the failure of an entryman on arid lands withdrawn under this section to continuously reside or cultivate the same cannot, the lands being later released, be deemed an abandonment. *Edwards v. Bodkin,* 267 Fed. 1004 (D. Cal. 1919), affirmed 265 Fed. 621, affirmed 255 U.S. 221.

In action to recover real property and quiet title, defendant holding possession of Government land and making improvements under application for desert land entry during pendency of order withdrawing land from entry under this section and at and after time of revocation of such order, was entitled to land as against patentee whose selection thereof in lieu of school land under Act of May 2, 1914, c. 75, 38 Stat. 372, was approved at time of revocation of order,

as defendant in possession and making improvements became rightful occupant when land was thrown open to entry. *Capron v. Van Horn,* 258 Pac. 77, 201 Cal. 486 (1927).

45. —Second withdrawal

All entries of lands withdrawn under the Act are subject to the conditions imposed by this section, and a revocation of the withdrawal operates to remove those conditions and leaves the entries in the same situation as entries made prior to the withdrawal, and such conditions cannot, by force of a second withdrawal, be reimposed upon such of the entries made during the period of the first withdrawal as had not been perfected at the date of the second withdrawal. Op. Asst. Atty. Gen., 34 L.D. 445 (1906).

II. RECLAMATION ENTRIES

51. Reclamation entries—Generally

Congress, in establishing a limitation on the size of entries on public lands under section 3 of the Reclamation Act of 1902, and on the maximum acreage for which a water-right could be acquired under section 5 of that Act, had as its purpose to provide homes on the arid lands of the West, the prevention of land monopoly, and the avoidance of land speculation. Solicitor Barry Opinion, 68 I.D. 372, 378 (1961), in re proposed repayment contracts for Kings and Kern River projects.

52. —Homestead laws, generally

In the withdrawal of lands under the second form there was an exception in favor of homestead; that is to say, such lands were not withdrawn from public entry under the homestead laws, but were continued to be open to such entry, "subject to all the provisions, limitations, charges, terms, and conditions" of the Act. *Edwards v. Bodkin,* 249 Fed. 562 (1918); affirmed *Edwards v. Bodkin* 267 Fed. 1004 (D.C. Cal. 1919); decree affirmed, *Bodkin v. Edwards,* 265 Fed. 621 (C.C.A. 1920); decree affirmed, 255 U.S. 221 (1921).

Although an entry is made under the provisions of the Reclamation Act of 1902, it is subject to the same requirements as entries made under the homestead laws. *Daniel H. Simkins,* A–26274 (March 11, 1952).

Entry of lands within a reclamation project can be initiated by settlement. In section 3 of the Reclamation Act the word "only," in the provision that "public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws," applies to and qualifies the clause "under the provisions of the homestead law." *Chapman v. Pervier,* 46 L.D. 113 (1917).

A homestead entry of a farm unit within a reclamation project, regardless of the area embraced therein, is the equivalent of a homestead entry for 160 acres outside of a project; but in fixing the area that should be charged against the entryman by reason of such entry, under the provision in the Act of August 30, 1890, 26 Stat. 371, that not more than 320 acres in the aggregate may be acquired by any one person under the agricultural public-land laws, the reclamation entry should be taken into account at its actual area and not charged as 160 acres. *Henry C. Taylor,* 42 L.D. 319 (1913).

Entrymen on lands expected to be irrigated from a reclamation project must comply with all requirements of the homestead laws even though it is impossible to cultivate the land without irrigation from the project. Instructions, 32 L.D. 633 (1904); *Jacob Fist,* 33 L.D. 257 (1904).

A settler on unsurveyed land in a school section who after survey and after withdrawal of the land under the Reclamation Act as susceptible of reclamation under an irrigation project was permitted to make entry for the full area of 160 acres, acquires rights by such settlement and entry which bar the attachment of any rights to the land on behalf of the State under its school grant. He must, however, conform his entry to a farm unit. *Sarah E. Allen,* 44 L.D. 331 (1915), modifying *Sarah E. Allen,* 40 L.D. 586 (1912) and *William Boyle,* 38 L.D. 603 (1910).

A homesteader whose entry is within the irrigable area of an irrigation project, but not subject to the restrictions, limitations, and conditions of the Act, cannot under the law, prior to the acquisition of title to the land, enter into an agreement to convey to a water users' association any portion of the land embraced in his entry, to be held in trust and sold for the benefit of the homesteader to persons competent to make entry of such lands. Op. Asst. Atty. Gen., 34 L.D. 532 (1906).

53. —Residence

Temporary withdrawal order does not suspend the requirements as to residence and irrigation until the lands are restored to entry, particularly where the Department notifies entrymen that it does not so construe the withdrawal. *Bowen v. Hickey,* 200 Pac. 46, 53 Cal. App. 250 (1921), cert. denied, 257 U.S. 656 (1921).

A reclamation homestead entry may be canceled where it is shown that the statutory requirement of the homestead laws with respect to the maintenance of residence has

not been met. *Kind v. Selstad,* 60 I.D. 382 (1949).

A homestead entry is subject to cancellation where the entryman has not resided upon the entry for the minimum length of time required by the homestead law. Visits of a transitory and temporary character to a homestead entry by the entryman are not sufficient to constitute actual residence. *United States v. Jesse J. Shaw,* A–26247 (December 29, 1951).

The requirement of the homestead law that the entryman must establish residence on his entry within a maximum period of 12 months from the allowance of his entry is not satisfied by clearing and leveling the land and cultivating it, where the entryman has lived with his family in rented premises in the vicinity of the entry and has never eaten, slept, or kept any possessions on the entry. *Boyd L. Hulse v. William H. Griggs,* A–28288, 67 I.D. 212 (1960).

Where an entryman fails to establish residence on his entry within 12 months from the allowance of his entry, the entry must be canceled. *Boyd L. Hulse v. William H. Griggs,* A–28288, 67 I.D. 212 (1960).

Where an entryman spent most of his waking hours upon the homestead, and had a habitable house thereon in which he ate some of his meals, took daytime naps, and entertained visitors, but slept every night in his son's home two miles from the homestead, he was not actually residing upon the homestead within the meaning of the homestead laws. *Daniel H. Simkins,* A–26274 (March 11, 1962).

54. —Preference right of entry

A successful contestant in exercising his preference right of entry upon lands within a reclamation project is limited to one farm unit, although such unit may embrace less than the area covered by the entry he contested. *Joseph F. Gladieux,* 41 L.D. 286 (1912).

Lands subject to entry within reclamation projects are no exception to the rule of law that an outstanding preference right of entry of certain lands is not, of itself, a bar to settlement thereupon, the settlement being subject, however, to the preference right if exercised. *Chapman v. Pervier,* 46 L.D. 113 (1917).

55. —Additional entries

The right of additional homestead entry granted by section 6 of the Act of March 2, 1889, 25 Stat. 854, cannot be exercised upon lands within a reclamation project. *Gjerluf Hanson,* 40 L.D. 234 (1911).

An entry of lands subject to the provisions of the Reclamation Act will not be allowed as additional to a prior entry subject only to the provisions of the general homestead law. *Charles O. Hanna,* 36 L.D. 449 (1908).

A person who has made homestead entry for any area within a reclamation project cannot make an additional entry for lands outside a project. *Bert Scott,* 48 L.D. 85, 87 (1921); see also 48 L.D. 113.

56. —Relinquishment of entry

An applicant who has been granted a water right in connection with a reclamation homestead application for land within a petroleum reserve is entitled, upon withdrawal of the application rather than accept a surface patent, to repayment of the water charges, where he had no knowledge of the petroleum withdrawal and the public notice pursuant to which he made payment failed to state that any of the land was within a reserve. *Dorsey L. Rouse,* 50 L.D. 379 (1924).

57. —Desert land entry

A desert entryman whose land is included within a reclamation project may elect to proceed with the reclamation thereof on his own account, and thus acquire title to all, or so much of, the land included within his entry as he can secure water to irrigate or accept the conditions of the Reclamation Act and acquire title thereunder to 160 acres; but he cannot avail himself of both the reclamation project and other means of reclamation and thus acquire title to more than 160 acres of land. *Robert J. Slater,* 39 L.D. 380 (1910).

58. —Farm units and area of entry

The Secretary of the Interior is empowered to fix the limit of area for each homestead entry under the same project according to the quality and character of the land with reference to its productive value, whether the areas of the entries are uniform or not. Instructions, 32 L.D. 237 (1903).

Every entry of lands within the limits of a withdrawal under this Act is subject to reduction to a farm as thereafter established by the Secretary of the Interior, and improvements placed upon the different subdivisions by the entryman prior to such reduction are at his risk. *Jerome M. Higman,* 37 L.D. 718 (1909).

Rule applied to reclamation homestead entries coming within the provisions of the Reclamation Act, that when the excess area in an entry above 160 acres is less than the deficiency would be if the smallest subdivision were excluded, it may be included in the entry; where it is greater it must be excluded. General Land Office Instructions, 38 L.D. 513 (1910).

Where a portion of a homestead entry made subject to the provisions of the Reclamation Act is subsequently eliminated from the project, and the portion remaining within the project is designated as a farm unit, the entryman may retain either the farm unit or the portion lying without the limits of the project, at his election, and the entry will be canceled as to the remainder. In view of the equities in this particular case, direction is given that if the entryman so desires the portion of the entry eliminated from the project may be again brought thereunder and added to the farm unit with a view to permitting him to complete entry for the entire tract. *Laurel L. Shell,* 39 L.D. 502 (1911).

A successful contestant in exercising his preference right of entry upon lands within a reclamation project is limited to one farm unit, although such unit may embrace less than the area covered by the entry he contested. *Joseph F. Gladieux,* 41 L.D. 286 (1912).

Settlement upon any portion of a farm unit entitles the settler to claim, by virtue of such settlement, only lands contained in that farm unit. *McDonald* v. *Rizor,* 42 L.D. 554 (1913).

Where an entryman of lands within a reclamation project fails, after notice, to conform his entry to an established farm unit, the Secretary of the Interior has the power to so conform the entry. *Mangus Mickelson,* 43 L.D. 210 (1914).

Where a farm unit which has been surveyed without segregation of a railroad right-of-way contains lands on both sides thereof, disposition of such unit under the reclamation homestead act will be made in accordance with the survey without any deduction from the purchase price as to diminution in area caused by the right-of-way, but the water charges will be based on the irrigable area only. *James A. Power, et al.,* 50 L.D. 392 (1924).

Under the Act of June 25, 1910, as subsequently amended, lands reserved for irrigation purposes are not subject to settlement or entry until the Secretary of the Interior shall have established the unit of acreage per entry and announced that water is ready to be delivered, and no exception to the rule can be made in favor of an applicant who seeks to make an additional entry of such lands in the exercise of a preference right acquired by contest. The prior holding in *Henry W. Williamson,* 38 L.D. 233 (1909), that a person holding an original homestead entry for less than 160 acres could be permitted to make additional homestead entry for land embraced in a second-form withdrawal where farm units had not been established is no longer applicable under the Act of June 25, 1910. *Bert Scott,* 48 L.D. 85 (1921); see also 48 L.D. 113.

59. —Entryman's interest

Upon the death of a homesteader, having an entry within an irrigation project, leaving a widow, and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. If in such case the land has been subdivided into farm units, the purchaser takes title to the particular unit to which the entry has been limited; but if subdivision has not been made, he will acquire an interest in only the land which would have been allotted to the entryman as his farm unit; in either case taking subject to the payment of the charges authorized by the Reclamation Act and regulations thereunder and free from all requirements as to residence and cultivation. *Heirs of Frederic C. De Long,* 36 L.D. 332 (1908).

A homestead entry, within a reclamation project, upon which the ordinary requirements of the homestead laws have been completed, is a property subject to mortgage which cannot be defeated by acts of the entryman or his assignee, and such entry cannot be cancelled upon contest in derogation of the right of the mortgagee to comply with the further provisions of the law looking to completion of title. *Watson v. Barney, et al,* 48 L.D. 325 (1921).

Issuance of a patent to a reclamation homestead entryman is mandatory (assuming no pending contest) under the proviso to section 7 of the Act of March 3, 1891, 26 Stat. 1095, two years after he has completed all requirements for entry, that is, conforms his entry to a farm unit, shows reclamation of one-half the irrigable area of the unit, assumes the payment of a water right, pays all the water-right charges which have accrued, makes proof of these facts, and pays the required final commissions, for which receipt issues. Instructions, 50 L.D. 506 (1924).

60. —Rights of way

Homesteaders without patents, but lawfully in possession of lands withdrawn for irrigation under a reclamation project, may grant rights of way over their settlements to a railroad company, and approval of the Secretary of the Interior is not required. *Minidoka & S.W.R.R. Co. v. United States,* 235 U.S. 211 (1914), reversing 190 Fed. 491 and affirming 176 Fed. 762.

Sec. 4. [Contracts for construction—Public notice of irrigable lands, limit of area, charges per acre, and method of payment.]—Upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: *Provided*, That in all construction work eight hours shall constitute a day's work. (32 Stat. 389; Act of May 10, 1956, 70 Stat. 151; 43 U.S.C. §§ 419, 461)

EXPLANATORY NOTES

Codification. All of the first sentence relating to contracts for construction and public notice of charges, together with the proviso providing for an eight-hour day, is codified as section 419, title 43 of the U.S. Code, with the omission of the phrase "in the reclamation fund", in reference to the availability of funds, and the phrase "not exceeding ten", in reference to the number of installments. The substance of the second sentence, relating to the basis for establishing the amount of the charges, is codified as section 461.

1956 Amendment. The Act of May 10, 1956, 70 Stat. 151, eliminated the words formerly at the end of the proviso "and no Mongolian labor shall be employed thereon."

Supplementary Provisions: Time and Manner of Repayment. The Reclamation Extension Act of 1914 extended the repayment period from ten to twenty years, payable in one initial installment and fifteen additional installments beginning with the sixth year. Section 46 of the Omnibus Adjustment Act of 1926 substituted repayment by an irrigation district for payment by individual water right applicants, and extended the repayment period to forty years. Section 9(d) of the Reclamation Project Act of 1939 authorizes the Secretary to establish special rates for an initial development period not to exceed ten years before the regular forty-year repayment period commences, and section 9(e) authorizes the execution of a water service contract in lieu of the forty-year repayment contract. Additionally, a large number of general and special acts authorize a moratorium on annual payments, amendment of existing contracts, extension of the repayment period, waiver of certain charges, variations in the amount of each annual payment, or other forms of relief.

Supplementary Provision: Presidential Approval of New Projects. Section 4 of the Act of June 25, 1910, 36 Stat. 836, provides that no new reclamation projects may be started thereafter unless approved by direct order of the President. The Act appears herein in chronological order.

Supplementary Provisions: Amount of Construction Costs Repaid by Irrigators. The original concept of the Reclamation Act was that the projects constructed thereunder would serve the single purpose of irrigation, and the second sentence of section 4 therefore contemplates that the irrigators would repay all of the construction costs. As the program evolved, however, it was recognized that other purposes were also served, and that construction costs would be allocated to these other purposes. This principle was formally recognized as general law in sections 9(a) and 9(b) of the Reclamation Project Act of 1939.

Supplementary Provision: Withdrawal of Public Notice. The Act of February 13,

1911, authorizes the Secretary of the Interior to withdraw any public notice issued theretofore and to modify any water right application or contract made on the basis thereof. The Act appears herein in chronological order.

Editor's Note, Annotations. Annotations of opinions are not included that deal with the large mass of litigation involving contract disputes or matters that fall under the traditional subject of Government procurement policies and contracts. Also omitted are opinions dealing with the eight-hour work day, as this subject is covered by other statutes of general application to all Government agencies.

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1. Construction of projects—Generally

Irrigation works for the reclamation of arid and semi-arid lands perfectly and comprehensively fill the idea of "public works of the United States." 26 Op. Atty. Gen. 64 (1906).

This Act contemplates the irrigation of private lands as well as lands belonging to the Government, and the fact that a scheme contemplates the irrigation of private as well as a large tract of Government land does not render the project illegal, so as to prevent the condemnation of land necessary to carry it out. *Burley v. United States,* 179 Fed. 1, 102 C.C.A. 429 (Ida. 1910), affirming 172 Fed. 615.

Under the authority conferred upon the Secretary by the Act he may, in his discretion, enter into contracts for the construction of irrigation works or construct such works by labor employed and operated under the superintendence and direction of Government officials. Op. Asst. Atty. Gen., 34 L.D. 567 (1906).

The contract with the Orchard Construction Company, owners of the stock of the Grand Mesas Company, which had certain rights of irrigation in the Grand Valley, whereby the Government abandoned a certain part of its project and permitted the company to construct a private irrigation ditch through an area south of the Grand River, the company transferring one-half of its stock to the United States to secure it against any claim on the part of the company or its associates for an excessive use of the waters of Grand River, the stock to be returned if the United States did not proceed with its Grand Valley project, may be regarded as void, and the stock should be returned. 27 Op. Atty. Gen. 360 (1909).

2. —Discretion of Secretary

The Secretary of the Interior is not required to proceed with the construction of the Baker project, Oregon, even though Congress has appropriated funds therefor, if he is unable to find that the project is feasible and that the costs will be repaid to the United States, as required by subsection B, section 4, of the Act of December 5, 1924, 43 Stat. 702, and section 4 of the Act of June 17, 1902, 32 Stat. 389, and unless a contract has been executed and confirmed as required by the Act of May 10, 1926, 44 Stat. 479. 35 Op. Atty. Gen. 125 (1926); 34 Op. Atty. Gen. 545 (1925). See also Solicitor's Opinions dated June 11, 1926, and July 20, 1925.

3. —Availability of funds

The National Irrigation Act of June 17 1902, gives the Secretary of the Interior authority to let contracts for the construction of reclamation works only when "the necessary funds * * * are available in the reclamation fund," and if these funds are not available and sufficient, no such authority exists. 27 Op. Atty. Gen. 591 (1909).

Regulations authorizing the engineers of the Reclamation Service to enter into contracts with water users or water users' asso

ciations, or with representative committees of the settlers to advance moneys and perform work in the construction of irrigation works, certificates to be issued therefor, redeemable at face value in part or full payment of the charges against the lands of the holders of the certificates, were unauthorized by Act of June 17, 1902, and the Secretary of the Interior had no authority to enter into such contracts, and certificates so issued cannot be used by the original payee or transferee as a discharge pro tanto of his indebtedness upon the land, but the certificates are evidence of work performed, and the work may be paid for, as upon a quantum meruit, if the money is available in the reclamation fund. 27 Op. Atty. Gen. 360 (1909).

The objection raised in 27 Op. Atty. Gen. 360, was not that the money subscribed by the water users' association was not in the reclamation fund, but that the fund contemplated by the Act of June 17, 1902, was to be created from the proceeds of the sale of Government lands, and there was no provision for augmenting it by private enterprise, and that the power of the Secretary of the Interior to let contracts for reclamation projects was specifically restricted to the amount of money available in the reclamation fund as constituted by law. 27 Op. Atty. Gen. 591 (1909).

There is no statute authorizing the Secretary of the Interior to enter into contracts contemplating a cooperative plan whereby the United States enters into an agreement with a water users' association, by which the association undertakes to perform certain work within certain maximum prices, the work to become the property of the United States upon acceptance, payment therefor to be made by the association in certificates of work performed, which certificates are to be accepted by the United States in reduction of charges against particular tracts, as an equitable apportionment thereof. 27 Op. Atty. Gen. 591 (1909).

Where necessary canals, laterals, and structures, properly a part of a Federal irrigation system, cannot be constructed by the United States because funds are not available, a landowner may advance the needed moneys to the United States, and he may be later reimbursed, without interest, by credits upon his water charges as they become due. Departmental decision, October 8, 1919, Milk River project.

4. —Lands, exclusion of

Under this section, articles of incorporation of Salt River Valley Water Users' Association and its contract with the United States in construction of the Salt River project, Secretary of the Interior had authority to exclude lands lying within reclamation district and to cancel stock of owners thereof in the association, on determining that area of lands included in district was greater than could be watered from supply stored and developed by works constructed or to be constructed. *Salt River Valley Water Users' Ass'n v. Spicer,* 236 Pac. 728, 28 Ariz. 296 (1925).

Determination of the Secretary of the Interior, in approving survey board's exclusion of certain lands within Salt River Reclamation District, after determining that area of land included in District was greater than could be watered from supply stored and developed by works constructed or to be constructed, was not a ministerial act, but exercise of discretion, and not subject to review by the courts. *Ibid.*

Secretary of the Interior's approval of survey board's exclusion of certain lands within Salt River Reclamation District, whose owners had subscribed for stock in association, formed to co-operate with United States in construction of the project, and who had paid all assessments levied, until their lands were excluded, after determining that area of land included in District was greater than could be watered from supply stored and developed by works then constructed or to be constructed, was valid, since, under association's articles of incorporation and its contract with the United States government, discretion of Secretary in excluding land was to be based on water to be impounded and raised by works specifically built or definitely determined to be built at time of his action. *Ibid.*

5. —Status pending completion

During the construction of a Government project the temporary use of the canals of an irrigation system purchased by the Government for conveying to lands water that would otherwise be allowed to go to waste, is not incompatible with the purpose, but is directly in pursuance of the object for which the property was acquired. Departmental decision, December 6, 1906.

The Reclamation Service cannot, while construction of a project is in progress, and prior to the laying out of its canals, undertake to reexamine, at the instance of individual claimants, particular tracts falling within the project to ascertain whether or not such tracts are capable of service from its projected canals. *Lewis Wilson,* 42 L.D. 8 (1913). See also 48 L.D. 153, amending paragraph 13 of General Reclamation Circular of May 18, 1916.

Contracts by a water users' association to receive additional subscriptions to stock and to grant water rights were not unauthorized,

on the ground that the reclamation project had been completed, and that the lands proposed to be taken into the project were not included in the area fixed and limited by the Secretary of the Interior, under this section, where the capacity of the project to supply water for irrigation had been substantially enlarged, and such contracts had been approved by the Secretary of the Interior under this section. *Bethune v. Salt River Valley Water Users' Ass'n.*, 227 Pac. 989, 26 Ariz. 525 (1924).

11. Water service—Generally

The provision in section 5 of the Reclamation Act of 1902 that "no right to the use of water for land in private ownership shall be sold" for more than 160 acres means that the use of project facilities shall not be made available to a single owner for service to more than 160 acres. Sections 4 and 5 of the 1902 Act, read together, indicate that the "sale" referred to is not merely a commercial transaction, but is the contract by which the government secures repayment and the water user obtains benefits resulting from construction of the federal project. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

It is not optional with an entryman of lands within a reclamation project to take or refuse water service from the project; but he is compelled to take the water service and to pay the charges fixed therefor. *Mangus Mickelson,* 43 L.D. 210 (1914).

Agreements for the purchase of lands, for water rentals, for conveyance of water rights, and similar instruments, contractual in form, relating to the adjustment of vested water rights, executed in behalf of the United States by some officer of the Reclamation Service for purposes within the purview of Act of June 17, 1902, are unlawful when a member of Congress is a party to or interested therein. 26 Op.Atty. Gen. 537 (1908).

12. —Corporations

No applications will be received from corporations on reclamation projects. That Congress did not intend that the reclaimed lands upon which the Government is expending the money of all the people should be the subject of corporate contract is conclusively established by the fact that the Secretary is authorized to fix the farm unit on the basis of the amount of land that will support a family. These lands are to be the homes of families. But existing corporations to which water rights have heretofore been granted should be permitted to continue without interference, and in view of past departmental decisions applications by corporations pending at this date may be allowed. Departmental decision, July 11, 1913, 42 L.D. 250. *Pleasant Valley Farm Co.,* 42 L.D. 253 (1913).

Religious, educational, charitable, and eleemosynary corporations are excepted from the decision of July 11, 1913. Departmental decision, December 5, 1916.

If an individual owns lands for which he makes water-right application duly accepted by the United States and the land is later in good faith transferred to a corporation, the corporate owner is entitled thereafter to the same treatment as other landowners on a project. Departmental decision, December 6, 1916, in re *The Santaquin Lime and Quarry Co.,* Truckee-Carson.

There is no statute which prohibits a corporation from taking a reclamation entry by assignment and there would be no objection to accepting the water-right application of the corporation in such a case where its intention is to protect its security in a loan transaction and not to hold and cultivate the land in competition with families. *Great Western Insurance Co.,* A–16335 (February 8, 1932).

13. —States and other public bodies

Agencies of a State government are entitled to become takers of water under a reclamation project for the lands benefited. Departmental decision, May 12, 1909.

An incorporated town organized as a city of the sixth class under the laws of the State of California (General Laws, 1909, ch. 7, p. 843) is entitled to make water-right application on the usual form to secure water from a Federal reclamation project for irrigating and beautifying a small tract of land which it owns, located outside the city limits and occupied by the septic tanks of the municipality. Departmental decision, July 13, 1917, Orland.

14. —Servicemen

The status of one qualified to make water-right application under the reclamation act of June 17, 1902 (32 Stat. 388), is not changed by a temporary service away from home in the Army, Navy, or Marine Corps of the United States, and a water-right application executed by any such person at any point where he may be engaged in the line of duty may be received and approved if otherwise found acceptable. Departmental decision, December 22, 1917, C.L. 720.

15. —Water users' association

Where defendants over whose land certain irrigation ditches belonging to a government irrigation project were located

became members of a water users' association which owned the project prior to its incorporation in the government work, and one of the by-laws of the association provided that such rules and regulations as the Secretary of the Interior might promulgate relating to the administration and use of the water should be binding on the stockholders of the association, and the Secretary put into effect certain rules prohibiting water users from cutting the banks of any canals or laterals and from taking water therefrom except at places designated by the government, defendants were estopped to claim the right to break down the banks of a lateral ditch and take water therefrom at a point not so designated, on the ground that, because they owned the fee in the soil of the ditch, they were entitled to take water at whatever point they desired. *United States v. Bunting,* 206 Fed. 341 (D. Ore. 1913).

Where a water users' association organized for the purpose of guaranteeing payment of the construction cost of a Federal irrigation project, having executed a contract with the United States for that purpose, makes assessments against its members to raise a fund with which to conduct litigation to avoid paying project costs, the United States will not assist the association in collecting such assessment by requiring prospective water users to show as a condition precedent to acceptance of water right applications that such assessments have been paid. Departmental decision, May 4, 1918, Boise.

Subscriptions to water users' association stock were construed in *Michaelson v. Miller,* 26 P. 2d 378 (Idaho 1933) which outlines the history of the Payette-Boise Water Users' Association, Boise project. Michaelson was the receiver of the association and brought actions against various stockholders of the association to foreclose liens created by assessments under stock subscription contracts to meet corporate expenses (not indebtedness to the United States). The defendants had refused to sign the "court form" of water-right application contract prescribed as a result of *Payette-Boise Water Users' Assn. v. Cole,* 263 Fed. 734 (D. Idaho 1919) and alleged that by so doing they had lost their status as stockholders. This contention was not sustained, and the liens were enforced, together with deficiency judgments where the land failed to sell for sufficient to pay the assessments.

16. —Desert land entries

Lands held by virtue of a desert-land entry are held in private ownership within the meaning of the act, and the entryman or his assignee is entitled to the same rights and privileges and is subject to the same conditions and limitations, so far as right to the use of water is concerned, as any other owner of lands within the irrigable area of an irrigation project. Instructions, July 14, 1905, 34 L.D. 29. [See Act of June 27, 1906, 34 Stat. 519.]

17. —Equitable owner of land

Persons holding contracts to purchase lands from a State, on deferred payments, no conveyance of title to be made to the purchasers until full payment, are entitled, if not in default and their contracts are in good standing, to subscribe for and purchase water rights under the reclamation act for irrigation of such lands, subject to the provisions and limitations of that act. Instructions, September 11, 1911, 40 L.D. 270.

18. —Carey Act lands

Individual owners of lands acquired under the provisions of the Carey Act may be supplied with such additional water from reservoirs constructed under the reclamation act as may be necessary to fully develop and reclaim the irrigable portions of such lands, subject to all the conditions governing the right to the use of water under any particular project. Op. Asst. Atty. Gen., 35 L.D. 222 (1906).

19. —Conditions

The provision in the form for water-right application by private landowner requiring applicant to agree to grant and convey to the United States, or its successors, all necessary rights of way for ditches, canals, etc., for or in connection with the project, is a proper requirement warranted by the spirit and intent of the reclamation act, and an applicant for water right will be required to conform thereto as a condition to allowance of his application. *C. M. Kirkpatrick,* 42 L.D. 547 (1913).

The provision in the form of water-right application by private landowner requiring him to bind himself not to convey the land voluntarily to any person not qualified under the reclamation law to purchase a water right, upon condition that the application and any "freehold interest," sought to be conveyed shall be subject to forfeiture, is a reasonable and proper requirement, and an application from which such provision has been eliminated will not be accepted. *Ibid.*

The provision in the form of water-right application by private landowner requiring applicant to agree that the United States, or its successors, shall have full control over all ditches, gates, or other structures owned or controlled by applicant and which are necessary for the delivery of water, is in accordance with departmental regulations, and being a necessary incident to the proper

management and operation of the project by the United States or its successors, is impliedly authorized by the reclamation act, and a water-right applicant will be required to conform thereto. *Ibid.*

Whatever may be the extent of the discretion of the Secretary of the Interior in the case of a reclamation project, where the charge for water and conditions of purchase are announced in advance of construction as required by statute, he could not exercise unlimited power to determine the conditions on which water would be supplied, where the project was constructed under the mutual understanding that landowners might procure water by paying their ratable proportion of the cost of construction and submitting to other equal and reasonable conditions. *Payette-Boise Water Users' Ass'n v. Cole,* 263 F. 734. (D. Idaho 1919).

20. —Quantity of water

An application for water for land in a reclamation project, providing that the measure of the water right was that quantity of water which should be beneficially used for irrigation, not exceeding the share proportionate to irrigable acreage of the water available as determined by the project manager or other proper officer during the irrigation season for the irrigation of lands under the land unit, did not authorize the project manager or other officer to decide whether a landowner needed water, but only to determine the amount of water actually available, but was too indefinite, and landowners could not be required to execute it as a condition of obtaining water. *Payette-Boise Water Users' Association v. Cole,* 263 Fed. 734 (D. Idaho 1919).

21. —Reinstatement

Where a water-right application for land held in private ownership has been canceled for default in payment of building, operation, and maintenance charges, such application may be reinstated upon full payment of all accrued charges. Departmental decision, April 3, 1916, 45 L.D. 23.

22. —Rentals of water

Water in irrigation canals constructed and operated under the reclamation act, which has not become appurtenant to any land and is not needed for irrigation, may be temporarily disposed of by lease, in the discretion of the Secretary of the Interior, the proceeds to become a part of the reclamation fund. *Alhambra Brick & Tile Co.,* 40 L.D. 573 (1912).

As an emergency measure to save growing crops, the director is authorized to supply squatters upon withdrawn lands under the reclamation projects with water on a rental basis, pending decision as to their rights to the land, subject to the provision that water shall be furnished only to such settlers as file a certain designated application therefor. Department decision, May 27, 1912.

Lands too alkaline to produce profitable crops may be supplied with water for a nominal rental, in order to encourage washing the alkali from the soil. Departmental decision, March 29, 1913, C.L. 88.

26. Public notice—Generally

The requirement of this section, that the cost of a project shall be estimated and apportioned before construction, may be waived by settlers and the Secretary of the Interior, and was waived where there was no formal compliance with such requirement and all parties understood that ultimately the settlers would reimburse the government for its actual and necessary outlay. *Payette-Boise Water Users' Assn. v. Cole,* 263 F. 734 (D. Idaho 1919).

The determination by the Secretary of the Interior of the practicability of a project and the making of the construction contracts are conditions precedent to the estimate of cost and the public notice, under this section. *Yuma County Water Users' Assn. v. Schlecht,* 262 U.S. 138 (1923).

Though there was a substantial and material difference between preliminary engineering estimates of the cost of an irrigation project and a later estimate, the courts will not interfere, in the absence of some substantial showing that the action of the Secretary of the Interior in publishing notice of charges based on such original estimates was fraudulent or arbitrary or so erroneous as to justify an inference of illegality or wrongdoing, especially where the increased cost was due to unexpected physical difficulties, higher wages, change of plans, increased mileage of canals, etc. *Yuma County Water Users' Assn. v. Schlecht,* 275 Fed. 885 (9th Cir. 1921), affirmed 262 U.S. 138 (1923).

A public notice by the Secretary of the Interior, specifying lands for which water would be furnished under an irrigation project, the classes of charges therefor, and the construction charge as $75 per acre of irrigable land, payable in installments as enumerated, was in accord with this section, authorizing the Secretary to give public notice of the number of annual installments, to be determined with a view of returning to the reclamation fund the "estimated cost" of the project, by which is meant, not the actual, exact final sums paid for construction, but such sums as it is believed after careful computation will cover the expenses directly and fairly connected

with the construction of the project. *Yuma County Water Users' Assn. v. Schlecht,* 275 Fed. 885 (9th Cir. 1921), affirmed 262 U.S. 138 (1923).

The Secretary of the Interior has no general statutory authority to suspend, even temporarily, public notices issued by him pursuant to section 4 of the Act of June 17, 1902, of lands irrigable under reclamation projects, nor does he possess supervisory power to do so in the absence of a specific statute authorizing it. Shoshone Irrigation project, 50 L.D. 223 (1923). [But see Act of February 13, 1911, 36 Stat. 902, authorizing the Secretary of the Interior to withdraw public notices issued under section 4 of the Reclamation Act.]

Contracts by water users' association to receive additional subscriptions to stock and to grant water rights were not unauthorized, on the ground that the reclamation project had been completed, and that the lands proposed to be taken into the project were not included in the area fixed and limited by the Secretary of the Interior, under this section, where the capacity of the project to supply water for irrigation had been substantially enlarged, and such contracts had been approved by the Secretary of the Interior under the Act of February 13, 1911. *Bethune v. Salt River Valley Water Users' Assn.,* 227 P. 989, 26 Ariz. 525 (1924).

Under date of July 31, 1929, the department approved a recommendation of the commissioner, Bureau of Reclamation, to the effect that a new entryman taking up land under the Belle Fourche project where a prior entry has been canceled after payment of only one construction charge installment, would be required at the time of making entry to pay such first installment and the remaining installments would be collected by the irrigation district under its contract with the United States. This plan dispenses with a public notice in cases where a district has assumed the obligation of paying charges at fixed rates.

27. —What constitutes

This section contemplates a precise and formal public notice, stating the lands irrigable under a project, the limit of area for each entry, the charges per acre, the number of annual installments, and the time when payments shall commence. *Yuma County Water Users' Assn. v. Schlecht,* 262 U.S. 138 (1923).

Preliminary, tentative opinions of the cost of constructing projected irrigation works, expressed by government engineers and officials in official correspondence and in statements at a meeting of prospective water-users, do not constitute the estimate of cost, or the public notice, required by this section, and, though relied upon by the water-users in subjecting their lands to the project, do not bind or estop the government from afterwards fixing the construction charges against the lands pursuant to this section, in accordance with a higher estimate arrived at in the light of further investigation and experience. *Yuma County Water Users' Assn. v. Schlecht,* 262 U.S. 138 (1923).

Under this section, correspondence between the Secretary of the Interior and officials of the Reclamation Service relative to estimates of the cost prior to the date of a contract between the landowners and the United States, for the payment thereof could not be regarded as a public notice to the former, nor as binding on the Government. *Yuma County Water Users' Assn. v. Schlecht,* 275 Fed. 885, (9th Cir. 1921), affirmed 262 U.S. 138 (1923).

28. —When required

The time within which the notice may be given, after determination of the practicability of the project and the making of construction contracts, is left to the sound discretion of the Secretary; and he may delay the notice while the question of cost remains in doubt. *Yuma County Water Users' Assn. v. Schlecht,* 262 U.S. 138 (1923), affirming 275 Fed. 885 (9th Cir. 1921).

The time of giving public notice of charges under section 4 of the Reclamation Act after the letting of the contracts is left to the discretion of the Secretary of the Interior, and notice might reasonably be delayed until the completion of the project. Moreover, when a contract fixing the amount and terms of payment of construction costs is entered into with an irrigation district pursuant to the Act of May 15, 1922, there was no purpose to be served by issuing the public notice. *Lincoln Land Co. v. Goshen Irr. Dist.,* 42 Wyo. 229, 293 Pac. 373, 376, 378–79 (1930).

29. —Amendment of

Where after application for water rights for the irrigable area of a farm unit, under the terms and for the acreage fixed in the published notice, a second notice is given showing an increased irrigable area in the farm unit and fixing a different rate per acre, the applicant is entitled to complete payment for the area originally fixed at the rate specified in the first notice, but as to water right for the additional irrigable acreage shown by the second notice, he will be required to pay at the rate fixed in the latter notice. *Walter L. Minor,* 39 L.D. 351 (1910).

Upon the issuance of public notices pur-

suant to section 4 of the Reclamation Act of June 17, 1902, the construction charges specified in the notices become fixed charges against the lands, and the acceptance and approval of water-right applications in a sense create a contractual relation between the applicants and the United States for the payment of the charges by the water users and the furnishing of irrigation water by the Government that cannot be changed except with the consent of both parties. *Shoshone irrigation project,* 50 L.D. 223 (1923).

36. Charges—Generally

The Department of the Interior is without authority to charge interest on the return of costs allocated to irrigation because Congress has not specifically authorized such charge. Letter of Acting Commissioner Lineweaver to Mr. William A. Owen, February 12, 1952.

The Secretary of the Interior can only make such charges to reimburse reclamation fund for construction of a project as are provided for in this section. *Fox v. Ickes,* 137 F.2d 30, 78 U.S. App. D.C. 84 (1943), cert. denied 320 U.S. 792.

The practice of the department in fixing a definite charge per acre in each project to cover this cost of construction, and to assess annually a specific amount per acre for operation and maintenance, collecting the same from the landowners, is correct. 27 Op. Atty. Gen. 360 (1909).

Settlers on lands within an irrigation project, with the understanding that water shall be supplied to their lands and that the cost of the works will be assessed against them, are not concluded by the decision of the Secretary of the Interior as to what their interest in the works shall be nor as to what sum shall be assessed against their lands for cost of construction, but have rights which may be judicially determined. *Payette-Boise Water Users' Assn. v. Bond,* 269 F. 159 (D. Idaho 1920).

In decision A–32702, of September 14, 1935, the Comptroller General held that the reclamation fund could not be reimbursed for expenditures made over a period of prior years for surveys and investigations of the All-American canal, California, as the allotment for construction of this canal was secured under the N.I.R.A., an emergency relief measure to quickly increase employment, and that most of this preliminary work seemed to be general investigations chargeable only to the reclamation fund.

The revolving fund features of section 4 are not applicable to nonreimbursable funds expended in connection with a reclamation project (Deschutes project). Letter of Acting Attorney General to Secretary of the Interior, September 7, 1937.

In letter dated February 18, 1918, the United States Commissioner of Internal Revenue holds that payments covering the construction charges on Federal reclamation projects are not allowable deductions in income-tax returns as the water rights secured by the payment of such charges are perpetual in nature, and the amount so paid should be added to the capital investment in order to determine the gain or loss resulting from the transaction upon subsequent disposal of the land and water rights. As to the operation and maintenance charges the commissioner holds them to be an ordinary and necessary expense of doing business, and that the amounts so paid are deductible in the income-tax returns.

In case the actual cost of a reclamation project exceeds the estimated cost of construction, it is the duty of the Secretary of the Interior to revise the estimate and make the charges sufficient to reimburse the reclamation fund for the cost of construction. *Mangus Mickelsen,* 43 L.D. 210 (1914).

37. —Contracts

Where a reclamation project was constructed with the mutual understanding that settlers would reimburse the Government for the actual outlay, and contracts had been made to supply irrigation districts and others with water, settlers were entitled to some authoritative description of the property to which their rights related, and a definition of the extent of their interest in the project, before they could be required to pay and to have from an authoritative source and of record a declaration of the cost of the project and of the portion of which it was intended they should become the beneficial owners, and could be required to pay the cost only of such portion of the works, or such interest therein as was set apart for the use of their lands. *Payette-Boise Water Users' Assn. v. Cole,* 263 F. 734 (D. Idaho 1919).

Where instead of estimating and apportioning the cost of a reclamation project before construction, it was mutually understood that the settlers would reimburse the Government for the actual cost, they were chargeable with the actual cost only, and the Secretary of the Interior was without discretion in fixing the charge, the actual cost of the project being a matter for judicial investigation and determination. *Payette-Boise Water Users' Assn. v. Cole,* 263 F. 734 (D. Idaho 1919).

Under a contract by which the government took over the canal system of an irrigation company for the purpose of incorporating it in a larger government

project, and providing that "an equitable proportion of the cost of maintaining and operating the system of irrigation works which may be constructed by the United States on the south side of the Boise Valley, as may be determined by the Secretary of the Interior, shall be paid to the United States by the holders of said certificates of stock," the fact that during the construction of the government project the manager made charges for water furnished such stockholders on a different basis did not affect the right and duty of the Secretary, after completion of the project, to make the apportionment as expressly provided in the contract. *New York Canal Co. v. Bond,* 273 F. 825 (D. Idaho 1921).

Where a contract between a water users' association and the United States provides that the association will promptly collect or require payment for that part of the cost of a reclamation project which shall be apportioned by the Secretary of the Interior to its shareholders, and also that payments for the water rights will be made and enforced by proper means, the fact that the cost is greater than was estimated cannot be urged as a ground for equitable relief. *Yuma County Water Users' Assn. v. Schlecht,* 275 F. 885, (9th Cir. 1921), affirmed 262 U.S. 138 (1923).

38. —Increase

Under this section, the cost is to be estimated and apportioned before construction, and in case of settlement under such conditions the price cannot be later increased, though the published estimate is insufficient to cover the actual cost. *Payette-Boise Water Users' Assn. v. Cole,* 263 F. 734 (D. Idaho 1919).

Where the Secretary of the Interior in the exercise of his discretion withdrew certain lands from an irrigation project and confined it to the area described in the public notice to the landowners affected, the latter, who contracted to pay for that part of the cost which should be apportioned to them by the Secretary, could not restrain the local reclamation officers from turning off the water for failure to pay an assessment in excess of the original estimate and of the actual value of work to be constructed, on the ground the system was not completed when the suit was filed. *Yuma County Water Users' Assn. v. Schlecht,* 275 F. 885 (9th Cir. 1921), affirmed 262 U.S. 138 (1923).

Action to enjoin the Secretary of the Interior from carrying out his intention as expressed in notice, to make charge for water distributed to land which was over and above amount determined to be within obligations of contract signed by water users' predecessors in interest, was not rendered "moot" by Secretary's revocation of notice, where Secretary still intended to impose such charge. *Fox v. Ickes,* 137 F. 2d 30, 78 U.S. App. D.C. 84 (1943), cert. denied 320 U.S. 792.

Where a new reservoir was constructed in violation of the provisions of reclamation law regarding construction charges, water users were entitled to injunction restraining Secretary of the Interior from imposing rental charge on any water which Secretary determines might be used on plaintiff users' land, in order to pay construction costs in the reservoir system of the project above the construction charge authorizedly fixed. *Fox v. Ickes,* 137 F. 2d 30, 78 U.S. App. D.C. 84 (1943), cert. denied 320 U.S. 792.

39. —Items included

The United States may assess operation and maintenance charges against water users as well as construction charges. To hold otherwise would greatly deplete, if not entirely consume, the Reclamation Fund, thus diverting the proceeds of the public domain to the payment of local expenses. This interpretation of the Reclamation Act has been recognized by Congress. *Swigart v. Baker,* 229 U.S. 187 (1913).

The purpose of this Act is to encourage the settlement and cultivation of public lands, and it contemplates that such lands may be entered on as soon as the irrigation system is so far completed that water may be furnished thereon for irrigation purposes; and when the act empowers the Secretary of the Interior to fix and determine the charges against the land, it must have intended that he should cover the cost of maintenance and operation while in control of the United States as well as construction. *United States v. Cantrall,* 176 F. 949 (C.C. Ore. 1910).

The provision in forms for the water-right applications requiring payment by applicant of "betterment" or maintenance charges is a proper requirement under the reclamation laws, and the fact that at the time entry was made there was no specific mention of "betterment" charges in the water-right application forms then in use will not relieve the entryman from payment of betterment charges legally assessed against his land. *C. M. Kirkpatrick,* 42 L.D. 547 (1913).

The cost of drainage work done for the benefit of lands in the project, or to protect other lands from conditions resulting from the construction and operation of the project, was chargeable against the project

lands. *Payette-Boise Water Users' Assn. v. Cole,* 263 F. 734 (D. Idaho 1919).

While administrative expenses of the reclamation service, such as salaries of the administrative officers and of those who assisted them in the performance of administrative duties, are not chargeable as part of the cost of a project, the cost of services rendered to that particular project, such as the keeping of its accounts, preparation of engineering specifications, or purchasing and forwarding supplies, whether such services are rendered at the place of the project or elsewhere, or for such project alone or in connection with others, in such case prorative, is properly chargeable as a part of its cost. *Payette-Boise Water Users' Assn. v. Bond,* 269 F. 159 (D. Idaho 1920).

The full amount of the claim of a contractor on an irrigation project, which is being contested by the Government in the Court of Claims, cannot properly be charged to the settlers as a part of the cost of the project. "It is a matter of common knowledge that such claims are usually susceptible to compromise and adjustment, and if the settlers are to be charged with a specific amount, the best settlement possible should have been made. * * * If the reclamation officials and the plaintiff cannot agree as to the proper amount to be charged on account of the contingent liability, or if a settlement agreeable to all parties cannot be made with the claimants, the full claim should be permitted to stand as a charge only upon condition and with the understanding that, in case the Government is successful in defeating it, appropriate credit be given the settlers." *Payette-Boise Water Users' Assn. v. Bond,* 269 F. 159 (D. Idaho 1920).

40. —Apportionment

Where the irrigable area of a legal subdivision embraced in an entry within a reclamation project is shown on the duly approved farm-unit plat to be greater than the entire area of such legal subdivision shown on the prior township plat, applications for water rights and payments therefor should be made on the basis of the actual irrigable area, and not on the basis of the acreage shown on the township plat. *J. E. Enman,* 40 L.D. 600 (1912).

An applicant for water rights under a reclamation project is required to pay for water for the entire irrigable area of his entry as shown on the plat upon which the construction charges were apportioned; and where mistake in the plat is alleged as to the irrigable area of the entry, application for correction thereof should be made to the local officer of the Reclamation Service. *Williston Land Co.,* 39 L.D. 2 (1910). [But see Regulations for Minidoka project, approved March 6, 1916.]

No deduction from the irrigable area subject to water charges will be made on account of easements for highways or irrigating ditches. *Williston Land Co.,* 39 L.D. 2 (1910). [But see Reclamation Circular Letter No. 569, July 11, 1916.]

The Reclamation Act provides that the cost of the project shall be imposed upon the land benefited equitably, which is to say ratably. No authority exists in the Reclamation Act, either in express terms or by necessary implication, that some of the lands benefited might be required to contribute one sum and other lands a greater or less sum, for such rule of apportionment would be inequitable and not ratable. Op. Asst. Atty. Gen., October 25, 1910, *In re Prosser Falls L. & P. Co.* (Yakima); *Williston Land Co.,* 37 L.D. 428. [But see Op. Atty. Gen., May 1, 1911 (Lower Yellowstone), with accompanying papers, in effect to the contrary.]

Where landowners within a reclamation project outside of an irrigation district are charged $80 per acre, while those within the district are charged only $70, because of the possibility that all those outside the district will not take water, those paying such higher price are entitled to the additional service for which they pay, and if seven-eighths of the acreage takes water, they are entitled to the water rights for the entire acreage. *Payette-Boise Water Users' Assn. v. Cole,* 263 F. 734 (D.C. Idaho 1919).

In computing the acreage on which the cost of an irrigation project was to be charged, a general deduction from the lands within the limits of the project of 10,000 acres, because it was "estimated" that such quantity would prove incapable of irrigation, because rough or sandy or from seepage, was not justified, where no land was described and excluded, and all lands within the project were equally entitled to water if demanded, and where specific tracts had already been excluded as non-irrigable. *Payette-Boise Water Users' Assn. v. Bond,* 269 F. 159 (D. Idaho 1920).

41. —Payment

A successful contestant of an entry within a reclamation project will be required, in making entry in exercise of his preference right, to pay the building charge obtaining at the time his application is filed, and is not entitled to the rate in effect when the former entry was made nor to credit for the payments made by the former entry-

man. *Henry A. Schroeder,* 40 L.D. 458 (1912).

Where after entry of a farm unit within a reclamation project the farm-unit plat is amended and the entryman in conforming his entry to the amended plat retains only part of the land originally entered he is entitled to have the payments theretofore made on account of building charges and on account of the Indian price for the land credited to the retained portion, but is not entitled to have the payments on account of operation and maintenance so credited. *Eugene F. Windecker,* 41 L.D. 389 (1912).

There is nothing in the act to prohibit a graduated scale of the annual payments required of users of water from projects constructed thereunder, and in all cases where it is deemed advisable this plan of payment may be adopted. Instructions, August 16, 1905, 34 L.D. 78.

42. —Waiver, extension and other relief

Water may be furnished without operation and maintenance charge for the irrigation of the grounds about country schoolhouses upon reclamation projects. Departmental decisions, January 11, 1912, and October 24, 1919.

When the Secretary of the Interior has fixed the number of installments to be paid for a water right and the time of payment, he is without authority to suspend payment of same in case the alkali has risen to the surface of the soil and interfered with the crop returns from the land. Departmental decision, *In re Sam Hammond* (Truckee-Carson), September 24, 1909. See regulations of the Secretary, August 11, 1915, governing extension of relief to water users whose lands are temporarily affected by seepage, alkali, etc., to such an extent as to render them impracticable of profitable cultivation.

Water cannot be furnished from a reclamation project to a State experiment farm free of charge. Departmental decision, September 15, 1909, *In re Idaho State Experiment Farm.*

The relinquishment of a homestead entry within the irrigable area of an irrigation project, where the entryman is in default in the payment of any annual installment, does not relieve the land of such charge, and a succeeding entryman takes it subject thereto. Instructions, July 16, 1906, 35 L.D. 29.

Except where specifically authorized by law, the Secretary of the Interior is not empowered to grant extensions of time, either directly or indirectly, for the payment of charges accruing from individual water users upon reclamation projects. *Shoshone irrigation project,* 50 L.D. 223 (1923).

43. —Collection

A corporation with which, as the representative of its shareholders, who are parties accepted by the United States as holders of water rights in a project under the Reclamation Act of June 17, 1902, the United States makes a contract for the benefit of such shareholders relative to the supply of water to and the dues to be paid by the shareholders, and which covenants in the contract to collect dues for the United States and guarantees the payment thereof, is a proper party plantiff in a suit to enjoin officers of the United States from collecting unlawful charges from the shareholders, turning the water from their lands, and canceling their water rights and homestead rights because they fail to pay such charges. *Magruder v. Belle Fourche Valley Water Users' Assn.,* 219 F. 72, 133 C.C.A. 524 (8th Cir. 1914).

A suit was brought by the United States in the Wyoming Federal District Court to recover maintenance charges, including charges for 1922, 1923, and 1924. The defendant had failed to pay charges for prior years or for the years 1922 to 1924, and the water had been shut off. Defendant maintained that for 1922, 1923, and 1924 he did not receive water, and therefore that for these three years he could not be charged for the use of it. The court ruled that the Secretary, being authorized to make rules and regulations for the government of irrigation projects, and fix maintenance charges, providing the manner in which they shall be paid, the obligation of the defendant became fixed and definite and is recoverable in an action brought for that purpose. *United States v. Parkins,* 18 F. 2d 643 (1926), Wind River (Indian) project.

Where the Secretary of the Interior in the exercise of his discretion withdrew certain land from an irrigation project and confined it to the area described in the public notice to the landowners affected, the latter, who contracted to pay for that part of the cost which should be apportioned to them by the Secretary, could not restrain the local reclamation officers from turning off the water for failure to pay an assessment in excess of the original estimate and of the actual value of work to be constructed, on the ground that the system was not completed when the suit was filed. *Yuma County Water Users' Assn. v. Schlecht,* 275 F. 885 (9th Cir. 1921), affirmed 262 U.S. 138 (1923).

Sec. 5. [Reclamation requirements for entrymen—No water for more than 160 acres of private lands in one ownership—Residence of landowner—Receipts to reclamation fund.]—The entryman upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the Government the charges apportioned against such tract, as provided in section 4. No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. All moneys received from the above sources shall be paid into the reclamation fund. (32 Stat. 389; § 1, Act of December 16, 1930, 46 Stat. 1029; § 8, Act of September 6, 1966, 80 Stat. 639; 43 U.S.C. §§ 392, 431, 439)

Explanatory Notes

Codification. So much of the first sentence as states the requirement for an entryman to reclaim one-half of the irrigable area for agricultural purposes is codified in section 439, title 43 of the U.S. Code. The second sentence is codified as section 431, and the last sentence as section 392.

1966 Amendment: Commissions. Section 8 of Public Law 89–554, the Act of September 6, 1966, 80 Stat. 639, repealed what was originally the fifth and last sentence of the section, which read as follows: "Registers and receivers shall be allowed the usual commissions on all moneys paid for lands entered under this act." The sentence was previously codified as section 381, title 43 of the U.S. Code. Public Law 89–554 codified title 5 of the U.S. Code relating to Government Organization and Employees.

1930 Amendment: Payment and Forfeiture. Section 1 of the Act of December 16, 1930, 46 Stat. 1029, repealed what was originally the third sentence of the section which read as follows: "The annual installments shall be paid to the receiver of the local land office of the district in which the land is situated, and a failure to make any two payments when due shall render the entry subject to cancellation, with the forfeiture of all rights under this Act, as well as of any moneys already paid thereon." The sentence was previously codified as section 476, title 43 of the U.S. Code. The first part of the sentence was superseded by section 4 of the Act of August 9, 1912, which authorized the Secretary to designate fiscal agents to whom shall be paid sums due on reclamation entries and water rights. The last part of the sentence, relating to cancellation and forfeiture for nonpayment, was superseded by section 3 of the Reclamation Extension Act of 1914. Both the 1912 and 1914 Acts appear herein in chronological order.

1914 Supplementary Provision: Reclamation and Cultivation. Section 8 of the Reclamation Extension Act of 1914, which appears herein in chronological order, authorizes the Secretary to require reclamation and cultivation of one-fourth the irrigable area within three years, and one-half the irrigable area within five years, of the filing of the water-right application or entry.

1912 Supplementary Provision: Payments for Patents and Water-Right Certificates. The Act of August 9, 1912, provides that a patent and a final water-right certificate may be issued upon payment of all charges due at the time, with a lien in favor of the United States attaching to the land and water rights for the payment of all sums due or to become due the United States. The Act appears herein in chronological order.

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1. Reclamation of entry—Generally

Order withdrawing land from entry under section 3, reclamation act, did not relieve entryman from the duty of reclaiming land under section 5, reclamation act, and complying with homestead law as to residence and cultivation under Revised Statutes, United States, sections 2289–2291, 2297, prior to amendment of 1912, where the land officials made a public announcement that the withdrawals of lands were not permanent, but were for the purpose of enabling preliminary investigations to be made as to feasibility of irrigation project. *Bowen v. Hickey,* 53 Cal. App. 250, 200 Pac. 46 (1921), cert. denied 257 U.S. 656 (1921).

2. —Interest of entryman

Under provisions of this section that entryman upon lands in a reclamation project before receiving patent shall, in addition to compliance with the homestead laws, reclaim at least one-half of total irrigable area and pay charges, an application to make reclamation homestead entry and the acceptance of it by the United States constitute a "contract" to the effect that when entryman has complied with legal requirements as to residence on and cultivation and reclamation of his land, and made acceptable proof of his compliance, government will issue a patent evidencing entryman's ownership of the land. *Jolley v. Minidoka County,* 106 P. 2d 865, 61 Idaho 696 (1940).

Under the Act of April 21, 1928, 45 Stat. 439, lands of a homestead entryman after compliance with all requirements of homestead laws as to residence, improvement and cultivation, but before final proof of reclamation of land is made, are subject to taxation by state and political subdivisions, regardless of when homestead entry was made. *Jolley v. Minidoka County,* 106 P. 2d 865, 61 Idaho 696 (1940).

Lands entered within a reclamation project are not subject to State taxation before the equitable title has passed to the entryman; and that title does not pass until the conditions of reclamation and payment of water charges due at time of final proof, imposed by the amended reclamation act, have been fulfilled in addition to the requirements of the homestead act. *Irwin v. Wright,* 258 U.S. 219 (1922), *overruling United States v. Canyon County,* 232 Fed. 985 (D. Idaho 1916) and *Cheney v. Minidoka County,* 26 Idaho 471, 144 Pac. 343 (1914), which held that the entryman has a taxable interest after compliance with the requirements of the homestead laws but before compliance with the additional requirements of the reclamation act. *Accord: Wood v. Canyon County,* 253 P. 839, 43 Idaho 556 (1927). *Casey v. Butte Co.,* 217 N.W. 508 (S. Dak. 1927). But see Act of April 21, 1928.

3. —Homestead laws

The provisions of the three-year homestead act of June 6, 1912, 37 Stat. 123, respecting cultivation, have no application to entries made under the reclamation act; but the reclamation laws require, as a prerequisite to the issuance of final certificate and patent, that the entryman shall have reclaimed, for agricultural purposes, at least one-half of the total irrigable area of his entry and paid all reclamation charges at that time due. *Wilbur Mills,* 42 L.D. 534 (1913).

The provisions of the three-year homestead law respecting cultivation do not apply to entries made subject to the reclamation act. *Rosa Voita,* 43 L.D. 436 (1914).

Upon the death of an entryman who has made satisfactory homestead final proof on a reclamation farm unit, the homestead becomes a part of his estate and as such subject to distribution, and is not an unperfected entry subject to the provisions of section 2291, Revised Statutes. The conditions imposed by the reclamation act as to reclamation, payment of charges, and filing of water-right application are conditions not of homestead law or proof but arising out of reclamation and imposed as a further requirement. *Heirs of Wm. L. Natzger,* 46 L.D. 61 (1917). See also *Edward Pierson,* 47 L.D. 625 (1921).

4. —Minerals

When land within a reclamation homestead entry upon which final reclamation proof has not been submitted is reported as prospectively valuable for oil and gas, the owner of the entry is correctly required to file consent to a reservation in the United States of the oil and gas in the land covered

by the entry. *L.S. Strahan,* A–26716 (August 21, 1953).

When land within a reclamation homestead entry upon which final reclamation proof has not been submitted and final certificate has not issued is reported as prospectively valuable for oil and gas, the claimant to the land is correctly required to file consent to a reservation in the United States of the oil and gas in the land included within the entry. *Jean W. Richards,* A–26718 (June 30, 1953).

Where a person applies for the reinstatement of his canceled homestead entry and it then appears upon the basis of the available geological data that the land covered by the entry is not valuable for oil and gas, the applicant should not be required to execute an oil and gas waiver as a condition precedent to the reinstatement of the entry. *Carl O. Olsen,* A–26432 (October 7, 1952).

11. Excess land laws—Generally

Nothing in the Reclamation Act of 1902 or its legislative history suggests that private landowners with water rights could participate in a project, pay their share of its cost, but be exempt from acreage limitation. Solicitor Barry Opinion, 71 I.D. 496, 502 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

The provision in section 5 of the Reclamation Act of 1902 that "no right to the use of water for land in private ownership shall be sold" for more than 160 acres means that the use of project facilities shall not be made available to a single owner for service to more than 160 acres. Sections 4 and 5 of the 1902 Act, read together, indicate that the "sale" referred to is not merely a commercial transaction, but is the contract by which the government secures repayment and the water user obtains benefits resulting from construction of the federal project. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

Congress, in establishing a limitation on the size of entries on public lands under section 3 of the Reclamation Act of 1902, and on the maximum acreage for which a water-right could be acquired under section 5 of that Act, had as its purpose to provide homes on the arid lands of the West, the prevention of land monopoly, and the avoidance of land speculation. Solicitor Barry Opinion, 68 I.D. 372, 378 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The drainage system authorized by reclamation law is that which will provide drainage necessary to the successful operation of the complete project, and as a general matter the acreage limitations of the law do not apply to it. Memorandum of Chief Counsel Fix to Commissioner, May 12, 1948.

12. —Constitutionality

This section providing that no right to use of water should be sold for lands in excess of 160 acres in single ownership is not unconstitutional as a denial of due process and equal protection of the law, and does not amount to a taking of vested property rights both in land and irrigation district water or discriminate between nonexcess and excess landowners. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275 (1958).

13. —Construction with other laws

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District; Solicitor Harper Opinion, M–33902 (May 31, 1945), in re applicability of excess land provisions to Coachella Valley lands.

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The excess land limits of general reclamation law do not apply to projects established under the Water Conservation and Utilization Act. The farm units established by the Secretary may be greater or less than 160 acres. Solicitor Harper Opinion, M–34062 (August 9, 1945), in re Balmorhea project.

14. —State laws

Section 8 of the 1902 Act does not override the excess land provisions of section 5, nor compel the United States to deliver water on conditions imposed by the State. It merely requires the United States to comply with state law when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein. But the acquisition of water rights must not be confused with the operation of Federal projects. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 291–2 (1958).

15. —Assessment of excess lands

A corporate landowner which, as required by section 12 of the Reclamation Extension Act of 1914, agreed to dispose of its excess lands, could not, after construction of the project, escape assessment of such lands by an irrigation district under state law on the grounds that its lands were not benefited. *Lincoln Land Co. v. Goshen Irr. Dist.*, 42 Wyo. 229, 293 Pac. 373 (1930).

Irrigable lands in excess of 160 acres, in the sole ownership of a corporation, which are shown by the general trend of the evidence to be benefited by an irrigation project so that their value becomes enhanced thereby, are properly included within the irrigation district and assessable accordingly, notwithstanding the inability under the Federal laws of the owner to receive water for more than 160 acres, as the basis of special improvement taxation is property benefit independent of ownership conditions. *Shoshone Irr. Dist. v. Lincoln Land Co.*, 51 F. 2d 128 (D. Wyo. 1930).

There is no merit to the contention by defendant, in an action contesting the outcome of an election of governor of a district of the Salt River Valley Water Users Association, that landowner's constitutional rights will be invaded by granting them water rights for only 160 acres while subjecting their entire acreage to assessments according to benefits. *Saylor v. Gray*, 41 Ariz. 558, 20 P. 2d 441 (1933).

In an action of foreclosure brought by the Enterprise Irrigation District against the Enterprise Land & Investment Co. to foreclose delinquency-assessment certificates issued for delinquent assessments over a period of several years, the defendant company, owner of more than 160 acres of irrigable land within the district, interposed a defense of fraud on the part of the district directors. These officers were charged with constructive fraud in assessing benefits to lands which could not receive water for irrigation from works constructed by the United States because of the ineligibility of the owner to receive water under rules imposed by section 5 of the act of June 17, 1902, limiting the furnishing of water from such works to lands in single ownership in excess of 160 acres. The defense was denied by the trial court, whose decision was reversed by the Supreme Court of Oregon, the latter holding that the answer stated a valid defense to the foreclosure action. *Enterprise Irrigation Dist. v. Enterprise Land & Investment Co.*, 300 Pac. 507 (Ore. 1931). But see *Klamath County v. Colonial Realty Co.*, 7 P. 2d 976, 139 Ore. 311 (1932) in which the same court under a slightly different state of facts, reached a different conclusion, and in which said court now appears to be in harmony in this matter with the courts of the other arid states and with its own earlier decisions.

16. —Standing to sue

There is nothing in the excess land statutes to indicate that Congress intended to confer a litigable right upon private persons claiming injury from the Secretary of the Interior's failure to discharge his duty to the public. *Turner v. Kings River Conservation Dist.*, 360 F. 2d 184, 198 (9th Cir. 1966).

17. —Vested water rights

In connection with the purchase of a partially completed canal system from a private company as part of the Umatilla reclamation project, the provision of section 5 of the Act of June 17, 1902, restricting the sale of a right to use water for land in private ownership to not more than one hundred and sixty acres, does not prevent allowing the continued flowage through the canal to be constructed under the project of water for 300 acres covered by a vested water right which is not acquired for the project, inasmuch as no sale of such water is involved. Op. Asst. Atty. Gen., 34 L.D. 351 (1906).

The departmental regulation, currently found at 43 CFR 230.70, which provides that section 5 of the Act of June 17, 1902, does not prevent the recognition of a vested water right for more than 160 acres and the protection of same by allowing the continued flowing of the water covered by the right through works constructed by the Government under appropriate regulations and charges, applies only to special situations where existing physical facilities or water rights are acquired under the authority of section 10 of the 1902 Act for incorporation in a project and where the lands to which the water right appertains are not included within that project. This regulation was intended as a codification of the Opinion of Assistant Attorney General, 34 L.D. 351 (1906). Solicitor Barry Opinion, 71 I.D. 496, 511–12, note 29 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

18. —Delivery of water

The limitation intended by the reclamation law, as set forth in section 5 of the Reclamation Act of 1902 and as supported by the plain language of section 3 of the Act of August 9, 1912, relates to the area in private ownership to which water may be delivered, and not to the quantity of water. A private owner will not be supplied with water, whether a full or supplemental supply, for use upon a tract exceeding 160

acres. The language in section 2 of the Warren Act referring to "an amount sufficient to irrigate 160 acres" is not intended to change this rule. Solicitor Patterson Opinion, M–21709 (March 3, 1927), in re proposed contract concerning Gravity Extension Unit, Minidoka project.

The restriction in the reclamation laws against furnishing project water to an acreage greater than 160 acres in a single ownership does not permit the furnishing of water alternately or in rotation to two or more 160-acre parcels of a larger single holder. Memorandum of Chief Counsel Fix to Commissioner, May 12, 1948.

31. Ownership of excess lands—Generally

A qualified water-right applicant may, after having disposed of a previously acquired water-right, make another application, and as to the latter, may be considered in the position of an original applicant. A landowner may be the purchaser of the right to the use of water for separate tracts at the same time, provided he can properly qualify and the tracts involved do not exceed 160 acres in the aggregate. Departmental decision, *In re Wm. B. Bridgman* (Sunnyside), November 20, 1909.

Congress is without power to control or regulate the sale or acreage of lands in private ownership within reclamation projects; but, so long as the projects are under Government control, may determine the acreage for which water may be supplied through such projects to any one landowner. *Amaziah Johnson,* 42 L.D. 542 (1913).

32. —Coalescence of holdings

A widow who succeeds to her husband's unperfected homestead entry by operation of law is entitled to complete it upon the same terms and conditions as were required of her husband. Therefore, the fact that she had previously acquired a water right for lands held by her in private ownership, the acreage of which, when added to the acreage of the entry, exceeds 160 acres, does not prevent her from completing the entry under the reclamation act. *Anna M. Wright,* 40 L.D. 116 (1911).

A person who holds a farm unit shall not be permitted before full payment has been made on the appurtenant water right, to acquire other lands with appurtenant water rights unless the water-right charges on the latter have been fully paid. A person may hold private lands with appurtenant water rights up to the limit of single ownership fixed for the project in one or more parcels before full payment of the water-right charge, but may not acquire other lands with appurtenant water rights unless the water-right charges thereon have been paid in full. The limit of area of the farm units and of single private-land holdings to which water rights are appurtenant, and as to which water-right charges have not been paid in full, shall in no case exceed 160 acres. Departmental decision, July 22, 1914, 43 L.D. 339. Departmental instructions of July 1, 1920, amend paragraph 41 of general reclamation circular of May 18, 1916, 45 L.D. 385. See C.L. 911, July 6, 1920, or 47 L.D. 417. See Act of August 9, 1912, 37 Stat. 265, and notes thereunder. See amendment of section 23, regulations of May 18, 1916, 43 CFR 230.21.

One who acquires lands of a reclamation homestead entryman at a tax sale pursuant to the Act of April 21, 1928, as amended, is subject to the provisions of reclamation law including the excess lands provisions. This result follows from the provisions of the 1928 Act that the holder of such tax deed or tax title is entitled to the rights and privileges of an assignee under the Act of June 23, 1910; and the latter Act makes the assignee "subject to the limitations, charges, terms and conditions of the reclamation act." *James P. Balkwill,* 55 I.D. 241 (1935).

33. —Husband and wife

An administrative determination that 320 acres of irrigable land can be held in community ownership is a reasonable construction of the excess land provisions of the Federal Reclamation Laws. In the practical application of such a determination, technical differences in the quality and extent of a wife's interest in community property may properly be disregarded. Solicitor Harper Opinion, M–34172 (August 21, 1945).

34. —Corporations

There is no *legal* objection to the acquisition of a water right by a water users association or other corporation if it is not otherwise disqualified under the excess land laws by reason of ownership of other lands on which there exist unpaid betterment and building charges. However, the Department has ruled as a matter of policy that water applications will not be accepted from corporations, Instructions, 42 L.D. 250 (1913), *Pleasant Valley Farm Co.,* 42 L.D. 253 (1913), unless the corporation acquires a patent and water right solely to protect its security in a loan transaction and with the intention of reselling it at more propitious times, *Great Western Insurance Co.,* A–16335 (February 8, 1932). Consequently, under this policy, where the Grand Valley Water Users Association has acquired several farm units at tax sales to protect its lien, it may receive a patent to one farm unit for security purposes and may bid

at tax sales for unlimited acreage for the purpose of protecting its lien and with the intent of reassigning its interest to qualified persons within a reasonable time. *James P. Balkwill,* 55 I.D. 241 (1935).

35. —Federal government

The Federal Subsistence Homesteads Corporation, being wholly financed and controlled by the United States Government and serving no function other than aiding in the purchase of subsistence homesteads by individuals as provided by section 208 of the National Recovery Act, does not fall within the category of corporations which it was the intention of Congress should be barred from acquiring or controlling lands within Reclamation projects; nor does the statutory limitation of individual holdings to 160 acres apply to such a corporation. Solicitor Margold Opinion, 54 I.D. 566 (1934).

36. —Joint operations

A landowner may deed his excess acreage to one of his children, or anyone else for that matter, and arrange to operate the alienated property with his own as one unit, provided he has divested himself of ownership in good faith and the child or other recipient of the property receives the full benefits of the operation of his own acreage. Letter from Commissioner Straus to Senator Joseph C. O'Mahoney, December 29, 1948.

Several farmers each holding 160 acres may farm their lands jointly as a unit under a proper mutual agreement, assuming all other requirements of Reclamation law have been met. Letter from Commissioner Straus to Senator Joseph C. O'Mahoney, December 29, 1948.

41. Residency of landowner—Generally

To entitle an applicant for the use of water for lands held in private ownership within the irrigable area of an irrigation project under this Act to the benefits of this Act, he must hold the title in good faith, and his occupancy must be bona fide and in his own individual right. Instructions, May 21, 1904, 32 L.D. 647.

The term "in the neighborhood" held to mean within 50 miles. Departmental decision, January 20, 1909.

Where a tract of land under a reclamation project is owned by two or more persons jointly, unless each is a "resident" or an occupant on the land, no right to use water to irrigate the same can be acquired under this section. Departmental decision, January 12, 1910.

The residence requirements provided for in section 5 of the Reclamation Act of June 17, 1902, apply to all persons acquiring by assignment water-right contracts with the United States, unless prior to such assignment the final water-right certificate contemplated by section 1 of the Act of August 9, 1912, has been issued, in which event the land may be freely alienated, subject to the lien of the United States. *H. G. Colton,* 43 L.D. 518 (1915).

The residence requirement of this section in reference to private lands is fully complied with if, at the time the water-right application is made, the applicant is a bona fide resident upon the land or within the neighborhood. After approval of the application further residence is not required of such applicant, and final proof may therefore be made under the Act of August 9, 1912, without the necessity of proving residence at the time proof is offered. Departmental decision, April 19, 1916.

Paragraph 105 of the general reclamation circular approved May 18, 1916, 45 L.D. 385, 43 C.F.R. 230.102 provides that in case of the sale of all or any part of the irrigable area of a tract of land in private ownership covered by a water-right application which is not recorded in the county records, the vendor will be required to have his transferee make new water-right application for the land transferred. *Held,* that in making the new application it is immaterial whether or not the transferee be "an actual bona fide resident on such land or occupant thereof residing in the neighborhood." Reclamation decision, July 25, 1917, *In re J. W. Merritt,* Truckee-Carson.

46. Payment of charges—Generally

One holding a mortgage against only a part of a tract of land in private ownership upon a Federal reclamation project for which entire tract a water-right application has been made, may pay up from time to time the charges on that portion of the tract covered by the mortgage in the event the landowner fails to pay. Departmental decision, July 13, 1917.

Fiscal agents upon United States reclamation projects are authorized to accept from water users money tendered in payment of an accrued installment of either construction, operation and maintenance, or rental charges, for any year, even though installments for a previous year remain unpaid. Reclamation decision, August 6, 1917; C.L. No. 680.

In cases where the title to lands under water-right application upon a Federal reclamation project is in dispute, and the land is in possession of one other than the record owner, the Reclamation Service may deliver water to the party in possession, upon payment in advance of the operation and

maintenance charges. Reclamation decision, August 24, 1917, *In re Wood v. Eggleston,* Truckee-Carson.

The Federal statutes relative to the payment of debts and demands due the United States do not require the acceptance of money only in the settlement of such debts and demands, and accordingly the proper administrative official representing the United States may, where it would be to the interest of the United States, accept a "call" warrant for indebtedness of an irrigation district under its contract with the United States Reclamation Service for drainage construction and reservoir storage capacity, such warrant to be held by the United States until paid. *Pioneer Irrigation District,* 54 I.D. 264 (1933).

47. —Overdue payments

The provision in section 5 of the Reclamation Act that failure to make payment of any two annual installments when due shall render the entry subject to cancellation, with forfeiture of all rights under the act, is not mandatory, but it rests in the sound discretion of the Secretary of the Interior whether the entryman in such case may thereafter be permitted to cure his default by payment of the water charges, where he has continued to comply with the provisions of the homestead law; and in event an entry has been canceled for such failure, the Secretary may, in the absence of adverse claim, authorize reinstatement thereof with a view to permitting the entryman to cure his default. *Marquis D. Linsea,* 41 L.D. 86 (1912).

Inasmuch as the Acts of June 17, 1902, and August 13, 1914, did not peremptorily declare in mandatory language that forfeitures must be declared, or that they will necessarily result by operation of law as soon as defaults in payments by water users on reclamation projects have occurred, it rests within the sound discretion of the Secretary of the Interior to determine whether an entryman may thereafter be permitted to cure the default by payment of the charges. *Shoshone irrigation project,* 50 L.D. 223. (1923).

The Department on December 24, 1935, cancelled water right application of J. W. Thompson, Yuma irrigation project, for nonpayment of construction charges more than one year in arrears. Pablo Franco later acquired the land and applied for reinstatement of the water right application. The Under Secretary, in letter of May 9, 1936, rejected Franco's application, stating that the Department was without authority to grant the application for reinstatement because the money previously paid by Thompson on this water right application, under section 5 of the Reclamation Act, had been forfeited to the United States.

No power exists in the Secretary of the Interior to formally grant specific extension of time for payment of overdue water-right charges. Departmental decision, April 22, 1909.

The provisions of section 5 of the Reclamation Act and of sections 3 and 6 of the Reclamation Extension Act of August 13, 1914, regarding one year of grace for the payment of overdue water charges refer only to the drastic remedies of cancellation and forfeiture and not to the right to bring suit in a court for collection of a water charge past due and unpaid. Reclamation decision, December 4, 1917, *U.S. v. Edison E. Kilgore,* Shoshone. See Secretary's regulations of February 27, 1909, regarding delinquent payments, 37 L.D. 468.

Where entries and water-right applications have been held for cancellation for failure to pay the building charges, pending final action, water may be furnished for the land upon proffer of the portion of the installments for operation and maintenance. Departmental decision, February 9, 1909.

Where a water-right application for land held in private ownership has been canceled for default in payment of building, operation, and maintenance charges, such application may be reinstated upon full payment of all accrued charges. Instructions, 45 L.D. 23 (1916).

48. —Nonirrigable lands

The director is authorized to assent to the release from stock subscription of any and all lands in any and all projects heretofore or hereafter shown by official survey or by the original or amended farm unit plats to be nonirrigable; also, to assent to the reduction of stock subscription for any such lands to the acreage so shown as irrigable. Department decisions, March 11, 1912, and September 16, 1912.

49. —Litigation to enjoin collection

A corporation with which, as the representative of its shareholders, who are parties accepted by the United States as holders of water rights in a project under the reclamation act, the United States makes a contract for the benefit of such shareholders relative to the supply of water due and the dues to be paid by the shareholders and which covenants in the contract to collect dues for the United States and guarantees the payment thereof, is a proper party plaintiff in a suit to enjoin officers of the United States from collecting unlawful charges from the shareholders, turning the water from their lands, and canceling their water rights and homestead rights be-

cause they fail to pay such charges. *Magruder et al. v. Belle Fourche Valley Water Users' Association,* 219 Fed. 72, 133 C.C.A. 524 (1914).

An injunction will not lie against the project manager of the Flathead Indian Reclamation project to restrain the shutting off of water to enforce the payment of charges due under orders of the Secretary of the Interior (a) unless the Secretary of the Interior were joined as a party defendant where the United States conceded the existence of the water supply claimed by the plaintiff below or (b) unless the Secretary of the Interior and the United States were joined as parties defendant, where the United States disputed the plaintiff's claim of a water supply, and where the allowance of the plaintiff's claim would affect the Government water supply available for the Flathead project. *Moody v. Johnson,* 66 F. 2d 999 (9th Cir. 1933).

Sec. 6. [Reclamation fund to be used for operation and maintenance—Management of works to pass to landowners—Title.]—The Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this act: *Provided,* That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided,* That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress. (32 Stat. 389; 43 U.S.C. §§ 491, 498)

EXPLANATORY NOTES

Codification. The first clause, down to the proviso, relating to operation and maintenance, is codified as section 491, title 43, U.S. Code. The balance of the section is codified as section 498.

Supplementary Provisions. A number of general and specific provisions relating to charges for, and transfer of, operation and maintenance, have been enacted and are referenced in the index. Statutes of general application include the Reclamation Extension Act of 1914 and the Fact Finders' Act of 1924, which appear herein in chronological order.

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1. Operation and maintenance—Generally

The Attorney General for New Mexico ruled July 5, 1917, that persons fishing in the Elephant Butte dam, Rio Grande project, must have a State license. On August 3, 1917, the Bureau held that persons fishing in said reservoir must comply with State law but must also have the consent of the United States.

The Secretary of the Interior is an indispensable party to a suit by water users to enjoin the project manager of the Yakima project from refusing to deliver quantities of water to which they claimed they were entitled under contracts with the United States, when such refusal was done at the direction of the Secretary. *Moore v. Anderson,* 68 F. 2d 191 (9th Cir. 1933).

2. —Charges for

The United States may assess operation and maintenance charges against water users as well as construction charges. To hold otherwise would greatly deplete, if not entirely consume, the Reclamation Fund, thus diverting the proceeds of the public domain to the payment of local expenses. This interpretation of the Reclamation Act has been recognized by Congress. *Swigart v. Baker,* 229 U.S. 187 (1913).

The Secretary of the Interior, being authorized to tax and determine the charges, is authorized to divide the same into two parts—one for construction and the other

for maintenance and operation; and hence he is authorized to impose reasonable assessments on land irrigated prior to the time when payment of the major portion of the cost of construction had been made and the works passed under management of the owners of the irrigated land. *United States v. Cantrall,* 176 Fed. 949 (C.C. Ore. 1910).

Where by a contract between the United States and landowners tributary to a Federal irrigation system, such landowners agreed to pay to the United States the charges duly levied against their lands for the construction and maintenance of the system, they were only liable for such reasonable charges as the Government was authorized to collect proportionate to their share of the cost of maintaining and operating the system, and not such as might be arbitrarily fixed in advance by such Secretary or other governmental officer. *Ibid.*

3. —Transfer of

The Secretary of the Interior is not authorized by the Reclamation Act to turn over the operation and maintenance of completed reclamation projects, in whole or in part, or to any extent, to water users' associations before the payments by such water users for water rights are made by the major portion of the lands irrigated by such works. 30 Op. Atty. Gen. 208 (1913); but see section 5 of the Act of August 13, 1914, which authorizes the Secretary to transfer the care, operation and maintenance of all or any part of a project to a water users' association or irrigation district.

4. —Negligence actions

A petition for damages against a State irrigation district for negligent maintenance of a canal was held to be no cause of action, in view of the State statutes and the contract making the district merely a fiscal agent for the United States, which operated and maintained the works. *Malone v. El Paso County Water Improvement Dist. No. 1,* 20 S.W. 2d 815 (Tex. Cir. App. 1929).

Where alleged negligence of federal government, while in control of maintenance and operation of irrigation system, could not be imputed to irrigation district, defendant in suit by district to foreclose land for delinquent assessments could not maintain a claim for affirmative relief against district by way of recoupment, set-off or counterclaim based on such negligence. *Klamath Irr. Dist. v. Carlson,* 157 P. 2d 514, 176 Ore. 336 (1945).

11. Title to property—Generally

The gravity extension unit (Gooding division) of the Minidoka project was constructed by the United States under a repayment contract with American Falls Reservoir District No. 2. It diverts water from the Snake River below Minidoka dam in an area of slack water caused by Milner dam, which was built in 1903 by the Twin Falls Land and Water Company, and is operated and maintained by the Twin Falls Canal Company. The latter brought suit against the American Falls Reservoir District No. 2 for a proportionate share of the costs of construction and operation of Milner dam. The suit was dismissed on the grounds: (1) that the United States, not the reservoir district, was the proper party defendant, notwithstanding a provision in the repayment contract that the district would hold the United States harmless against claims in favor of the owners of Milner dam, because under section 6 of the Reclamation Act title to and management and operation of the works remained in the Government; and (2) that the gravity diversion works were not damaging plaintiff's water rights or its use of Milner dam. *Twin Falls Canal Co. v. American Falls Reservoir Dist. No. 2,* 59 F. 2d 19 (9th Cir. 1932); affirming 49 F. 2d 632 (D. Idaho 1931); see also 45 F. 2d 649 (D. Idaho 1930) overruling demurrer to amended complaint.

The United States is not an indispensable party to a suit by a landowner receiving water from the Yakima project to enjoin the Secretary of the Interior from imposing additional charges for water delivery, representing part of the cost of the new Cle Elum reservoir, beyond those stated in a repayment contract with a water users' association and in the public notice issued by the Secretary, because the landowner, not the United States, is the owner of the water right under Federal and State law and under contract with the Secretary. This ownership is wholly distinct from the property right of the Government in the irrigation works. The suit is to enjoin the Secretary from enforcing an order, the wrongful effect of which will be to deprive the landowner of vested property rights, and may be maintained without the presence of the United States. *Ickes v. Fox,* 300 U.S. 82 (1937). See also *Fox v. Ickes,* 137 F. 2d 30 (D.C. Cir. 1943), cert. denied, 320 U.S. 792.

In suit by irrigation district to foreclose for delinquent taxes and assessments, evidence adduced by defendant under claim for affirmative relief by way of recoupment, set-off or counterclaim was insufficient to sustain allegation that alleged federal control, which would defeat defendant's right to affirmative relief against district, was a

subterfuge and fraud, in that district had paid major portion of cost of project. *Klamath Irr. Dist. v. Carlson*, 157 P. 2d 514, 176 Ore. 336 (1945).

Irrigation district, by instituting suit to foreclose certificates of delinquency in irrigation assessments, was not estopped from meeting defendant's allegations, which were foundation of defendant's plea for affirmative relief, that district had paid major portion of cost of project and that federal operation was a fraud and subterfuge by proof that aggregate payments were not sufficient to entitle plaintiff to take control of operation of irrigation project, and that no subterfuge or fraud had been practiced. *Klamath Irr. Dist. v. Carlson*, 157 P. 2d 514, 176 Ore. 336 (1945).

The United States is an indispensable party to a suit by the City of Mesa, a municipal corporation, to condemn a portion of the electrical plant and system operated by the Salt River Project Agricultural and Improvement District as an integral part of the Salt River reclamation project; and the United States not having consented to the suit, the court is without jurisdiction to entertain the action. *City of Mesa v. Salt River Project Agricultural Improvement and Power District*, 101 Ariz. 74, 416 P. 2d 187 (1966).

In the construction of the American Falls Reservoir of the Minidoka project, Idaho, the Secretary of the Interior, pursuant to act of Congress of Mar. 4, 1921, 41 Stat. 1367, 1403, acquired by purchase or condemnation the fee simple title to certain lots adjacent to the town of American Falls. Power County, Idaho, assessed these lots as the property of the American Falls Reservoir District. The United States, claiming that the District had no equity in the lots, and that the placing of the lots on the assessment roll would constitute a cloud on the title of the United States, brought proceedings to have the assessments declared void. The Court held that when the Secretary of the Interior, under authority of the Congress purchases lands, the fee simple title is in the United States until the United States disposes of them; that neither the States nor their subdivisions have the power to tax property of the United States; that the lots when acquired by the United States became a necessary and proper part of the reservoir enterprise and incidental thereto, and that the only interest the District has in the reservoir is the right to receive water delivered to it by the United States therefrom. The taxing proceedings were decreed void. *United States v. Power County, Idaho, et al.*, 21 F. Supp. 684 (1937).

Sec. 7. [Authority to acquire property—Attorney General to institute condemnation proceedings.]—Where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney General of the United States upon every application of the Secretary of the Interior, under this act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice. (32 Stat. 389; 43 U.S.C. § 421)

EXPLANATORY NOTES

Supplementary Provision: Exchanges. Section 14 of the Reclamation Project Act of 1939 authorizes the Secretary to acquire lands for the relocation of property in connection with the construction or operation and maintenance of any project, and to enter into contracts for the exchange of water, water rights, or electric energy. The Act appears herein in chronological order.

Exchange of Lands, North Platte Project. An exchange of lands on the North Platte project between the United States and the Swan Land and Cattle Company was authorized by the Act of August 9, 1921, ch. 55, 42 Stat. 147. The land was conveyed to the United States by deed dated September 12, 1921, and recorded in Goshen County, Wyoming, October 10, 1921. Patent issued February 15, 1922—Cheyenne No. 849041.

Editor's Note, Annotations. Annotations of opinions dealing with aspects of property acquisition including condemnation proceedings which are common to all Government agencies, such as valuation of property, payment of interest, acceptability of title, and so forth, are not included.

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1. Purpose of acquisition—Generally

The Act of June 17, 1902, does not authorize the use of the reclamation fund for the purchase of any land except such as may be necessary in the construction and operation of irrigation works. *California Development Co.*, 33 L.D. 391 (1905).

The United States has constitutional authority to organize and maintain an irrigation project within a State where it owns arid lands whereby it will associate with itself other owners of like lands for the purpose of reclaiming and improving them, and for that purpose it exercises the right of eminent domain against other land owners to obtain land necessary to carry the proposed project into effect. *Burley v. United States*, et al., 179 F. 1, 102 C.C.A. 429, 33 L.R.A. (N.S.) 807 (Idaho 1910), affirming 172 F. 615 (C.C. 1909). See also *Magruder v. Belle Fourche Valley Water Users' Assn.*, 219 F. 72, 133 C.C.A. 524 (S. Dak. 1914).

The fact that a scheme contemplates the irrigation of private as well as government land does not prevent condemnation of land necessary to carry it out. *Burley v. United States*, 179 F. 1, 102 C.C.A. 429, 33 L.R.A. (N.S.) 807 (Idaho 1910).

Lands condemned by the United States under the Reclamation Act for right of way for a canal or ditch required in the carrying out of an irrigation project are taken for a public use. *United States v. O'Neill*, 198 F. 677 (D. Colo. 1912).

The Department of the Interior had right to condemn 277.97 acres of land in the County of Madera, California, for navigation, reclamation, and storage of waters of the San Joaquin and Sacramento Rivers, irrigation and power purposes, since those purposes were "public purposes." *United States v. 277.97 Acres of Land*, 112 F. Supp. 159 (D. Cal. 1953).

2. —Discretion of Secretary

In a proceeding by the United States to condemn land for reservoir purposes whether a more feasible plan of irrigation than the one adopted might be devised, or some other site selected for the reservoir, is immaterial, the determination of the proper Government authorities being conclusive. *United States v. Burley*, 172 F. 615 (C.C. Idaho 1909), affirmed 179 F. 1, 102 C.C.A. 429, 33 L.R.A. (N.S.) 807 (1910).

Where Congress left determination of need for particular realty for navigation, reclamation, and storage of waters of rivers, and for irrigation and power purposes to Secretary of the Interior, courts had no right to question manner in which the Secretary of the Interior exercised the delegated power. *United States v. 277.97 Acres of Land*, 112 F. Supp. 159 (D.C. Cal. 1953).

When the Secretary of the Interior in the exercise of a reasonable discretion determines as to the validity of title to and as to the value of a right to appropriate water for irrigation purposes to be acquired by him under the provisions of the act of June 17, 1902, his decision is conclusive upon the accounting officers. 14 Comp. Dec. 724 (1908).

3. —Relocation of property

Where establishment of a reservoir under the Reclamation Act involved flooding part of the town, the United States had constitutional power to take by condemnation other private land near by, in the only practicable and available place, as a new town site to which the buildings affected could be moved at the expense of the United States and new lots be provided in full or part satisfaction for those flooded. The fact that, as an incident of such a readjustment, there may be some surplus lots of the new town site which the Government must sell does not characterize the condemnation as a taking of one man's property for sale to another. *Brown v. United States*, 263 U.S. 78 (1923), affirming *United States v. Brown*, 279 F. 168 (1922). See also section 14 of the Reclamation Project Act of 1939.

4. —Related lands

The Reclamation Act permits the United States to acquire strips of land, aggregating 10 per cent of the irrigable area of a project,

and establish and maintain thereon plantations of trees and shrubs to serve as windbreaks, in order to facilitate and protect the agricultural development of the adjacent irrigable lands and to protect irrigation canals and laterals. Departmental decision, July 24, 1912 (Umatilla).

5. —Research and development

The Secretary of the Interior is authorized to purchase or lease lands for a "development farm" in the nature of a field laboratory where this is an appropriate method of developing data relevant to such factors as classification of lands, suitability of crops, and repayment ability of irrigators. Acting Solicitor Burke Opinion, M-36219 (May 12, 1954).

11. Property or interest involved—Generally

The Secretary of the Interior has no authority under the provisions of the Act of June 17, 1902, to embark upon or commit the Government to any irrigation enterprise that does not contemplate the absolute transfer of the property involved to the United States. *California Development Co.*, 33 L.D. 391 (1905).

The Act contemplates that the United States shall be the full owner of irrigation works constructed thereunder, and clearly inhibits the acquisition of property, for use in connection with an irrigation project, subject to servitudes or perpetual obligation to pay rents to a landlord holding the legal title. Op. Asst. Atty. Gen., 34 L.D. 186 (1905).

In the acquisition of interests in real property, if not administratively objectionable, title may be acquired subject to (a) any existing coal or mineral rights reserved or outstanding in third parties and (b) any existing rights of way in favor of the public or third parties for roads, railroads, telephone lines, transmission lines, ditches, conduits or pipe lines, on over or across the property, although the property is under contract, to be conveyed to the United States in fee simple free of lien or encumbrance. Central Valley project, letter of July 9, 1940.

There is no authority for the use of the reclamation fund, either directly by the Secretary or indirectly by advancement to others, for the purchase of lands or other property outside of the territorial limits of the United States. *California Development Co.*, 33 L.D. 391 (1905).

The Secretary of the Interior may not, in the acquisition of land needed for a reservoir to be constructed by the Bureau of Reclamation, agree that as a part of the consideration the landowner shall have the perpetual right to utilize any power facilities afforded by the reservoir. Decision of First Assistant Secretary, December 15, 1936, in re Truckee Storage project, Boca reservoir.

The Secretary has full authority to purchase lands necessary for reservoir purposes, to arrange the terms of purchase, and to allow the vendor to retain possession until the land may be actually needed where by so doing the purchase may be more advantageously made; but he has no authority under said act to lease such purchased lands after the Government has taken possession thereof. Instructions, 32 L.D. 416 (1904).

12. —Existing irrigation system

Where an irrigation system already constructed and in operation may be utilized in connection with a greater system to be constructed under the provisions of the Act of June 17, 1902, its purchase for such purpose comes within the purview of the act. *California Development Co.*, 33 L.D. 391 (1905).

The Act affords authority for the purchase of an incomplete irrigation system to be used in connection with and to become a part of a larger system contemplated by the Government. Op. Asst. Atty. Gen., 34 L.D. 351 (1906).

13. —Indian lands

The United States has authority to condemn tribal lands of the Crow Tribe for construction of Yellowtail Dam, under section 9(c) of the Flood Control Act of 1944 and the Federal Reclamation Laws; under the general condemnation act of August 1, 1888, 55 Stat. 357, 40 U.S.C. § 257; and under the several acts appropriating money for preconstruction work and for initiation of construction. *United States v. 5,677.94 Acres of Land*, 162 F. Supp. 108 (D. Mont. 1958); *ibid*, 152 F. Supp. 861 (D. Mont. 1957); Opinion of Solicitor Davis, M-36148 (Supp.) (February 3, 1954).

Under the provisions of the Reclamation Act, the Secretary of the Interior has power to acquire the rights and property necessary therefor, including those of allottee Indians, by paying for their improvements, and giving them the right of selecting other lands. The restrictions on alienation of lands allotted to Indians within the area of the Milk River irrigation project do not extend to prohibiting an allottee Indian from selling his improvements to the United States and selecting other lands so that the United States could use the lands selected for purposes of an irrigation project as provided by Act of Congress. *Henkel* v. *United States*, 237 U.S. 43 (1915), affirming 196 F. 345, 116 C.C.A. 165 (1912).

14. —School lands

Until so authorized by Congress, neither the Department nor the Territorial Government of Arizona has power to dedicate for use in connection with an irrigation project, lands in said territory which, by section 2 of the Act of February 2, 1863, 12 Stat. 664, sec. 1946, R.S., have been reserved for school purposes to the future State to be erected, including the same. Instructions, 32 L.D. 604 (1904).

15. —Municipal property

Although land owned by a municipality was being devoted to public use, the Secretary of the Interior had authority to condemn such land for Missouri River Basin project. *United States v. 20.53 Acres of Land in Osborne County, Kansas, City of Downs,* 263 F. Supp. 694 (D. Kansas 1967).

16. —Water rights

The United States had power to acquire through exercise of eminent domain water rights of riparian owners and overlying owners on river below Government dam. *State of California v. Rank,* 293 F. 2d 340 (9th Cir. 1961), modified on other grounds 307 F. 2d 96, affirmed in part 372 U.S. 627, affirmed in part, reversed in part on other grounds sub. nom. *Dugan v. Rank,* 372 U.S. 609 (1963).

17. —Personal property

An engine necessary for the purpose of carrying out the provisions of this Act may be acquired under this section. *United States v. Buffalo Pitts Co.,* 234 U.S. 228 (1914).

18. —Leasehold

The Secretary is authorized by this section to acquire a leasehold interest. Acting Solicitor Burke Opinion, M–36219 (May 12, 1954), *in re* authority to lease or purchase lands for development farms on reclamation projects.

19. —Easements and rights-of-way

Where the United States acquired a primary easement to construct an irrigation ditch on the land of defendant, it also acquired the right, as a secondary easement, to go upon land to maintain, repair, and clean ditch, but such secondary easement can be exercised only when necessary, and in such reasonable manner as not to increase the burden upon defendant's land. *Mosher v. Salt River Valley Water Users' Assn.,* 209 P. 596, 24 Ariz. 339 (1922).

20. —Power sites

In proceedings by the Federal Government to condemn land located at Kettle Falls on the Columbia River in the State of Washington, uplands which power company had purchased and developed as a power site could not be disassociated from bed of river and flow of stream in creating a value for power site purposes, and company could not introduce evidence showing value of uplands for power site purposes, separate from use of bed of river and flow of stream. *Washington Water Power Co. v. United States,* 135 F. 2d 541 (9th Cir. 1943).

In condemnation proceedings for the acquisition of lands for the Grand Coulee dam, the defendant Continental Land Company claimed compensation for the inherent adaptability of its uplands for dam-site purposes for the production of electrical power. On appeal the Circuit Court affirmed the lower court holding that the Columbia River was a navigable stream and that the Company had no inherent right in the uplands for special use as against the Government's dominant right to the river bed for navigation; that the Company was limited to the reasonable market value of the upland for any purpose to which the lands may reasonably be adapted now or in a reasonable time in the future, and that the Continental Land Company had produced no proof of any possibility, reasonably near or remote, or at any time, that the land would be or could be used for dam-site purposes. *Continental Land Co. v. United States,* 88 F. 2d 104 (9th Cir. 1937).

21. —Noncompensable claims

The Secretary has no authority under the seventh section of this Act to compensate settlers upon lands within the limits of a withdrawal made in connection with an irrigation project, unless they have in good faith acquired an inchoate right to the land by complying with the requirements of law up to the date of the withdrawal and have such a claim as ought to be respected by the United States. Op. Asst. Atty. Gen., 34 L.D. 155 (1905).

Where a lease provides that the lessor can terminate it on 30 days' written notice and that lessee's improvements remaining on the premises after expiration of the 30 day period shall become the property of the lessor, its successors or assigns, and where lessor after conveying the property to the United States, gives the required notice of termination, which is formally accepted by the lessee, the United States, after the expiration of the notice period, cannot compensate lessee for moving of improvements. Dec. Comp. Gen., A–14629 (June 24, 1926). [Ed. note: Relief was subsequently granted the lessee through a private relief act dated March 3, 1927, 44 Stat. 1844.]

The United States does not impliedly

promise to compensate persons engaged in stock raising for the destruction of their business, or the loss sustained through the enforced sale of their cattle, the result of the inundation of their lands by the construction of a dam which arrests flood waters. *Bothwell v. United States,* 254 U.S. 231 (1920).

Where, in proceedings by the United States to condemn land overflowed by the construction of a dam, damages for loss from a forced sale of the landowners' cattle and the destruction of their business were denied, and the landowners brought suit in the Court of Claims, they were in no better position in respect to such damages than if no condemnation proceedings had been instituted. *Bothwell v. United States,* 254 U.S. 231 (1920), affirming 54 Ct. Cl. 203 (1918).

31. Condemnation proceedings

In proceedings by the United States to condemn right of way for a ditch under the Reclamation Act which provides a fund from which the damages assessed shall be paid, it is not necessary that the damages shall be assessed and paid before the Government may be allowed to take possession. *United States v. O'Neill,* 198 F. 677 (D. Colo. 1912). See also 5 Comp. Gen. 907 (1926).

Where land is condemned pursuant to section 7, for reclamation projects, the judgment is not required to be certified to the Congress, but may be paid from applicable reclamation funds. Such judgments are required by the Act of February 18, 1904, 33 Stat. 41, to be paid on settlements by the General Accounting Office. 5 Comp. Gen. 737 (1926).

The fact that the taking of realty by the Secretary of the Interior was for construction of distribution system did not require that contract with an irrigation district precede the taking. *United States v. 277.97 Acres of Land,* 112 F. Supp. 159 (D. Cal. 1953).

Government may dismiss or abandon petition in condemnation proceedings at any time before taking property, notwithstanding owners claim for damages was in excess of district court jurisdiction. *Owen v. United States,* 8 F. 2d 992 (C.C.A. Tex. 1925).

36. Physical seizure (inverse condemnation)

(Editor's Note: See also opinions annotated under the Fifth Amendment, the Sundry Civil Expenses Appropriation Act of March 3, 1915, and the Federal Tort Claims Act as codified June 25, 1948.)

The authorization in section 7 of the Reclamation Act of 1902 that the Secretary of the Interior may "acquire any rights or property," "by purchase or by condemnation under judicial process," extends to the taking of private water rights by physical seizure as well as by purchase or formal condemnation. *Turner v. Kings River Conservation Dist.,* 360 F. 2d 184, 192 (9th Cir. 1966).

The substantial reduction in the natural flow of the San Joaquin River as the result of the impoundment and diversion of the flow at Friant Dam upstream constitutes a seizure or taking, in whole or in part, of rights which may exist in the continued flow and use of the water; it does not constitute a trespass against such rights. This seizure was authorized by Congress when it authorized the project, and any relief to which claimants of the rights may be entitled by reason of such taking is by suit against the United States under the Tucker Act, 28 U.S.C. § 1346. *Dugan v. Rank,* 372 U.S. 609 (1963). (Ed. note: The Tucker Act is the Act of March 3, 1887, 24 Stat. 505. It authorized suits to be brought in the Court of Claims against the United States in certain cases, including claims founded upon the Constitution. This includes claims based upon the Fifth Amendment provision that private property shall not be taken for public use without just compensation. 28 U.S.C. § 1346 relates to the jurisdiction of the Federal District Courts in such cases, and 28 U.S.C. § 1491 relates to the jurisdiction of the Court of Claims. These sections appear herein in the appendix.)

United States had right to acquire by physical seizure water rights of riparian owners and overlying owners on river below Government dam and was not required to resort to judicial condemnation proceedings. *State of California v. Rank,* 293 F. 2d 340 (9th Cir. Cal. 1961), modified on other grounds 307 F. 2d 96, affirmed in part 372 U.S. 627, affirmed in part, reversed in part on other grounds sub. nom. *Dugan v. Rank,* 372 U.S. 609 (1963).

In actions in the Court of Claims for damages resulting from an unforeseen flooding of claimants' soda lakes following construction and operation of a Government irrigation project by which water was brought into the watershed, held (1) That allegations that the water percolated through the ground, due to lack of proper lining in the Government's canals and ditches, the manner of their construction and the natural conditions, were not intended to set up negligence, but merely to show causal connection between the project and the flooding, and hence did not characterize the cause of action as *ex delicto;* (2) That, as no intentional taking of claimants' property could be implied, the Government

was not liable *ex contractu,* assuming such causal relation. *Horstmann Co. v. United States* and *Natron Soda Co. v. United States,* 257 U.S. 138 (1921), affirming 54 Ct. Cl. 169, 214 (1919), 55 Id. 66 (1920).

An injury caused by the construction and operation of a Government irrigation project, which by seepage and percolation necessarily influences and disturbs the ground water table of the entire valley where plaintiffs' lands are situated, is *damnum absque injuria. Ibid.*

(Editor's note: The *Horstmann* and *Natrona Soda* cases are probably not good law today. See cases noted under the Fifth Amendment.)

41. Availability of funds

The authority to purchase property given by section 7 is an authority to make such purchases out of the reclamation fund available therefor at the time such purchases are made, and does not include authority to make purchases on the credit of the reclamation fund or in anticipation of a future increment therein. 27 Comp. Dec. 662 (1921).

42. Exchanges

The Secretary has no authority to permit the owner of lands needed for a reservoir to be constructed under said act to select other lands of the same area within the district that may be made susceptible of irrigation from the proposed reservoir, in exchange for the lands so needed for reservoir purposes. Op. Asst. Atty. Gen., 32 L.D. 459 (1904). But see section 14 of the Reclamation Project Act of 1939.

43. Option to purchase

The act does not authorize the expense of procuring mere options to purchase rights of way, water rights, or lands. 9 Comp. Dec. 569 (1903).

44. State laws

A state, though it can bestow on citizens property rights which the United States must respect, cannot take from the United States power to acquire such property rights. *State of California v. Rank,* 293 F. 2d 340, modified on other grounds 307 F. 2d 96, affirmed in part 372 U.S. 627, affirmed in part, reversed in part on other grounds sub. nom. *Dugan v. Rank,* 372 U.S. 609 (1963).

The power conferred on the Secretary of the Interior by the Reclamation Act to condemn lands necessary for use in constructing irrigation works is not subject to limitation by State statutes relating to the exercise of the power of eminent domain of the State nor is its exercise governed by a State procedure requiring the necessity of the taking in each particular case to be determined by a local commission, but such necessity is a matter to be determined by the Secretary, whose decision is not reviewable by the courts. *United States v. O'Neill,* 198 F. 677 (D. Colo. 1912).

Where the Government acquires an irrigation system held in private ownership, for use in connection with a reclamation project under the Act of June 17, 1902, it takes the same free from any obligation or control of State authority theretofore existing. Op. Asst. Atty. Gen., 37 L.D. 6 (1908).

Sec. 8. [Irrigation laws of States and Territories not affected—Interstate streams—Water rights.]—Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided,* That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right. (32 Stat. 390; 43 U.S.C. §§ 372, 383)

EXPLANATORY NOTE

Codification. The proviso is codified in section 372, title 43 of the U.S. Code. The preceding portion of the section is codified in section 383.

NOTES OF OPINIONS

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1. State laws—Generally

In choosing between users within each state and in settling the terms of his contracts for the use of stored Colorado River water, the Secretary is not bound, either by section 18 of the Boulder Canyon Project Act, or by section 8 of the Reclamation Act, to follow State law. Although section 18 allows the States to do things not inconsistent with the Project Act or with federal control of the river, as for example, regulation of the use of tributary water and protection of present perfected rights, the general saving language of section 18 cannot bind the Secretary by state law and thereby nullify the contract power expressly conferred upon him by section 5. *Arizona v. California,* 373 U.S. 546, 580–90 (1963).

Section 8 of the Reclamation Act does not mean that state law may operate to prevent the United States from exercising the power of eminent domain to acquire the water rights of others. Rather, the effect of section 8 in such a case is to leave to state law the definition of the property interests, if any, for which compensation must be made. *City of Fresno v. California,* 372 U.S. 627, 630 (1963).

Section 8 of the 1902 Act does not override the excess land provisions of section 5, nor compel the United States to deliver water on conditions imposed by the State. It merely requires the United States to comply with state law when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein. But the acquisition of water rights must not be confused with the operation of Federal projects. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 291–2 (1958).

Even though navigation is mentioned as one of the purposes of the Central Valley Project, Congress realistically elected to treat Friant Dam not as a navigation project but as a reclamation project, with reimbursement to be provided for the taking of water rights recognized under State law, in accordance with section 8 of the Reclamation Act, and this election is confirmed by administrative practice. Accordingly, the judgment of the Court of Claims will be upheld granting compensation to the owners of so-called "uncontrolled grass lands" along the San Joaquin River which depend for water upon seasonal inundations resulting from overflows of the river. *United States v. Gerlach Live Stock Co.,* 339 U.S. 725 (1950).

Section 8 of the Reclamation Act of 1902 requires federal officers to recognize state-created water rights and pay for them if taken, but it does not limit the authority of federal officers to take such rights for just compensation. *Turner v. Kings River Conservation Dist.,* 360 F. 2d 184, 194–95 (9th Cir. 1966).

Section 8 of the Reclamation Act of 1902 does not compel the United States either to acquire or to deliver water on conditions imposed by the State. *Turner v. Kings River Conservation Dist.,* 360 F. 2d 184, 197–98 (9th Cir. 1966).

There is nothing in the language of this section to indicate that the intent of Congress was to go further than to recognize and prevent interference with the laws of the State relating to the appropriation, control, or distribution of water. *San Francisco v. Yosemite Power Co.,* 46 L.D. 89 (1917).

2. —Navigable waters

Where the Government has exercised its right to regulate and develop the Colorado River and has undertaken a comprehensive project for improvements of the river and for the orderly and beneficial distribution of water, there is no room for inconsistent state laws. *Arizona v. California,* 373 U.S. 546, 587 (1963).

The privilege of the States through which the Colorado River flows and their inhabitants to appropriate and use the water is subject to the paramount power of the United States to control it for the purpose of improving navigation. *Arizona v. California, et al.,* 298 U.S. 558, 569 (1936), rehearing denied, 299 U.S. 618 (1936).

The Secretary of the Interior is under no

obligation to submit the plans and specifications for Boulder Dam and Reservoir to the State Engineer as required by Arizona law because the United States may perform its functions without conforming to the police regulations of a State. *Arizona v. California,* 283 U.S. 423, 451 (1931).

Where reclamation projects are involved on navigable waters, even though power element is absent, federal government will not brook interference by the States. *United States v. Fallbrook Public Utility Dist.,* 165 F. Supp. 806 (D. Cal. 1958).

Congress has control over navigable streams and the waters thereof, and no claim based upon appropriation of such waters for irrigation purposes, made without the sanction of Congress, should be recognized by the Secretary of the Interior as valid. *California Development Co.,* 33 L.D. 391 (1905).

3. —Public lands

In a suit for the equitable apportionment of the waters of the interstate non-navigable North Platte River among three States, it is not necessary to pass upon the contention of the United States that it owns all the unappropriated water in the river by virtue of its original ownership of the water as well as the land in the basin, where the rights to the waters required for the reclamation projects on the river have been appropriated under State law pursuant to the directive of section 8 of the Reclamation Act, where the individual landowners have become the appropriators of the water rights appurtenant to their land, and where the decree in the case is limited to natural flow, not storage water, and does not involve a conflict between a Congressionally provided system of regulation for Federal projects and an inconsistent State system. *Nebraska v. Wyoming, et al.,* 325 U.S. 589, 611–16, 629–30 (1945).

There is no authority to make such executive withdrawal of public lands in a State as will reserve the waters of a stream flowing over the same from appropriation under the laws of the State, or will in any manner interfere with its laws relating to the control, appropriation, use, or distribution of water. Op. Asst. Atty. Gen., 32 L.D. 254 (1903). But cf. *Arizona v. California,* 373 U.S. 546, 595–601 (1963).

4. —Procedures

The bureau made application for storage of additional water in Arrowrock reservoir. The laws of the State of Idaho specifically require that a bond be furnished in support of such an application and provide that failure to file the bond would be an abandonment of the permit. The Comptroller General held that since the furnishing of the bond and the continued validity of the permit were necessary in order to assure the Government its priority in the water rights, the premiums on the bond could be paid as a necessary incident to the construction and operation and maintenance of the Boise project. Dec. Comp. Gen., B–10509 (February 3, 1941).

In order to conform as nearly as possible to the laws of Wyoming, the Farmers Irrigation District should submit to the United States proof of beneficial use of water delivered to it by the United States under its Warren Act contract, and the United States, acting through the Secretary of the Interior, should make such proof of beneficial use in Nebraska of Pathfinder reservoir water as may be required by the Wyoming laws, attaching to such proof Warren Act contracts of all contractors who are entitled to the use of any Pathfinder storage and any proof of beneficial use they may have submitted to the United States. Solicitor's decision, April 17, 1936.

Under section 8 of the Reclamation Act of June 17, 1902, the 5-year period for completion of irrigation appropriations fixed by the State law for the development of a water supply for a reclamation project in Idaho is applicable to the United States. *Pioneer Irrigation District v. American Ditch Association, et al.,* 1 Pac. 2d 196, 52 Idaho 732 (1931).

The Reclamation Act not only recognizes the constitution and laws of the state providing for the appropriation of its waters and the reclamation of its arid lands, but it requires that the Secretary of the Interior, in carrying out the provisions of this chapter, shall proceed in conformity with such laws. *Burley v. United States,* 179 F. 1, 102 C.C.A. 429, 33 L.R.A. (N.S.) 807 (Idaho 1910).

5. —Adoption of Federal law

The 160-acre limitation is a basic part of federal reclamation policy, and the state legislature has adopted this concept as state policy for federal projects by authorizing irrigation districts to cooperate and contract with the United States under reclamation law. *Ivanhoe Irr. Dist. v. All Parties,* 53 Cal. 2d 692, 3 Cal. Rptr. 317, 330, 350 P. 2d 69, 82 (1960).

6. —Rights of way to United States

[Ed. Note—The Act of September 2, 1964, as amended by the Act of October 4, 1966, authorizes the Secretary of the Interior to pay just compensation for utilization of rights of way reserved to the United States under State law.]

Under a statute of Wyoming (Laws 1905

ch. 85) granting rights of way over all lands of the State for ditches "constructed by or under the authority of the United States," and providing that reservations thereof shall be inserted in all State conveyances, patents of school land issued by the State to private parties expressly subject to rights of way "reserved to the United States," are subject to the right of the United States thereafter to construct and operate irrigation ditches for a reclamation project over the lands conveyed by the patents. This right may be exercised by straightening and using as a ditch, a natural ravine to collect waters appertaining to the Federal project which have been used in irrigating its lands and are found percolating where they are not needed, and to conduct them elsewhere for further use upon the project. *Ide v. United States,* 263 U.S. 497 (1924), affirming *United States v. Ide,* 277 Fed. 373 (C.C.A. Wyo. 1921).

Under Idaho Session Laws 1905, p. 373, granting right of way over State lands for ditches constructed by authority of the United States, the United States was authorized to construct an irrigation canal across land sold by State subsequent to the enactment of the statute. The contention of the landowner that under the State Constitution, the Board of Land Commissioners, and not the legislature, was authorized to dispose of State lands was admitted by the court, which, however, held that the constitutional provision related only to disposition and sale and not to the mere grant of an easement which could be effectuated by the State legislature. *United States v. Fuller,* 20 F. Supp. 839 (D. Idaho 1937).

The right-of-way granted under Utah law to the United States for ditches includes the right to operate a fifty foot high boom for cleaning the canal, and the cost to a utility company in raising its transmission lines to accommodate such boom is not compensable. *United States v. 3.08 Acres of Land, etc.,* 209 F. Supp. 652 (D. Utah 1962).

A 1905 Washington statute providing that in the disposal of lands granted by the United States, the State "shall reserve for the United States" a right-of-way for ditches, etc., for irrigation works, constituted a present, absolute grant to the United States, and such grant could not be defeated by a subsequent conveyance of the rights-of-way and without actual notice to the grantee. *United States v. Anderson,* 109 F. Supp. 755 (E.D. Wash. 1953). *Contra: United States v. Pruden,* 172 F. 2d 503 (10th Cir. 1949), construing an Oklahoma statute.

11. Interstate conflicts—Generally

As to the words "and nothing herein shall in any way affect any right of any state or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof" in this section, the U.S. Supreme Court in *Wyoming v. Colorado,* 259 U.S. 419 (1922) said: "The words * * * constitute the only instance, so far as we are advised, in which the legislation of Congress relating to the appropriation of water in the arid land region has contained any distinct mention of interstate streams. The explanation of this exceptional mention is to be found in the pendency in this court at that time of the case of *Kansas v. Colorado,* wherein the relative rights of the two states, the United States, certain Kansas riparians and certain Colorado appropriators and users in and to the waters of the Arkansas river, an interstate stream, were thought to be involved. Congress was solicitous that all questions respecting interstate streams thought to be involved in that litigation should be left to judicial determination unaffected by the act—in other words, that the matter be left just as it was before. The words aptly reflect that purpose."

Nebraska brought suit against Wyoming in the Supreme Court for an equitable apportionment between the two States of waters of the North Platte river, alleging that the laws of both of these States recognize the doctrine of prior appropriation, and that Wyoming, in spite of Nebraska's protestations, neglected to control appropriators, whose rights arise under the law of Wyoming, from encroaching upon the rights of Nebraska appropriators. Wyoming on Jan. 21, 1935, 294 U.S. 693, entered a motion to dismiss. The court, in denying the motion, held that Nebraska had cited no wrongful act by Colorado, and even though the river rises and drains a large area in that State, Colorado is not an indispensable party; that the Secretary of the Interior, as an appropriator under the irrigation laws of Wyoming, will be bound by the adjudication of Wyoming's rights, and is not an indispensable party; that the allegations of the bill are not vague and indefinite; and if Nebraska's contention that there are no tributaries of the North Platte and the Platte rivers between the state line and the City of Grand Island, Nebraska, supplying any substantial amount of water, be not a fact, Wyoming may make this an issue to be determined by proof. *Nebraska* v. *Wyoming,* 295 U.S. 40 (1935).

In view of the Reclamation Act, the Warren Act, and the legislation of Wyoming

and Nebraska, an appropriation by the United States Reclamation Service for the irrigation of lands in Nebraska was valid, though the source of the supply was in Wyoming. *Ramshorn Ditch Co. v. United States,* 269 F. 80 (8th Cir. 1920).

The North Side Canal Co. entered into a contract with the United States for the purchase of storage rights in the Jackson Lake reservoir in Wyoming, the water stored therein to be used in Idaho. The State of Wyoming assessed taxes against the interest of the canal company in the reservoir and the canal company resisted the payment of such taxes. The trial judge held that the taxes were properly levied. *Northside Canal Co.* v. *State Board of Equalization, Wyoming,* 8 F. 2d 739 (D. Wyo. 1925). The case was appealed to the Circuit Court of Appeals for the Eighth Circuit, which reversed the decision of the District Court of the United States for the District of Wyoming and held that the attempted tax is wholly null and void for the reason that the water rights in question are appurtenant to the lands on which the water has been applied to beneficial use, which lands are located in the State of Idaho and are therefore not within the jurisdiction of Teton County, Wyoming, for taxation purposes. 17 F. 2d 55 (1926), cert. denied 274 U.S. 740 (1927). Similar ruling in *Twin Falls Canal Co.* v. *State of Wyoming.*

Subsequently to this decision the Legislature of Wyoming passed an act (chapter 36, Session Laws, of Wyoming, 1927), in effect attempting to make water rights acquired under the laws of Wyoming taxable. Thereafter the State attempted to levy taxes upon the water rights, the taxability of which was litigated in the foregoing suit. The district court, in *Twin Falls Canal Co. v. Teton County,* unpublished memorandum decision dated November 14, 1928, held that the nontaxability of these water rights by Wyoming was *res judicata,* and the taxes were therefore annulled.

United States' appropriation, from territory of New Mexico, of all unappropriated water in Rio Grande did not render such water as found its way to Texas untouchable by policy of water rights and appropriations under Texas law. *El Paso County Water Imp. Dist. No. 1 v. City of El Paso,* 133 F. Supp. 894 (D. Tex. 1955), affirmed in part, reformed in part on other grounds, 243 F. 2d 927 (5th Cir. 1957), cert. denied 355 U.S. 820.

16. Rights of United States—Generally

The United States, by filing with the State of Oregon notices of intent to appropriate and thereafter impounding waters for the Klamath project, pursuant to State law, did not become the owner of the water in its own right. Dec. Comp. Gen. B–125866 (September 4, 1956).

In view of the compact among the states of Texas, New Mexico, and Colorado concerning use of Rio Grande water, and in view of the United States' appropriation of water for use of water improvement district, the City of El Paso was not entitled to appropriate water already appropriated for use of the district. *El Paso County Water Imp. Dist. No. 1 v. City of El Paso,* 133 F. Supp. 894 (D. Tex. 1955), affirmed in part, reformed in part on other grounds 243 F. 2d 927 (5th Cir. 1957), cert. denied 355 U.S. 820.

By filing notices of intent to appropriate and thereafter impounding water of Rio Grande River, pursuant to authority granted by this section, the United States did not become owner of water in its own right. *Hudspeth County Conservation and Reclamation Dist. No. 1 v. Robbins,* 213 F. 2d 425 (5th Cir. 1954), cert. denied, 348 U.S. 833.

Under the Reclamation Act, the right of the United States as a storer and carrier is not necessarily exhausted when it delivers the water to grantees under its irrigation projects. *Nebraska v. Wyoming,* 325 U.S. 589 (1945).

In constructing reclamation project the property right in a water right is separate and distinct from the property right in reservoirs, ditches, or canals, in that water right is appurtenant to the land owned by the appropriator, and is acquired by perfecting an "appropriation", that is, by an actual diversion followed by an application within a reasonable time of the water to a beneficial use. *Nebraska v. Wyoming,* 325 U.S. 589 (1945).

The scope of the appropriative water rights in connection with a Federal reclamation project must be regarded, under the law of Nebraska, as the same as those in connection with any irrigation canal. That is, although the right to the beneficial use of the water for irrigation is appurtenant to the land and vested in the landowner, the owner of the irrigation project also has an interest in such appropriative rights which entitles him to representatively secure and protect the full measure of beneficial use for the landowners as well as to effectuate the object of the project or canal as an enterprise. *United States v. Tilley,* 124 F. 2d 850, 860–61 (8th Cir. 1941), cert. denied, 316 U.S. 691 (1942).

Federal government's diversion, storage and distribution of water at reclamation project pursuant to Reclamation Act and contracts with landowners did not vest in United States ownership of water rights

which remained vested in owners as appurtenant to land wholly distinct from property of government in irrigation work, while government remained carrier and distributor of water with right to receive sums stipulated in contract for construction and annual charges for operation and maintenance of work. *Ickes v. Fox,* 300 U.S. 82 (1937); *Nebraska v. Wyoming,* 325 U.S. 589 (1945).

Under the Act of June 17, 1902, the Secretary of the Interior in operating an irrigation project is in the position of a carrier of water to all entrymen in the project, and he is not obligated to furnish any more water than is available. *Fox v. Ickes,* 137 F. 2d 30, 78 U.S. App. D.C. 84 (1943), cert. denied 320 U.S. 792.

Whatever rights the United States may have to divert waters from a stream in Nevada under permits issued by the state engineer as against an irrigation company and the extent thereof must be determined by the law of Nevada. *United States v. Humboldt Lovelock Irr. Light & Power Co.,* 97 F. 2d 38 (9th Cir. 1938), cert. denied 305 U.S. 630.

The Government, like an individual, can appropriate only so much water as it applies to beneficial uses, and can only restrain a diversion which operates to its prejudice. *West Side Irr. Co. v. United States,* 246 Fed. 212, 158 C.C.A. 372 (Wash. 1917), affirming *United States v. West Side Irr. Co.,* 230 Fed. 284 (D.C. 1916).

17. —Suits by United States

In view of this section, requiring Secretary of the Interior to proceed in conformity with state law in his administration of the Reclamation Act, the district court had jurisdiction to review state engineer's decision approving voluntary application of United States for a change of the diversion place of some of the irrigation waters of the United States notwithstanding that the law may be different as applied to the United States as to payment of costs, estoppel, and abandonment. *United States v. District Court of Fourth Judicial Dist. in and for County,* 238 P. 2d 1132, 121 Utah 1 (1951), rehearing denied 242 P. 2d 774, 121 Utah 18.

In suit by the United States to enjoin an irrigation company from diverting irrigation water allegedly purchased and owned by the United States, the appointment of a water master was unnecessary, since injunction could enjoin company from interfering with diversion and storage of water by the United States and could enjoin company from diverting and storing water, and by such an injunction the District Court could protect the United States against unlawful invasions of its rights by company without the appointment of a water master. *United States v. Humboldt Lovelock Irr. Light & Power Co.,* 97 F. 2d 38 (9th Cir. 1938), cert. denied 305 U.S. 630.

The rule of comity did not require that a suit by the United States in a federal court to enjoin an irrigation company from diverting irrigation water allegedly purchased and owned by the United States should await determination of company's suit in a Nevada court to enjoin others from interfering with its diversion and storage of water where the United States was not a party to that suit. *United States v. Humboldt Lovelock Irr. Light & Power Co.,* 97 F. 2d 38 (9th Cir. 1938), cert. denied 305 U.S. 630.

A suit wherein a Nevada court adjudicated water rights allegedly owned by the United States and also the rights of an irrigation company was no obstacle to a suit by the United States in a federal court to enjoin company from interfering with its rights as against contention that suit contemplated an adjudication of water rights and that they were in *custodia legis. United States v. Humboldt Lovelock Irr. Light & Power Co.,* 97 F. 2d 38 (9th Cir. 1938), cert. denied 59 S. Ct. 94, 305 U.S. 630.

In action in state court to determine water rights in which United States intervened by leave and did not request removal to federal court, state court had jurisdiction to enter decree fixing priorities of United States, and the United States would be bound by the decree. *Pioneer Irrigation Dist. v. American Ditch Assn.,* 1 P. 2d 196, 50 Idaho 732 (1931).

In a suit by United States to enforce terms of contract entered into by defendant, a mutual irrigation company, which provided that it should not divert more than 80 cubic feet per second from stream and the Government proceeded with a reclamation project based on such contract, defendant cannot defeat the contract on the theory that it should not be construed as abandonment of rights of its stockholders. *West Side Irrigation Co. v. United States,* 246 Fed. 212, 158 C.C.A. 372 (Wash. 1917). For subsequent suit involving these same limiting agreements see *United States v. Union Gap Irr. Dist.,* 39 F. 2d 46 (9th Cir. 1930).

The government, like an individual, can appropriate only so much water as it applies to beneficial uses, and can only restrain a diversion which operates to its prejudice. *United States v. West Side Irr. Co.,* 230 F. 284 (D. Wash. 1916).

The fact that the United States has appropriated all of the unappropriated water of a stream in a county for an irrigation project, as permitted by a law of the State,

does not give it standing to maintain a suit to enjoin a prior appropriator from using an excessive amount of water unless it is alleged and proved that it had acquired the right to such water under its own appropriation. *United States v. Bennett,* 207 Fed. 524 (C.C.A. Wash. 1913).

The United States, like an individual, can restrain a diversion which operates to its prejudice and where the United States had examined, surveyed, located and had in operation extensive irrigation works for the storage, diversion and development of water from the Yakima river for the reclamation of arid lands and it appeared that an irrigation company had appropriated and was diverting and using quantities of water in excess of the amounts to which it was entitled, thereby entailing great damage upon the United States, the United States was entitled to an injunction to restrain the defendant from such use of the water in the river above, as to materially lessen the quantity at complainant's point of diversion which it had lawfully appropriated and which was necessary to the success of its project and fulfillment of its contracts. *United States v. Union Gap. Irr. Co.,* 209 F. 274 (D. Wash. 1913).

18. —Suits against the United States

A suit by riparian and overlying landowners to enjoin officials of the Bureau of Reclamation from impounding water at a federal dam on the San Joaquin River so as to protect plaintiffs' vested water rights was in fact a suit against the United States without its consent, in view of the fact that the decree granted by the lower court to enjoin the action unless a physical solution was provided would have interfered with public administration, required expenditure of public funds, and would have required the United States, contrary to the mandate of Congress, to dispose of irrigation water and to deprive the United States of full use and control of reclamation facilities. *Dugan v. Rank,* 372 U.S. 609 (1963).

The substantial reduction in the natural flow of the San Joaquin River as the result of the impoundment and diversion of the flow at Friant Dam upstream constitutes a seizure or taking, in whole or in part, of rights which may exist in the continued flow and use of the water; it does not constitute a trespass against such rights. This seizure was authorized by Congress when it authorized the project, and any relief to which claimants of the rights may be entitled by reason of such taking is by suit against the United States under the Tucker Act, 28 U.S.C. § 1346. *Dugan v. Rank,* 372 U.S. 609 (1963). (Ed. note: The Tucker Act is the Act of March 3, 1887, 24 Stat. 505. It authorized suits to be brought in the Court of Claims against the United States in certain cases, including claims founded upon the Constitution. This includes claims based upon the Fifth Amendment provision that private property shall not be taken for public use without just compensation. 28 U.S.C. § 1346 relates to the jurisdiction of the Federal District Courts in such cases, and 28 U.S.C. § 1491 relates to the jurisdiction of the Court of Claims. These sections appear herein in the Appendix.)

Where riparian rights of landowners along branch channel of San Joaquin River were subordinate to water rights of corporation which, with its subsidiary and affiliated companies, owned rights to use very substantial portion of flow of San Joaquin River, and United States, which, in carrying out Central Valley Project for irrigation purposes, formulated plan whereby waters of San Joaquin River were diverted and waters of Sacramento River were substituted therefor, entered into contract with corporation and its subsidiaries for such substitution, and United States faithfully and fully delivered substitute waters, and landowners suffered no actual damage because of substitution, any impairment of landowners' rights because of substitution was at most a technicality, for which landowners could not recover from United States, since United States could not with impunity take away substitute waters. *Wolfsen v. United States,* 162 F. Supp. 403, 142 Ct. Cls. 383 (1958), cert. denied 358 U.S. 907.

Where the United States in 1908 appropriated all the water of the Rio Grande River above lands in Hudspeth County Conservation and Reclamation District No. 1, riparian rights of owners of land in Hudspeth District were destroyed in 1908, and their alleged right of action against the United States for the taking of riparian rights was barred by limitations in 1958. *Bean v. United States,* 163 F. Supp. 838, 143 Ct. Cls. 363 (1958), cert. denied 358 U.S. 906.

The United States is not an indispensable party to a suit by a landowner receiving water from the Yakima project to enjoin the Secretary of the Interior from imposing additional charges for water delivery, representing part of the cost of the new Cle Elum reservoir, beyond those stated in a repayment contract with a water users' association and in the public notice issued by the Secretary, because the landowner, not the United States, is the owner of the water right under Federal and State law and under contract with the Secretary. This ownership is wholly distinct from the property right of the Government in the irrigation works. The suit is to enjoin the Sec-

retary from enforcing an order, the wrongful effect of which will be to deprive the landowner of vested property rights, and may be maintained without the presence of the United States. *Ickes v. Fox,* 300 U.S. 82 (1937). See also *Fox v. Ickes,* 137 F. 2d 30 (D.C. Cir. 1943), cert. denied, 320 U.S. 792.

A judicial apportionment of the unappropriated waters of the Colorado River among the states of the Colorado River Basin cannot be made without an adjudication of the rights of the United States, to control navigation and to impound and control in Boulder reservoir the disposition of surplus water in the stream not already appropriated, as any right of Arizona to the unappropriated waters in the Colorado River is subordinate to and dependent upon the right of the United States to such waters. Hence, the United States is an indispensable party to such apportionment proceedings. *Arizona v. California,* 298 U.S. 558 (1936).

The United States made application on March 30, 1921, for a diversion permit of 8,000 acre feet of the waters of the Snake River and for a storage permit of 3,000,000 acre feet per annum in connection with the Minidoka project. From 1930 to 1932 the American Falls District obtained water from the Government's natural flow or diversion permit, but in 1933 the United States required the District to use storage flow in alternate years. The district brought an action against the State Water Master. The court ordered the suit dismissed on account of the absence of the United States but on September 28, 1936, in denying a petition for a rehearing, modified its opinion to state that because the United States was not made a party to the suit, the court could not adjudicate the water rights. *American Falls Reservoir District No. 2 v. Crandall, et al.,* 82 F. 2d 973, 85 F. 2d 864 (C.C.A. Idaho 1936).

The word "control" in section 8 of the Reclamation Act providing that nothing therein shall be construed to affect or interfere with State laws relating to control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, held not to warrant inference that Congress thereby intended to relegate suit against United States or Secretary of the Interior involving right, title, or interest of United States, to State court for determination, or to deny United States or Secretary the right of removal. *North Side Canal Co. v. Twin Falls Canal Co.,* 12 F. 2d 311 (D. Ida. 1926).

19. —Seepage

Where the United States in 1906 and 1908 appropriated all of the unappropriated water of the Rio Grande for operation of the Elephant Butte Project, the United States also acquired the right to any incidental seepage of such waters. *Hunter v. United States,* 159 Ct. Cl. 356 (1962).

The abandonment of seepage waters from the Rio Grande reclamation project in the past by the United States did not constitute abandonment of the right to use such waters when needed in the future; and plaintiffs' use of such seepage waters did not create in them rights superior to those of the United States to control and prescribe the use of these waters. *Bean v. United States,* 163 F. Supp. 838 (Ct. Cl. 1958), cert. denied, 358 U.S. 906 (1958).

The United States' rights as a storer and carrier of project water are not exhausted with a single application of the water to land, but the water may be recaptured and reused as developed water. *Hudspeth County Conservation & Reclamation Dist. No. 1 v. Robbins,* 213 F. 2d 425 (5th Cir. 1954), cert. denied, 348 U.S. 833 (1954). Although the United States, as owner of an irrigation project, may retain control over and re-use seepage waters from the project, when return flows to the river are abandoned, they become subject to appropriation down stream. *Nebraska v. Wyoming, et al.,* 325 U.S. 589, 633–37 (1945).

The United States purchased, for the Vale reclamation project, a one-half interest in the reservoir of the Warmsprings Irrigation District. The district agreed, in a contract with the United States, to accept return flow, drainage or waste water escaping from the Vale project and being available for diversion by the district's canals, as a part of the district's share of the stored water from Warmsprings reservoir. It was disputed whether, under the contract, the district must give the United States credit in Warmsprings reservoir storage only for the water leaving the Vale project above ground, or also for the water leaving the project by deep percolation, and later finding its way into the watercourses whence it might be diverted into the canals of the district. It was held by the Court, in construing the contract, that both surface flow and deep percolation water escaping from the Vale project and being available for diversion into the canals of the district could be the bases of a contract claim by the United States for storage in the reservoir. As the court interpreted the law of Oregon, water escaping from the Vale project by deep percolation is of a public character, even as against the United States. *United States v. Warmsprings Irr. Dist.,* 38 F. Supp. 239 (D. Ore. 1941).

The right of the United States in water appropriated generally for the lands of a

reclamation project is not exhausted by conveyance of the right of user to grantees under the project and use of the water by them in irrigating their parcels, but attaches to the seepage from such irrigation, affording the Government priority in the enjoyment thereof for further irrigation on the project over strangers who seek to appropriate for their lands. *Ide v. United States,* 263 U.S. 497 (1924), affirming *United States v. Ide,* 277 Fed. 373 (1921).

Under the Warren Act a contract between the United States and a land company for the delivery to the latter of water which escaped by seepage from the canal of a reclamation project was a valid contract which gave the United States the right to conserve and deliver water thereunder. *Ramshorn Ditch Co. v. United States,* 269 Fed. 80 (8th Cir. 1920), affirming 254 Fed. 842 (D. Neb. 1918). *Accord*: *United States v. Tilley,* 124 F. 2d 850, 858–63 (8th Cir. 1941), cert. denied 316 U.S. 691 (1942).

Where waste water arising from a Federal irrigation project, after percolation, is recovered by the Government by means of drainage ditches, with the intention of conserving and applying it to a beneficial use, the Government has a superior right to the water. *Griffiths v. Cole,* 264 Fed. 369 (D. Ida. 1919).

Landowners within a Federal irrigation project cannot avail themselves of waste and seepage water arising in connection with the operations of the project when such water is claimed by the Government. Memorandum decision June 26, 1918, by State District Judge Isaac F. Smith, in re petition Nampa-Meridian Irrigation District for confirmation of contract with the United States. Boise project.

26. Rights of water users—Generally

Where interest of United States in proceedings to obtain adjudication of water rights for irrigation and other purposes was only that of carrier or trustee in behalf of owners of water, title to which was sought to be adjudicated, United States immunity as sovereign government could not be extended to the water users. *City and County of Denver v. Northern Colorado Water Conservancy Dist.,* 276 P. 2d 992, 130 Colo. 375 (1954).

Where United States and water conservancy district failed in their duty to take all necessary steps to protect rights of consumers of water of which United States was carrier or trustee in behalf of water owners, beneficiaries of such trust became proper necessary parties to proceeding to obtain adjudication of water rights for irrigation and other purposes and had right to appear and present their case in such proceedings. *City and County of Denver v. Northern Colorado Water Conservancy Dist.,* 276 P. 2d 992, 130 Colo. 375 (1954).

Where water rights on which Federal water project rested pursuant to this chapter had been obtained in compliance with state law, and pursuant to government's action individual landowners had become the appropriators of the water rights, the United States being the storer and carrier, the rights acquired by landowners were as definite and complete as if they were obtained by direct cession from the Federal Government, so that even if the government owned unappropriated rights, they were acquired by landowners in manner contemplated by Congress. *Nebraska v. Wyoming,* 325 U.S. 589 (1945).

In constructing a reclamation project, the property right in water right is separate and distinct from property right in reservoirs, ditches, or canals, in that water right is appurtenant to land, the owner of which is the appropriator, and is acquired by perfecting an "appropriation," that is, by an actual diversion followed by an application within a reasonable time of the water to a beneficial use. *Nebraska v. Wyoming,* 325 U.S. 589 (1945).

Although the doctrine of prior appropriation fixes priorities among individual appropriators in the use of water according to maxim, qui prior in tempore, prior in jure est, it confers no right to waste water upon prior appropriator whose right is qualified by limitation, made in favor of subsequent appropriators and widest possible use of water on arid lands, that all of water he uses must be beneficially applied and with reasonable economy in view of conditions under which application must be made. *Burley Irr. Dist. v. Ickes,* 116 F. 2d 529, 73 App. D.C. 23 (1940), cert. denied 312 U.S. 687 (1941).

The United States is not an indispensable party to a suit by a landowner receiving water from the Yakima project to enjoin the Secretary of the Interior from imposing additional charges for water delivery, representing part of the cost of the new Cle Elum reservoir, beyond those stated in a repayment contract with a water users' association and in the public notice issued by the Secretary, because the landowner, not the United States, is the owner of the water right under Federal and State law and under contract with the Secretary. This ownership is wholly distinct from the property right of the Government in the irrigation works. The suit is to enjoin the Secretary from enforcing an order, the wrongful effect of which will be to deprive the landowner of vested property rights and may be maintained without the presence

of the United States. *Ickes v. Fox,* 300 U.S. 82 (1937). See also *Fox v. Ickes,* 137 F. 2d 30 (D.C. Cir. 1943), cert. denied, 320 U.S. 792.

27. —Beneficial use

A beneficial use of waters alone gives user no vested right to them, and preceding the beneficial use there must have been a filing of a notice of intent to appropriate. *Bean v. United States,* 163 F. Supp. 838, 143 Ct. Cl. 363 (1958), cert. denied 358 U.S. 906.

Under this section, users of water from Rio Grande project have a defeasible interest, which is always at risk of loss by unjustifiable delay in making or continuing beneficial use. *El Paso County Water Imp. Dist. No. 1 v. City of El Paso,* 133 F. Supp. 894 (D. Tex. 1955), affirmed in part, reformed in part on other grounds 243 F. 2d 927, cert. denied 355 U.S. 820.

Notwithstanding the quantities of water stated in water right contracts, the measure of the water right of a water user on a Federal reclamation project is the amount that can be put to beneficial use. *Fox v. Ickes,* 137 F. 2d 30 (D.C. Cir. 1943), certiorari denied, 320 U.S. 792.

There is an important distinction between beneficial use and economical use of water. A property right once acquired by the beneficial use of water is not burdened by the obligation of adopting methods of irrigation more expensive than those considered reasonably efficient in the locality. *Fox v. Ickes,* 137 F. 2d 30, 35 (D.C. Cir. 1943), cert. denied, 320 U.S. 792.

Mere diversion and storage of water does not constitute appropriation thereof, but water must be applied to beneficial use to constitute appropriation. *Ickes v. Fox,* 85 F. 2d 294, 66 App. D.C. 128 (1936), affirmed 300 U.S. 82, rehearing denied, 300 U.S. 640.

By the provisions of this section the right to the use of water acquired must be appurtenant to the land and the beneficial use is the basis, the measure, and the limit of the right. *Imperial Water Co. No. 5 v. Holabird,* 197 F. 4, 116 C.C.A. 526 (Cal. 1912). See also *Gutierres v. Albuquerque Land & Irr. Co.,* 188 U.S. 545 (1903); *United States v. Bennett,* 207 F. 524, 525, 125 C.C.A. 186 (Wash. 1913); *United States v. Conrad Inv. Co.,* 156 F. 123 (C.C. Mont. 1907), affirmed 161 F. 829, 88 C.C.A. 647; *San Joaquin & Kings River C. & I. Co. v. Stanislaus County,* 191 F. 875 (C.C. Cal. 1911), reversed on other grounds 233 U.S. 454; *United States v. Union Gap Irr. Co.,* 209 F. 274 (D.C. Wash. 1913).

There can be no beneficial use of water for irrigation until it is actually applied to reclamation of the land. The final and only conclusive test of reclamation is production. This does not, perhaps, necessarily mean the maturing of a crop, but certainly does mean the securing of actual growth of a crop. Departmental decision, February 5, 1909.

28. —Appurtenant to land

This section providing that Rio Grande project water should be appurtenant to land irrigated must be construed consistently with provision upholding the force of state laws. *El Paso County Water Imp. Dist. No. 1 v. City of El Paso,* 133 F. Supp. 894 (D.C. Tex. 1955), affirmed in part, reformed in part on other grounds 243 F. 2d 927, cert. denied 355 U.S. 820.

In Nevada and in the states of the arid region generally, water for irrigation is appurtenant to the land irrigated, and hence is the property of the landowner, *United States v. Humboldt, Lovelock Irr. Light & Power Co.,* 19 F. Supp. 489 (D. Nev. 1937), reversed on other grounds 97 F. 2d 38, cert. denied 305 U.S. 630.

Water, appropriated by application thereof to beneficial use on appropriator's land, becomes part of and appurtenant to the land. *Ickes v. Fox,* 85 F. 2d 294, 66 App. D.C. 128 (1936), affirmed 300 U.S. 82, rehearing denied 300 U.S. 640.

Upon the issuance of a water-right certificate the right evidenced thereby becomes appurtenant to the land, subject to forfeiture for failure to pay the annual installments at the time and in the manner prescribed by law and the regulations, and a subsequent purchaser of the land succeeds to the rights and status of the original owner, subject to the same charges and conditions. *Fleming McLean,* 39 L.D. 580 (1911).

29. —Power purposes

Where a canal drop is not developed for power purposes as a part of a Federal reclamation project, the water users do not acquire a property interest in the energy of the falling water either as an incident of their right to the use of project water or as an incident of their obligation to repay the costs of the irrigation works which made the power drop possible; and therefore the United States may make development of the site available to a Warren Act contractor without the concurrence of the water users or the irrigation district which executed the repayment contract. Solicitor Margold Opinion M–28725 (October 6, 1936), in re use of power site at C drop, Klamath project.

30. —Warren Act

Land in the Hudspeth County Conservation and Reclamation District No. 1 is not a part of the Rio Grande Irrigation Project of the United States, and waters of the Rio Grande River delivered to landowners in the Hudspeth District were delivered, not pursuant to notices of appropriation of 1906 and 1908 filed by the Bureau of Reclamation of the Department of the Interior, but pursuant to contracts entered into under the Warren Act, between the Hudspeth District and Bureau of Reclamation, and such contracts gave landowners no vested rights to the use of the water, and landowners could not recover from United States for taking of alleged water rights. *Bean v. United States,* 163 F. Supp. 838, 143 Ct. Cl. 363 (1958), cert. denied 358 U.S. 906.

Sec. 9. [Allocation of funds to States and Territories of origin.]—*Repealed.*

EXPLANATORY NOTE

Repealed. Section 9 was repealed by section 6 of the Act of June 25, 1910, 36 Stat. 836, which appears herein in chronological order. As originally enacted, the section read as follows: "That it is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory: *Provided,* That the Secretary may temporarily use such portion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each 10-year period after the passage of this act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid."

Sec. 10. [Necessary and proper acts and regulations.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect. (32 Stat. 390; 43 U.S.C. § 373)

EXPLANATORY NOTES

Administrative Organization. The Reclamation Service was established within the Geological Survey of the Department of the Interior in July, 1902. In March, 1907, the Service was given bureau status under a director. The name of the Reclamation Service was changed to Bureau of Reclamation on June 20, 1923, and the position of Commissioner of Reclamation was established. The Act of May 26, 1926, which appears herein in chronological order, provides that the Commissioner of Reclamation shall be appointed by the President.

Previous Bills. A large volume of original bills were introduced in the Congress prior to the enactment of the Reclamation Act—22 Senate bills, 54 House bills, 2 Senate joint resolutions and 2 House joint resolutions. Unpublished volume entitled "Reclamation Act, Original Bills, 1899–1901", Engineering files, Bureau of Reclamation.

Legislative History. S. 3057, Public Law 161 in the 57th Congress. S. Rept. No. 254. H.R. Rept. No. 1468.

NOTES OF OPINIONS

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1. Reclamation Act—Generally

A reclamation project is designed to benefit people, not land. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 297 (1958).

The history of the Reclamation Act of 1902 shows that it was the intent of Congress that the cost of each irrigation project should be assessed against the property benefited and that the assessments as fast

as collected should be paid back into the fund for use in subsequent projects without diminution. This intent cannot be carried out without charging the expense of maintenance during the Government-held period as well as the cost of construction. *Swigart v. Baker,* 229 U.S. 187 (1913).

Subsequent legislative construction of a prior act may properly be examined as an aid to its interpretation. The repeated and practical construction of the Reclamation Act of 1902 by both Congress and the Secretary of the Interior, in charging cost of maintenance as well as construction, accords with the provisions of the act taken in its entirety and is followed by the court. *Swigart v. Baker,* 229 U.S. 187 (1913).

The Federal reclamation law is contained in the Reclamation Act of June 17, 1902, which, together with acts amendatory and supplementary thereto, forms a complete legislative pattern in the field. Solicitor Harper Opinion, M–33902, at 2 (May 31, 1945), in re applicability of excess land provisions to Coachella Valley lands.

The irrigation systems on the Flathead Indian Reservation do not constitute a reclamation project as contemplated by the Reclamation Act of June 17, 1902, and the amendments thereto. *Flathead Lands,* 48 L.D. 475 (1921).

The project manager (superintendent) of a Federal irrigation project is the Government representative through whom the project is managed and carried on. He is engaged in the administration of a Federal law and has the right to bring into the Federal courts controversies to which he is made a party touching the validity or propriety of acts done by him in his representative capacity. When sued in a State court for damages on account of his alleged negligence in operating a project canal, he can remove the cause to a Federal court. *Whiffin v. Cole,* 264 Fed. 252 (D. Ida. 1919).

The Act contemplates the irrigation of private lands as well as lands belonging to the Government and the fact that a scheme contemplates the irrigation of private as well as a large tract of Government land does not render the project illegal, so as to prevent the condemnation of land necessary to carry it out. *Burley v. United States,* 179 Fed. 1, 102 C.C.A. 429 (Ida. 1910).

Whatever may be its maximum power under the Constitution, it is thought that by the Reclamation Act Congress has chosen to confer authority upon the Secretary of the Interior only to undertake projects the primary or predominant purpose of which is to reclaim public lands. *Griffiths v. Cole,* 264 Fed. 374 (D.C. Ida. 1919).

The Act of June 17, 1902, outlines a comprehensive reclamation scheme, and provides for the examination and survey of lands and for construction and maintenance of irrigation works for the storage, diversion, and development of water for the reclamation of arid and semi-arid lands. *Henkel v. United States,* 237 U.S. 43 (1915).

In the construction of works for the irrigation of arid public lands, the United States is not exercising a governmental function, nor even a strictly public function, but is promoting its proprietary interests. *Twin Falls Canal Co. v. Foote,* 192 F. 583 (D. Ida. 1911).

The Reclamation Act is not a "revenue law" within the meaning of Revised Statutes, section 643, allowing removal to Federal Courts of suits brought in state courts "against any officer appointed under or acting by authority of any revenue law of the United States." *Twin Falls Canal Co., Ltd. v. Foote,* 192 Fed. 583 (D. Ida. 1911); *City of Stanfield v. Umatilla Water Users' Assn.,* 192 Fed. 596 (D. Ore. 1911).

2. —Constitutionality

There can be no doubt of the Federal government's general authority to construct projects for reclamation and other internal improvements under the general welfare clause, article I, section 8, of the Constitution as well as article IV, section 3, relating to the management and disposal of federal property. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 294 (1958).

In conferring power upon Congress to tax "to pay the Debts and provide for the common Defense and general Welfare of the United States," the Constitution delegates a power separate and distinct from those later enumerated, and one not restricted by them; thus Congress has a substantive power to tax and appropriate for the general welfare, limited only by the requirement that it shall be exercised for the common benefit as distinguished from some mere local purpose. It is now clear that this includes the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement. *United States v. Gerlach Live Stock Co.,* 339 U.S. 725, 738 (1950).

The United States has constitutional authority to organize and maintain an irrigation project within a State where it owns arid lands whereby it will associate with itself other owners of like lands for the purpose of reclaiming and improving them, and for that purpose it exercises the right of eminent domain against other land owners to obtain land necessary to carry the proposed project into effect. *Burley* v. *United States, et al.,* 179 Fed. 1, 102 C.C.A.

429 (Ida. 1910), affirming 172 Fed. 615 (C.C. 1909). See also *Magruder v. Belle Fourche Valley Water Users' Assn.*, 219 Fed. 72, 133 C.C.A. 524 (S.D. 1914).

The Reclamation Act is within the power of Congress as to lands within the States as well as Territories, under Constitution, article 4, section 3, giving it power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States", and is not in violation of the Constitution on the ground that it authorizes the expenditure of public money without an appropriation, since it is in itself an appropriation of the proceeds of land sold, nor as delegating legislative authority to the Secretary of the Interior. *United States v. Hanson,* 167 Fed. 881, 93 C.C.A. 371 (Wash. 1909).

6. Powers of Secretary—Generally

Section 10 of the Reclamation Act does not authorize the Secretary to construct extra capacity in a sewerage system beyond the needs for project construction purposes, and make this capacity available to an adjacent town in return for the town's agreement to operate and maintain the system. The proposed use would violate R.S. § 3678, 31 U.S.C. § 28, which limits the use of appropriated funds to the objects for which the appropriation is made, unless otherwise provided by law. 34 Comp. Gen. 599 (1955), in re Glendo, Wyoming.

In cases where, because of administrative laxity in enforcing the excess land limitations of reclamation law, or because projects were initiated prior to the enactment of section 46 of the 1926 Act, owners of excess lands have been receiving water therefor without having executed recordable contracts, the Secretary, in the exercise of his authority to perform all acts necessary and proper to carry the reclamation laws into full force and effect (sec. 10 of the Reclamation Act of 1902; sec. 15 of the Reclamation Project Act of 1939), may permit the continued delivery of water to such excess lands on condition that the owner, by the execution of a recordable contract, agrees to dispose of such lands within a reasonable time on reasonable conditions. Associate Solicitor Cohen Opinion, M-34999 (October 22, 1947).

Secretary of the Interior had power to execute a plan of conservation whereby he stopped winter flow of water through power plant in irrigation district, ceased producing power in nonirrigating season for purpose of conserving such water for irrigating season, contracted with private power company to supply commercial demand in district, and preserved the profitable commercial power business which would otherwise have been lost through lack of dependable source of power during irrigation season. *Burley Irr. Dist. v. Ickes,* 116 F. 2d 529, 73 App. D.C. 23 (1940), cert. denied 312 U.S. 687.

Neither the Boulder Canyon Project Act nor the Reclamation laws generally authorize the Secretary of the Interior to establish a Federal reservation, in connection with the construction of the dam and powerplant, over which the United States would have exclusive jurisdiction pursuant to a Nevada statute generally ceding jurisdiction over lands acquired by the United States for public buildings. *Six Companies, Inc. v. DeVinney, County Assessor,* 2 F. Supp. 693 (D. Nev. 1933).

The Secretary of the Interior has no general supervisory authority under section 441, Revised Statutes, under section 10 of the Act of June 17, 1902, or under section 15 of the Act of August 13, 1914, to suspend public notices issued under the reclamation law. In re Shoshone irrigation project, 50 L.D. 223 (1923).

See C.L. 818, May 12, 1919, regarding authority of Secretary of the Interior to provide means for extermination of grasshoppers and other pests.

Under the Reclamation Act the Secretary of the Interior has power to contract with an irrigation district to supply, or partially supply, the district with water. *Pioneer Irr. Dist. v. Stone,* 23 Idaho 344, 130 Pac. 382 (1913); *Hillcrest Irr. Dist. v. Brose,* 24 Ida. 376, 133 Pac. 663 (1913); *Nampa & Meridian Irr. Dist. v. Petrie,* 153 Pac. 425 (1915). See also *Nampa & Meridian Irr. Dist. v. Petrie,* 223 Pac. 531, 37 Ida. 45 (1924).

7. —Leases and permits

The Secretary of the Interior may establish rules as to the use of withdrawn lands while not needed for the purpose for which they are reserved, and may lease them for grazing and limit animals to be grazed thereon; the revenue derived going into the reclamation fund. *Clyde v. Cummings,* 101 Pac. 106, 35 Utah 461 (1909).

There is no general statutory authority for leasing Government-owned land, and the Secretary of the Interior may adopt such methods as he deems in the best interest of the United States and the project. In the administration of the Boulder Canyon project area, the Bureau of Reclamation and the National Park Service may grant leases for lands and permits to engage in business activities to private individuals without advertising for proposals or securing competitive bids. Solicitor Margold Opinion M-28694 (October 13, 1936).

An easement for the construction and maintenance of an electrical transmission line over lands purchased under the reclamation law could be granted for a maximum period of 50 years on certain conditions administratively imposed. Solicitor's Opinion, M–24897 (December 31, 1928), Newlands project.

The Secretary of the Interior has authority to make temporary leases of lands reserved or acquired by purchase for use in connection with an irrigation project contemplated under the provisions of the Reclamation Act where use under the proposed lease will not interfere with the use and control of the lands when needed for the purposes contemplated by the reservation or purchase. Op. Asst. Atty. Gen., 34 L.D. 480 (1906).

Temporary leases for grazing and other agricultural purposes may be made of lands acquired through condemnation proceedings for reservoir or canal purposes in reclamation projects during such periods as may elapse between the acquisition of title and the actual use of the same for reservoirs and canals. All such leases should state the purpose for which the lands were acquired and that such purpose will not in any manner be interfered with or delayed by the lease; should specifically provide for the immediate, or speedy, termination of the lease in event it is desired to utilize the land or any part thereof for reclamation works, or in event the work of reclamation is found to be hindered or delayed by reason thereof; and should be limited to one year, but may contain provision for renewal for the succeeding year in event the lands should not sooner be needed for reclamation purposes. Instructions, 39 L.D. 525 (1911).

Whenever it is reasonably necessary for the preservation of the buildings, works, and other property, or for the proper protection and efficiency of any reclamation project, or where special conditions make it advisable, first-form withdrawn or purchased lands may be leased to the highest bidder for a term to be decided upon by the Reclamation Service (Bureau of Reclamation) as the conditions may arise. Reclamation decision, March 23, 1917.

The Secretary has full authority to purchase lands necessary for reservoir purposes, to arrange the terms of purchases, and to allow the vendor to retain possession after the Government has taken possession until the land may be actually needed where by so doing the purchase may be more advantageously made; but he has no authority under said act to lease such purchased lands after the Government has taken possession thereof. Instructions, 32 L.D. 416 (1904).

8. —Overseas projects

Section 10 of the Reclamation Act is to be construed as relating only to projects of the United States and does not authorize the Bureau of Reclamation engineers to review designs for two dam projects in Ceylon, and prepare supplemental plans and specifications therefor, with funds to be provided in advance by the Government of Ceylon. Dec. Comp. Gen. B–60382 (October 8, 1946).

16. Rules and regulations—Generally

This section gives the Secretary of the Interior no authority or power that he would not have if it were omitted. Op. Atty. Gen., April 27, 1905.

Rules and regulations prescribed by the Secretary of the Interior under statutory authority have the effect of statutes and will be judicially noticed by the courts. *Alford et al. v. Hesse,* 279 Pac. 831 (Calif. 1929).

While this section authorizes the Secretary of the Interior to make such regulations as may be necessary and proper to carry this act into full force and effect, he is not authorized to amend, modify, or change statutory provisions fixing rights of a successful contestant, who has secured cancellation of any pre-emption homestead or timber culture entry. *Edwards v. Bodkin,* 249 Fed. 562, 161 C.C.A. 488 (Cal. 1918).

A rule by the Secretary of the Interior, the import of which is to carry into effect the provisions of an act relating to the public lands, is valid, and has the same binding force as the law itself. *Clyde v. Cummings,* 101 Pac. 106, 35 Utah 461 (1909).

RECLAMATION OF INDIAN LANDS IN YUMA, COLORADO RIVER, AND PYRAMID LAKE INDIAN RESERVATIONS

[Extracts from] An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for fiscal year ending June 30, 1905, and for other purposes. (Act of April 21, 1904, ch. 1402, 33 Stat. 189)

* * * * *

Sec. 25. [Reclamation and disposal of irrigable lands in Yuma and Colorado River Reservations—Diversion of Colorado River—Allotment—Price per acre—Installment payments—Proceeds.]—In carrying out any irrigation enterprise which may be undertaken under the provisions of the reclamation act of June seventeenth, nineteen hundred and two, and which may make possible and provide for, in connection with the reclamation of other lands, the reclamation of all or any portion of the irrigable lands on the Yuma and Colorado River Indian reservations in California and Arizona, the Secretary of the Interior is hereby authorized to divert the waters of the Colorado River and to reclaim, utilize, and dispose of any lands in said reservations which may be irrigable by such works in like manner as though the same were a part of the public domain: *Provided,* That there shall be reserved for and allotted to each of the Indians belonging on the said reservations ten acres of the irrigable lands. The remainder of the lands irrigable in said reservations shall be disposed of to settlers under the provisions of the reclamation act: *Provided further,* That there shall be added to the charges required to be paid under said act by settlers upon the unallotted Indian lands such sum per acre as in the opinion of the Secretary of the Interior shall fairly represent the value of the unallotted lands in said reservations before reclamation; said sum to be paid in annual installments in the same manner as the charges under the reclamation act. Such additional sum per acre, when paid, shall be used to pay into the reclamation fund the charges for the reclamation of the said allotted lands, and the remainder thereof shall be placed to the credit of said Indians and shall be expended from time to time, under the direction of the Secretary of the Interior, for their benefit. (33 Stat. 224; § 3, Act of March 3, 1911, 36 Stat. 1063)

Explanatory Note

1911 Amendment and Supplementary Provision. The Act of March 3, 1911, 36 Stat. 1063, increased the size of the allotment in the first proviso from five to ten acres and further provided: "That the entire cost of irrigation of the allotted lands shall be reimbursed to the United States from any funds received from the sale of the surplus lands of the reservations or from any other funds that may become available for such purpose: *Provided further,* That in the event any allottee shall receive a patent in fee to an allotment of land irrigated under this project, before the United States shall have been wholly reimbursed as herein provided, then the proportionate cost of the project to be apportioned equitably by the Secretary of the Interior, shall become a first lien on such allotment, and the fact of such lien shall be recited on the face of each patent in fee issued and the amount of the lien set forth thereon, which said lien, however, shall not be enforced so long as the original allottee, or his heirs, shall actually occupy the allotment as a homestead, and the receipt of the Secretary of the Interior or of the officer, agent, or employee duly authorized by him for that

purpose, for the payment of the amount assessed against any allotment as herein provided shall, when duly recorded by the recorder of deeds in the county wherein the land is located, operate as a satisfaction of such lien."

NOTE OF OPINION

1. Parker Dam

Section 25 of the Act of April 21, 1904, does not authorize the Secretary of the Interior to build Parker Dam on the Colorado River. *United States* v. *Arizona*, 295 U.S. 174 (1935).

Sec. 26. [Reclamation and disposal of irrigable lands in Pyramid Lake Indian Reservation—Allotment—Price per acre—Installment payments—Proceeds.]—In carrying out any irrigation enterprise which may be undertaken under the provisions of the reclamation act of June seventeenth, nineteen hundred and two, and which may make possible and provide for, in connection with the reclamation of other lands, the reclamation of all or any portion of the irrigable lands on the Pyramid Lake, Indian Reservation, Nevada, the Secretary of the Interior is hereby authorized to reclaim, utilize, and dispose of any lands in said reservation which may be irrigable by such works in like manner as though the same were a part of the public domain: *Provided,* That there shall be reserved for and allotted to each of the Indians belonging on the said reservation five acres of the irrigable lands. The remainder of the lands irrigable in said reservation shall be disposed of to settlers under the provisions of the reclamation act: *Provided further,* That there shall be added to the charges required to be paid under said act by settlers upon the unallotted Indian lands such sum per acre as in the opinion of the Secretary of the Interior shall fairly represent the value of the unallotted lands in said reservation before reclamation, said sum to be paid in annual installments in the same manner as the charges under the reclamation act. Such additional sum per acre, when paid, shall be used to pay into the reclamation fund the charges for the reclamation of the said allotted lands, and the remainder thereof shall be placed to the credit of said Indians and shall be expended from time to time under the direction of the Secretary of the Interior for their benefit. (33 Stat. 225)

* * * * *

EXPLANATORY NOTES

Not Codified. Sections 25 and 26 of this Act are not codified in the U.S. Code.

Legislative History. H.R. 12684. Public Law 125 in the 58th Congress. H.R. Rept. No. 1022. S. Rept. No. 1660. H.R. Rept. No. 2342 (conference report).

CROW INDIAN LANDS SUBJECTED TO RECLAMATION LAW

[Extracts from] An act to ratify and amend an agreement with the Indians of the Crow Reservation in Montana, and making appropriations to carry the same into effect. (Act of April 27, 1904, ch. 1624, 33 Stat. 352)

* * * * *

Art. II. [Ceded lands to be disposed of under Reclamation Law.]—In consideration of the land ceded, granted, relinquished, and conveyed by article one of this agreement the United States stipulates and agrees to dispose of the same as hereinafter provided under the provisions of the reclamation act approved June seventeenth, nineteen hundred and two, the homestead, town site, and mineral land laws, except sections sixteen and thirty-six, or an equivalent of two sections in each township, at not less than four dollars per acre, subject to the provisions in section five. * * * (33 Stat. 356)

* * * * *

Sec. 5. **[Filing schedule of allotments—Residue to be disposed of under Reclamation Act—Indian employees—Undisposed of lands to be open to settlement—Nonirrigable lands.]**—Before any of the lands by this agreement ceded are opened to settlement or entry the Commissioner of Indian Affairs shall cause the allotments to be made and the schedule to be prepared, as provided for in section four of this act, and a duplicate of said schedule shall be filed with the Commissioner of the General Land Office. Upon the completion of such allotments and the filing of such schedule, and after the sale or removal of such improvements, the residue of such ceded lands, except sections sixteen and thirty-six, or lands in lieu thereof, which shall be reserved for common-school purposes and are hereby granted to the State of Montana for such purpose, shall be subject to withdrawal and disposition under the reclamation act of June seventeenth, nineteen hundred and two, so far as feasible irrigation projects may be found therein. The charges provided for by said reclamation act shall be in addition to the charge of four dollars per acre for the land, and shall be paid in annual installments as required under the reclamation act; and the amounts to be paid for the land shall be credited to the funds herein established for the benefit of the Crow Indians. If any lands in sections sixteen and thirty-six are included in an irrigation project under the reclamation act, the State of Montana may select in lieu thereof, as herein provided, other lands not included in any such project, in accordance with the provisions of existing law concerning school-land selections. In any construction work upon the ceded lands performed directly by the United States under the reclamation act preference shall be given to the employment of Crow Indians, or whites intermarried with them, so far as may be practicable: *Provided, however,* That if the lands withdrawn under the reclamation act are not disposed of within five years after the passage of this act, then all of said lands so withdrawn shall be disposed of as other lands provided for in this act. That the lands not withdrawn for irrigation under said reclamation act, which lands shall be determined under the direction of the

Secretary of the Interior at the earliest practical date, shall be disposed of under the homestead, town site, and mineral land laws of the United States, * * *. (33 Stat. 360; Act of March 3, 1909, 35 Stat. 797)

EXPLANATORY NOTE

1909 Amendment. The Indian Appropriation Act of March 3, 1909, 35 Stat. 797, provides that any lands withdrawn under the Reclamation Act, pursuant to the provisions of the above section, which are not disposed of within five years, shall remain subject to disposal under the provisions of the Reclamation Act until otherwise directed by the Secretary of the Interior.

* * * * *

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 11676, Public Law 183 in the 58th Congress. H.R. Rept. No. 890. S. Rept. No. 1937. H.R. Rept. No. 2763 (conference report).

NOTE OF OPINION

1. Construction with other laws

The Act of May 16, 1930, 46 Stat. 367, authorizing the sale of vacant lands which are classified as temporarily or permanently unproductive, does not apply to ceded Crow Indian lands on the Huntley Irrigation project which were withdrawn for reclamation purposes pursuant to the Act of April 27, 1904, 33 Stat. 352. Solicitor White Opinion, M–34393 (March 26, 1947).

USE OF EARTH, STONE, AND TIMBER FROM PUBLIC LANDS AND FORESTS

An act authorizing the use of earth, stone, and timber on the public lands and forest reserves of the United States in the construction of works under the national irrigation law. (Act of February 8, 1905, ch. 552, 33 Stat. 706)

[**Use of earth, stone, and timber on public lands for irrigation works.**]—In carrying out the provisions of the national irrigation law, approved June seventeenth, nineteen hundred and two, and in constructing works thereunder, the Secretary of the Interior is hereby authorized to use and to permit the use by those engaged in the construction of works under said law, under rules and regulations to be prescribed by him, such earth, stone, and timber from the public lands of the United States as may be required in the construction of such works, and the Secretary of Agriculture is hereby authorized to permit the use of earth, stone, and timber from the forest reserves of the United States for the same purpose, under rules and regulations to be prescribed by him (33 Stat. 706; 43 U.S.C. § 420)

Explanatory Notes

1919 Supplementary Provision. The Act of July 19, 1919, 41 Stat. 163, 202, provides that proceeds from the lease of, or from the sale of products from, lands withdrawn under the Reclamation Act shall go into the reclamation fund, and that any such lands needed for the protection or operation of any constructed reclamation reservoir or other works shall remain under the jurisdiction of the Secretary of the Interior even though also reserved and withdrawn for some other purpose. The Act appears herein in chronological order.

National Forests. The Department of Agriculture Appropriation Act for 1908, approved March 4, 1907, 34 Stat. 1256, 1269, provides that "forest reserves" * * * "shall be known hereafter as national forests * * *".

Legislative History. H.R. 14710, Public Law 54 in the 58th Congress. S. Rept. No. 3333.

Notes of Opinions

Construction with other laws 1
National forests 2

1. Construction with other laws

Under the Act of February 8, 1905, and the Act of March 3, 1891, as amended, the Bureau may issue a permit to an irrigation district to remove clay without charge from public lands to be used in connection with the operation and maintenance of drainage facilities of a Federal reclamation project. This authority is not repealed by section 10(a) of the Reclamation Project Act of 1939. Memorandum of Acting Associate Solicitor Coulter, August 11, 1966, in re request of Yuma Mesa Irrigation and Drainage District.

2. National forests

Under this Act the Reclamation Service may use timber from the national forests without charge in connection with work performed in cooperation with private parties under the provisions of the Warren Act of February 21, 1911. 30 Op. Atty. Gen. 398 (1915), in re Jackson Lake.

CHANGE LEVELS OF LITTLE KLAMATH, TULE, AND GOOSE LAKES

An act authorizing the changing of the levels of certain lakes and the disposal of certain lands under the terms of the national reclamation act. (Act of February 9, 1905, ch. 567, 33 Stat. 714)

[**Authority to change lake levels and dispose of lands.**]—The Secretary of the Interior is hereby authorized in carrying out any irrigation project that may be undertaken by him under the terms and conditions of the national reclamation act and which may involve the changing of the levels of Lower or Little Klamath Lake, Tule or Rhett Lake, and Goose Lake, or any river or other body of water connected therewith, in the States of Oregon and California, to raise or lower the level of said lakes as may be necessary and to dispose of any lands which may come into the possession of the United States as a result thereof by cession of any State or otherwise under the terms and conditions of the national reclamation act. (33 Stat. 714; 43 U.S.C. § 601)

Explanatory Notes

Oregon Legislation. In connection with the above statute the State of Oregon enacted the following law:

"An act to authorize the utilization of Upper Klamath Lake, Lower or Little Klamath Lake, and Tule or Rhett Lake, situate in Klamath County, Oregon, and Goose Lake, situate in Lake County, Oregon, in connection with the irrigation and reclamation operations of the Reclamation Service of the United States, and to cede to the United States all the right, title, interest, and claim of the State of Oregon to any and all lands recovered by the lowering of the water levels or by the drainage of any or all of said lakes.

"*Be it enacted by the Legislative Assembly of the State of Oregon; be it enacted by the people of the State of Oregon*:

"Section 1. That for the purpose of aiding in the operations of irrigation and reclamation conducted by the Reclamation Service of the United States, established by the act of Congress approved June 17, 1902 (32 Stat. 388), known as the reclamation act, the United States is hereby authorized to lower the water level of Upper Klamath Lake, situate in Klamath County, Oregon, and to lower the water level of or to drain any or all of the following lakes: Lower or Little Klamath Lake and Tule or Rhett Lake, situate in Klamath County, Oregon, and Goose Lake, situate in Lake County, Oregon, and to use any part or all of the beds of said lakes for the storage of water in connection with such operations.

"Sec. 2. That there be, and hereby is, ceded to the United States all the right, title, interest, or claim of this State to any land uncovered by the lowering of the water levels or by the drainage of any or all of said lakes not already disposed of by the State; and the lands hereby ceded may be disposed of by the United States, free of any claim on the part of this State in any manner that may be deemed advisable by its authorized agencies, in pursuance of the provisions of said reclamation act."

Approved January 20, 1905. (General Laws of Oregon, 1905, p. 63.)

California Legislation. The State of California passed the following law:

"An act authorizing the United States Government to lower the water levels of any or all of the following lakes: Lower or Little Klamath Lake, Tule or Rhett Lake, Goose Lake, and Clear Lake, situated in Siskiyou and Modoc Counties, and to use any part or all of the beds of said lakes for the storage of water in connection with the irrigation and reclamation operations conducted by the Reclamation Service of the United States; also

ceding to the United States all right, title, interest, or claim of the State of California to any lands uncovered by the lowering of the water levels of any or all of said lakes not already disposed of by the State.

"*The people of the State of California, represented in senate and assembly, do enact as follows:*

"SECTION 1. That for the purpose of aiding in the operations of irrigation and reclamation conducted by the Reclamation Service of the United States, established by the act of Congress approved June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), known as the reclamation act, the United States is hereby authorized to lower the water levels of any or all of the following lakes: Lower or Little Klamath Lake, Tule or Rhett Lake, Goose Lake, and Clear Lake, situated in Siskiyou and Modoc Counties, as shown by the map of the United States Geological Survey, and to use any part or all of the beds of said lakes for the storage of water in connection with such operations.

"SEC. 2. And there is hereby ceded to the United States all the right, title, interest, or claim of this State to any lands uncovered by the lowering of the water levels of any or all of said lakes not already disposed of by this State; and the lands hereby ceded may be disposed of by the United States free of any claim on the part of this State in any manner that may be deemed advisable by the authorized agencies of the United States in pursuance of the provisions of said reclamation act: *Provided,* That this act shall not be in effect as to lakes herein named, which lie partly in the State of Oregon, until a similar cession has been made by that State."

Approved, February 3, 1905. (Cal. Stats. 1905, p. 4.)

EXPLANATORY NOTES

Supplementary Provision: Agricultural Entries. The Act of May 27, 1920, authorizes the Secretary of the Interior to determine the ceded lands which will be opened to agricultural development, and provides that such lands will be open to entry under the homestead laws. The Act appears herein in chronological order.

Cross Reference, Consent to Suit. The Act of March 3, 1923, 42 Stat. 1438, grants the consent of Congress to the State of California to bring suit against the United States to determine title to lands alleged to have been ceded by the State to the United States and to determine title to any lands uncovered by the lowering of the water levels of the lakes referred to in this Act. The 1923 Act appears herein in chronological order.

Contract with California Oregon Power Co. By contract executed in 1917 on behalf of the United States by Secretary Franklin K. Lane the California Oregon Power Co. was given the right to construct and operate a dam at the outlet of Upper Klamath Lake and to regulate the flow of the water in the lake for 50 years. For a copy of this contract and a large amount of data concerning it see joint hearings by the Senate and House committees in connection with S. 3189 and H.R. 9493, first session Sixty-ninth Congress. The contract was amended in 1956. For a discussion of the relationship between the dam and the various power projects of the company downstream on Link and Klamath Rivers, see *California Oregon Power Co.* v. *Federal Power Commission,* 239 F. 2d 426 (D.C. Cir. 1956), and *California Oregon Power Co.,* 13 F.P.C. 1 (1954) and 15 F.P.C. 14 (1956).

Legislative History. S. 6312, Public Law 66, in the 58th Congress. S. Rept. No. 3067. H.R. Rept. No. 4092.

NOTES OF OPINIONS

Bird refuge 2
Ceded lands 1
Homestead entry 3

1. Ceded lands

The State of California made application to the General Land Office for a survey, with a view to the subsequent issuance of patent to the State under the swamp-land act of September 28, 1850 (9 Stat. 519), of alleged swamp and overflowed lands in T. 47 N., Rs. 2 and 3 E., and T. 48 N., Rs. 1, 2, and 3 E., Mount Diablo meridian, Calif. The lands for which survey and patent were asked are areas lying between the precipitous banks in the lower portion of the lower Klamath Lake area and the high ground. The department, in denying the application of the State, held that under the act of the State of California of February 3, 1905 (California Statutes, 1905, p. 4), these lands were ceded to the United States, and are now held subject to disposition only under the general reclamation laws; that the department is without

authority to recognize or entertain any claim on the part of the State therefor under the swamp-land act or under any other existing law; and that the title of the United States to these lands can be divested only by act of Congress. *State of California,* 47 L.D. 207(1919).

2. Bird refuge

Under the Act of February 9, 1905, and the cession statutes of the States of Oregon and California relating thereto; the Act of May 27, 1920; appropriations of water made by the United States for agricultural and power development under section 47–1201 of the Oregon Code, 1930; and the contracts with the California-Oregon Power Company relating to a dam in Upper Klamath Lake to control the flow in the Klamath River, the United States may use waters of the Klamath River and lands of Lower Klamath Lake for agricultural purposes, whether such lands are used for flowage purposes or uncovered and used for agricultural purposes, but is not authorized to use such waters or lands for establishment of a bird refuge. Solicitor Finney Opinion, 53 I.D. 693 (1932).

3. Homestead entry

The Secretary of the Interior has the authority, but is not required, to open for homestead entry under the reclamation laws any or all of the lands, whether ceded by the states of California or Oregon or public lands in the Tule Lake Unit of the Tule Lake Wild Life Refuge, and the Klamath Straits Unit, the Sheepy Lake West Unit, and the Sheepy Lake East Unit of the Klamath Lake Reservation for the protection of native birds. Solicitor White Opinion, M–36157 (December 12, 1952).

RIO GRANDE RECLAMATION PROJECT

An act relating to the construction of a dam and reservoir on the Rio Grande, in New Mexico, for the impounding of flood waters of said river for the purposes of irrigation. (Act of February 25, 1905, ch. 798, 33 Stat. 814)

[Reclamation development in Texas and New Mexico authorized from proposed Engle Dam on Rio Grande.]—The provisions of the reclamation act approved June seventeenth, nineteen hundred and two, shall be extended for the purposes of this act to the portion of the State of Texas bordering upon the Rio Grande which can be irrigated from a dam to be constructed near Engle, in the Territory of New Mexico, on the Rio Grande, to store the flood waters of that river, and if there shall be ascertained to be sufficient land in New Mexico and in Texas which can be supplied with the stored water at a cost which shall render the project feasible and return to the reclamation fund the cost of the enterprise, then the Secretary of the Interior may proceed with the work of constructing a dam on the Rio Grande as part of the general system of irrigation, should all other conditions as regards feasibility be found satisfactory. (33 Stat. 814)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Elephant Butte Dam. The dam herein referred to was completed in 1916 and is known as the Elephant Butte Dam. Located about 125 miles north of El Paso, Texas, it creates the major storage reservoir on the Rio Grande within the United States.

Caballo Dam. Caballo Dam, a related flood control and power regulating structure completed in 1938, is located 23 miles downstream from Elephant Butte Dam. Flood control operations of the dam are governed by the agreement of October 9, 1935, between the Departments of State and Interior. The dam is discussed in annexes to the Convention between the United States and Mexico for the Rectification of the Rio Grande of February 1, 1933, 48 Stat. 1629 ff.

Cross Reference, Reclamation Act Extended to Texas. The Act of June 12, 1906, 34 Stat. 259, extended the Reclamation Act to the entire State of Texas. The 1906 Act appears herein in chronological order.

Construction of Private Dam Enjoined. Protracted litigation in which the United States obtained a permanent injunction against the construction by a private company of an irrigation diversion dam across the river in New Mexico near Engle on the grounds that navigability of an international river would be adversely affected, is reported in *United States* v. *Rio Grande Dam and Irrigation Co.,* 174 U.S. 690 (1899); *United States* v. *Rio Grande Dam and Irrigation Co.,* 184 U.S. 416 (1902); and *Rio Grande Dam and Irrigation Co.* v. *United States,* 215 U.S. 266 (1909). The proceedings were instituted at the direction of the Attorney General, 21 Op. Atty. Gen. 518 (1897).

Cross Reference, 1906 Convention with Mexico. The Convention with Mexico of May 21, 1906 (effective January 16, 1907), obligates the United States, after completion of the Engle (Elephant Butte) Dam, to deliver 60,000 acre-feet of water annually to Mexico at the headworks of the Old Mexican Canal located above the city of Juarez, Mexico. The Convention appears herein in chronological order.

1907 Nonreimbursable Appropriation. The Act of March 4, 1907, 34 Stat. 1295, appropriates $1,000,000 toward the cost of the Elephant Butte Dam in recognition of the obligation to deliver water to Mexico, with the balance of the cost of the project to be allocated from the reclamation fund and returned under the reclamation laws. The text of the provision appears herein in chronological order.

Supplementary Provisions: Drainage Expenses. The Sundry Civil Expenses Appropriation Act of June 12, 1917, 40 Stat. 148, and subsequent appropriation acts, and the Act of October 6, 1917, 40 Stat. 426, con-

tain special limitations on the expenditure of funds for drainage purposes in connection with the Rio Grande project. The texts of the relevant provisions appear herein in chronological order.

Supplementary Provisions: Adjustment of Charges. Section 30 of the Omnibus Adjustment Act of 1926, 44 Stat. 643, and the Act of May 28, 1928, 45 Stat. 785, relate to adjustments in payment of charges. The texts of the relevant provisions appear herein in chronological order.

Supplementary Provision: American Diversion Dam. Under the authority of the Act of August 29, 1935, 49 Stat. 961, the United States section of the International Boundary Commission constructed and operates a new diversion dam that supplies water to the old Franklin Canal. This structure, called the American Diversion Dam, is located on the Rio Grande 2 miles northwest of El Paso immediately above the point where the river becomes the international boundary line. The 1935 Act appears herein in chronological order.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treaty with Mexico of February 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Cross References, Statutory Authority of the Commission. The Act of August 19, 1935, which appears herein in chronological order, provides general authority for the work of the Commission, and the notes following the Act briefly summarize other statutory provisions relating to its program.

Supplementary Provision: Rio Grande Canalization Project. The Act of June 4, 1936, 49 Stat. 1463, authorized the United States Section of the Commission to construct and operate canalization works in the river between Caballo Dam and the American Diversion Dam. The Act appears herein in chronological order.

Supplementary Provision: Power Development. A provision in the Interior Department Appropriation Act of August 9, 1937, 50 Stat. 593, relates to the repayment of the cost of power facilities and of certain costs of Elephant Butte and Caballo Dams. The text of the provision appears herein in chronological order.

Supplementary Provision: Recreation Development. The Act of July 25, 1962, 76 Stat. 171, authorizes recreation development by the Secretary of the Interior at Elephant Butte and Caballo Reservoirs. The Act appears herein in chronological order.

Supplementary Provision: Franklin Canal Relocation. Pursuant to the authority contained in section 1 of the American-Mexican Chamizal Act of 1964, enacted April 29, 1964, 78 Stat. 184, the International Boundary Commission, United States and Mexico, relocated 1.7 miles of the Franklin Canal, which is part of the distribution system of the Rio Grande project. For legislative history of the 1964 Act see S. 2394 in the 88th Congress; S. Rept. No. 868; H.R. Rept. No. 1233.

Cross References, Miscellaneous. Related subjects include the Rio Grande Compact, Rio Grande rectification project (I.B.W.C.), Middle Rio Grande project (upstream from Elephant Butte Reservoir), and the 1944 treaty with Mexico.

Legislative History. H.R. 17939, Public Law 104 in the 58th Congress. H.R. Rept. No. 3990; S. Rept. No. 3915.

NOTES OF OPINIONS

Bridges 3
Compact 7
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Flood control 4
Project, what constitutes 1
Suits against United States 8
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Water rights 2

1. Project, what constitutes

Lands of the Hudspeth County Conservation and Reclamation District No. 1 are not part of the Rio Grande reclamation project. *Bean v. United States,* 163 F. Supp. 838 (Ct. Cl. 1958), *cert. denied,* 358 U.S. 906 (1958).

2. Water rights

The delivery of water by the United States from the Rio Grande reclamation project under a Warren Act contract conveys to water users no vested rights to the use of the water, but the rights of the contractor are governed by the contract alone. *Bean* v. *United States,* 163 F. Supp. 838 (Ct. Cl. 1958), *cert. denied,* 358 U.S. 906 (1958).

The abandonment of seepage waters from the Rio Grande reclamation project in the past by the United States did not constitute abandonment of the right to use such waters when needed in the future; and plaintiffs' use of such seepage waters did not create in them rights superior to those of the United States to control and prescribe

the use of these waters. *Bean* v. *United States,* 163 F. Supp. 838 (Ct. Cl. 1958), *cert. denied,* 358 U.S. 906 (1958).

The City of El Paso could not claim a right to water from the Rio Grande River in an amount equal to city sewage effluent discharged into the river, when by an earlier agreement the city surrendered all control over the effluent once it entered the river. *El Paso County Water Improvement District No. 1* v. *City of El Paso,* 243 F. 2d 927 (5th Cir. 1957), *modifying* 133 F. Supp. 894 (W.D. Tex. 1955), *cert. denied,* 355 U.S. 820 (1957).

Where the City of El Paso applied to the appropriate state agency for a water permit, a compromise settlement was arranged between the city and an irrigation district opposing the permit, and thereafter the permit was issued, then the conditions of the compromise agreement are binding upon the parties. *El Paso County Water Improvement District No. 1* v. *City of El Paso,* 243 F. 2d 927 (5th Cir. 1957), *modifying* 133 F. Supp. 894 (W.D. Tex 1955), *cert. denied,* 355 U.S. 820 (1957).

The United States' rights as a storer and carrier of project water are not exhausted with a single application of the water to land, but the water may be recaptured and reused as developed water. *Hudspeth County Conservation & Reclamation Dist. No. 1* v. *Robbins,* 213 F. 2d 425 (5th Cir. 1954), *cert. denied,* 348 U.S. 833 (1954).

3. Bridges

The United States in receiving a deed for the interest of the City of El Paso in a canal right-of-way and agreeing to "maintain" bridges over the canal, did not bind itself to construct new bridges across the canal as increased traffic conditions required. *El Paso County Water Improvement District No. 1* v. *City of El Paso,* 243 F. 2d 927 (5th Cir. 1957), *modifying* 133 F. Supp. 894 (W.D. Tex. 1955), *cert denied,* 355 U.S. 820 (1957).

4. Flood control

Operation of Caballo Reservoir for flood control is subject to the Agreement of October 9, 1935, between the Departments of State and Interior, irrespective of the authority of the Secretary of War to promulgate flood control regulations pursuant to section 7 of the Flood Control Act of 1944. Memorandum of Chief Counsel Fix, May 2, 1946.

5. Excess lands

The Secretary of the Interior has authority under the Act of February 25, 1920, 41 Stat. 451, to enter into a contract to supply to the City of El Paso an amount of water from the Rio Grande reclamation project representing the water service for certain project lands acquired by the city and retired from irrigation farming, but not to exceed a maximum of 3½ acre-feet of water a year for each acre of such land acquired by the city. The city's ownership of some 1400 acres of such land does not violate the 160-acre limitation of reclamation law. *El Paso County Water Improvement District No. 1* v. *City of El Paso,* 133 F. Supp. 894, 918–920 (W.C. Tex. 1955), *affirmed,* 243 F. 2d. 927 (5th Cir. 1957), *cert. dened,* 355 U.S. 820 (1957).

6. Treaty obligation

The Secretary of the Interior has the discretion to deny an application for a right of way for a reservoir in Colorado that would store Rio Grande water for irrigation purposes, until a determination can be made that such a development would not interfere with the treaty obligation to deliver Rio Grande water to Mexico and with the Engle Dam project. *Francis W. Bosco,* 39 L.D. 104 (1910).

7. Compact

An analysis of the Rio Grande Compact shows convincingly that the water of the river belonging to Texas is definitely committed to the service of the Rio Grande reclamation project. *El Paso County Water Improvement District No. 1,* 133 F. Supp. 894, 907 (W.D. Tex. 1955), *affirmed on other grounds,* 243 F. 2d 927 (5th Cir. 1957), *cert. denied* 355 U.S. 820 (1957).

8. Suits against United States

Section 208 of the Act of July 10, 1952, consenting to the joinder of the United States in a suit "for the adjudication of rights to the use of water of a river system or other source," does not apply to an action for a declaration of rights in certain drainage waters from the Rio Grande reclamation project and for an injunction restraining Bureau of Reclamation officials from interfering with such rights. *Miller* v. *Jennings,* 243 F. 2d 157 (5th Cir. 1957), cert. *denied,* 355 U.S. 827 (1957).

In an action to enjoin diversion of waters from the Elephant Butte reservoir to a federal game refuge, the United States was an indispensable party, as any judgment would expend itself on the administration of public laws, and therefore the action had to be dismissed. *Elephant Butte Irrigation Dist.* v. *Gatlin,* 61 N. Mex. 58, 294 P. 2d 628 (1956).

The United States is a necessary party to a suit for an injunction restraining the responsible officials of the Bureau of Reclamation from diverting seepage waters

from the Rio Grande reclamation project which the plaintiffs formerly had utilized; and since the United States has not given its consent to such a suit, the action must be dismissed. *Hudspeth County Conservation & Reclamation District No. 1* v. *Robbins,* 213 F. 2d 425 (5th Cir. 1954), *cert. denied,* 348 U.S. 833 (1954).

An action by the State of New Mexico and a city to enjoin the further lowering of the Elephant Butte reservoir, on the grounds that this would cause more fish to die and create a health menace, must be dismissed because it is a suit against the United States without its consent. *New Mexico* v. *Backer,* 199 F. 2d 426 (10th Cir. 1952).

CREDIT CERTAIN PROCEEDS AND REFUNDS TO RECLAMATION FUND

An act to provide for the covering into the reclamation fund certain proceeds of sales of property purchased by the reclamation fund. (Act of March 3, 1905, ch. 1459, 33 Stat. 1032)

[Proceeds from certain sales and refunds to be covered into the reclamation fund.]—There shall be covered into the reclamation fund established under the act of June seventeenth, nineteen hundred and two, known as the reclamation act, the proceeds of the sales of material utilized for temporary work and structures in connection with the operations under the said act, as well as of the sales of all other condemned property which had been purchased under the provisions thereof, and also any moneys refunded in connection with the operations under said reclamation act. (33 Stat. 1032; 43 U.S.C. § 393)

Explanatory Notes

Cross Reference, Funds Collected from Defaulting Contractors. The Act of June 6, 1930, 46 Stat. 522, provides that amounts collected from defaulting contractors or their sureties shall be covered into the reclamation fund and credited to the project or operation for or on account of which the contract was made. The 1930 Act appears herein in chronological order.

Legislative History. H.R. 18528, Public Law 192 in the 58th Congress. H.R. Rept. No. 4833. S. Rept. No. 4383.

Notes of Opinions

Act not retrospective 1
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Not credited to appropriations 2

1. Act not retrospective

This act only relates to and affects such moneys as have been and shall be derived from the specified sources after the passage of the act and moneys so derived prior to its passage but which had not been deposited in the Treasury to the credit of some other fund. It does not operate retrospectively. 12 Comp. Dec. 297 (1905).

2. Not credited to appropriations

Moneys received by the Reclamation Service both as refunds and as proceeds of sales of material and property that have served their purpose in connection with reclamation projects must be credited to the reclamation fund generally and not to the particular appropriation made therefrom for the project from which the refunds or sales arose. Such application will not work to the detriment of the water users on any particular project, since the matter of the net cost of any such project and hence the amount to be paid by the water users as reimbursement of the Government for such cost is to be determined by the Interior Department quite independently of the question as to what particular public fund is to be credited with refunds or sales arising in connection with the project. 22 Comp. Dec. 54 (1915).

3. Commissary supplies

Where funds paid to the Reclamation Service pursuant to contract by an irrigation company to cover the cost of work being done by that service for the benefit of said company are expended for commissary and other supplies, which are resold during the progress of the work, the receipts from such resales are to be applied to the completion of the work and are not to be covered into the reclamation fund. 22 Comp. Dec. 289 (1916).

4. Moneys forfeited by bidders

Moneys forfeited by successful bidders for work under the Reclamation Service because of failure to perform the award should, under the provisions of this act, be covered into the Treasury to the credit of the reclamation fund. 12 Comp. Dec. 297 (1905).

5. Construction charges

The Great Northern Railway Co. paid the United States the estimated construction charges on a small acreage of land on the Teton Division of the Sun River project, over which land the company proposed to construct a railway line under the act of March 3, 1875 (18 Stat. 482). Neither the Teton Division nor the line of road was constructed, and the grant to the company was forfeited by court decree. The railway company made an application for refund of the construction charges paid. The Comptroller General in decision of October 7, 1932 (A–43217) refused to make the refund on the ground that such refund was prohibited by section 1 of the act of Congress of March 26, 1908 (35 Stat. 48), as amended by the act of December 11, 1919, 41 Statute 366, permitting the return of filing fees and commissions in connection with public land entries, etc., only when the entry is rejected, not when it is allowed.

6. Erroneous deposit in Treasury

When moneys appropriated by Congress for a particular purpose have been erroneously covered into the Treasury to the credit of the unappropriated surplus, the error may be corrected by withdrawing the moneys from the Treasury and re-covering them into the credit of the appropriation to which Congress directed they should belong. The proceeds of sales of property belonging to the Reclamation Service required by this act to be covered into the Treasury to the credit of the reclamation fund form a part of the appropriation for the Reclamation Service, and those erroneously covered into the Treasury as "proceeds of Government property" may be withdrawn from the Treasury and re-covered into the credit of the reclamation fund. 12 Comp. Dec. 733 (1906).

7. Mineral leases

Lands withdrawn for a reservoir site or similar reclamation purposes which are essential to the project, and lands acquired by purchase or condemnation for the exclusive use of the project, may be developed for their mineral resources only by temporary leases for periods not inconsistent with the needs of the project, and the proceeds therefrom must be placed in the reclamation fund to the credit of that project. *J. D. Mell, et al.,* 50 L.D. 308 (1924).

DAMS ACROSS YELLOWSTONE RIVER

An act to authorize the Secretary of the Interior to construct dams across the Yellowstone River at Montana in connection with irrigation works. (Act of March 3, 1905, ch. 1476, 33 Stat. 1045)

[Construction of dams authorized.]—Where, in carrying out projects under the provisions of the national reclamation act, it shall be necessary to construct dams in or across the Yellowstone River in the State of Montana, the Secretary of the Interior is hereby authorized to construct and use and operate the same in the manner and for the purposes contemplated by said reclamation act. (33 Stat. 1045; 43 U.S.C. § 422)

EXPLANATORY NOTE

Legislative History. H.R. 19118, Public Law 209 in the 58th Congress. H.R. Rept. No. 4834. S. Rept. No. 4384.

YAKIMA INDIAN LANDS SUBJECTED TO RECLAMATION LAW

An act authorizing the disposition of surplus and allotted lands on the Yakima Indian Reservation, in the State of Washington, which can be irrigated under the act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation act, and for other purposes. (Act of March 6, 1906, ch. 518, 34 Stat. 53)

[**Sec. 1. Withdrawal of irrigable lands for reclamation.**]—If within the limits of the Yakima Indian Reservation, in the State of Washington, as described in the act approved December twenty-first, nineteen hundred and four, entitled "An act to authorize the sale and disposition of surplus or unallotted lands of the Yakima Indian Reservation, in the State of Washington," there shall be found surplus or unallotted lands under irrigation projects deemed practicable and undertaken under the provisions of the act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation act, the Secretary of the Interior is hereby authorized to exclude from the provisions of said act of December twenty-first, nineteen hundred and four, such surplus or unallotted lands which can be irrigated under such projects and to dispose of the same in the manner hereinafter provided, and he is further authorized to make withdrawals of such lands for the purposes provided in said reclamation act. (34 Stat. 53)

EXPLANATORY NOTE

Reference in the Text. The Act of December twenty-first, nineteen hundred and four, referred to in the text, is found at page 595, volume 33, United States Statutes-at-Large.

Sec. 2. [Lands subject to homestead entries—Payments—Forfeitures—Canceled entries.]—The irrigable surplus and unallotted lands in any such projects shall be subject to homestead entry under all the provisions of the reclamation act at such time as may be fixed by the Secretary of the Interior and at a price determined by appraisal, as provided in said act of December twenty-first, nineteen hundred and four. Payments for the land shall be made in annual installments, the number and time of beginning being fixed by the Secretary of the Interior, and shall be deposited in the Treasury of the United States and credited to the Yakima Indian fund, and disposed of as provided by section four of the said act of December twenty-first, nineteen hundred and four. Such payments shall be in addition to the charges for construction and maintenance of the irrigation system made payable into the reclamation fund by the provisions of the reclamation act. In case of failure to make any payment for such lands when due the Secretary of the Interior shall have power to cancel the entry and the corresponding water right and declare forfeited to the said Yakima Indian fund and the reclamation fund, respectively, the amounts paid on such entry and water right. The lands embraced within such canceled entry shall be subject to further entry under the reclamation act at the appraised value until otherwise directed by the President, who may by proclamation, as provided by said act of December twenty-first, nineteen hundred and four, from time to time, fix such

price as he may deem most advantageous upon all lands within such projects not disposed of. (34 Stat. 53)

Sec. 3. [Disposal of allotted irrigable lands—Payments—Forfeiture.]—If any lands heretofore allotted or patented to Indians on said Yakima Indian Reservation shall be found irrigable under any project, the Secretary of the Interior is hereby authorized upon the request or with the consent of such allottee or patentee, to dispose of all land in excess of twenty acres in each case, in tracts of an area approved by him and subject to all the provisions of the reclamation act to any person qualified to acquire water rights under the provisions of the reclamation act at a price satisfactory to the allottee or patentee and approved by the Secretary of the Interior, or at public sale to the highest bidder. The payments shall be made in annual installments, the number and terms being approved by the Secretary of the Interior. Such payments shall be in addition to the charges for construction and maintenance of the irrigation system made payable into the reclamation fund by the provisions of the reclamation act. In case of failure to make any payment for such lands when due, or the charges under the reclamation act, the Secretary of the Interior shall have power to cancel the entry and the corresponding water right and again dispose of the land in the manner hereinbefore provided. (34 Stat. 54)

NOTE OF OPINION

1. Limit of Indian ownership

This Act fixes 20 acres as the unit for Indian ownership to be irrigated by the waters of a project, and if an Indian desires to accept the benefits of the Act and place his surplus lands under the control of the Government to be sold for his benefit, he can do so only upon the condition that he will retain 20 acres thereof, and no more, for which a water right shall be secured to him, appurtenant to the land and subject to the same charge for construction and annual charge for maintenance as other lands under the project. Op. Asst. Atty. Gen., 35 L. D. 110 (1906).

Sec. 4. [Use of proceeds of sales—Balance credited to individual Indians.]—From the payments received from the sale of such individual Indian lands there shall be covered into the reclamation fund the amounts fixed by the Secretary of the Interior as annual charges on account of the land retained by such Indian for the construction and maintenance of the irrigation system, as required under the reclamation act. The balance, if any, shall be deposited in the Treasury of the United States to the credit of the individual Indians, and may be paid to any of them if, in the opinion of the Secretary of the Interior, such payments will tend to improve the condition and advance the progress of said Indians, but not otherwise. (34 Stat. 54)

Sec. 5. [Payment of water charges—Water supply—Perpetual water rights—Use of funds.]—The Secretary of the Interior is hereby authorized to cover into the reclamation fund from the money of any such Indian, either from his individual credit or from the general Yakima Indian fund, for the payment of charges for construction and maintenance, for the water rights appurtenant to the land retained by him, or for the annual maintenance charges payable on account of such water rights after the construction charge thereon has been paid in full. After unconditional title in fee has passed from the United States for

any lands retained by such Indians, the water for irrigating such lands shall be furnished under the same conditions in all respects as for other lands under the project: *Provided,* That any Indian taking advantage of this act shall have a perpetual water right so long as the maintenance charges are paid whether he uses the water or not, and the Secretary of the Interior is hereby authorized to use the funds of the tribe to pay such maintenance charges, which in his discretion it is necessary to preserve said water right: *Provided further,* That he may, in his discretion, use said funds to pay for water rights and the maintenance charges on twenty acres of any Indian allotment if the sum obtained from the sale of the allottee's land in excess of twenty acres and his interest in the tribal funds be insufficient for those purposes. (34 Stat. 54)

Sec. 6. [Patent in fee.]—The Secretary of the Interior shall be authorized, upon compliance with the provisions of this act and of the reclamation act by any party having purchased such allotted or patented lands as herein provided, to issue patent passing unconditional title in fee by the United States as trustee for the allottee or patentee, and shall cancel any allotment as to the lands disposed of under this act. (34 Stat. 54)

Sec. 7. [Cost of irrigation works to be paid from sales of water rights—Amendment.]—The irrigation works heretofore constructed for the Yakima Indian Reservation may be, at a cost to be determined by the Secretary of the Interior, included in any project developed under the provisions of the reclamation act and of this act, and become a part of said project for all purposes of the reclamation act, and the cost of same shall be included in the cost of such project and be paid into the Yakima Indian fund out of the proceeds arising from the sale of water rights, from time to time, as payments on account thereof are received. The provisions of this act shall be construed as superseding or amending any provisions of the said act of December twenty-first, nineteen hundred and four, so far as any conflict may appear. (34 Stat. 55)

Sec. 8. [Authority to make regulations.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect. (34 Stat. 55)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 10067, Public Law 36 in the 59th Congress. H.R. Rept. No. 1477.

COLVILLE INDIAN LANDS SUBJECTED TO RECLAMATION LAW

[Extract from] An act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes. (Act of March 22, 1906, ch. 1126, 34 Stat. 80)

* * * * *

Sec. 12. [Irrigable lands to be disposed of under reclamation act—Payments.]—If any of the lands of said diminished Colville Indian Reservation can be included in any feasible irrigation project under the reclamation act of June 17, 1902, the Secretary of the Interior is authorized to withhold said lands from disposition under this act and to dispose of them under the said reclamation act, and the charges provided for by said reclamation act shall be in addition to the appraised value of said lands fixed as hereinbefore provided and shall be paid in annual installments as required under the said reclamation act, and the amounts to be paid for the land, according to appraisement, shall be credited to the fund herein established for the benefit of the Colville Indians. (34 Stat. 82)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 4229, Public Law 61 in the 59th Congress. S. Rept. No. 1424.

TOWN SITES AND POWER DEVELOPMENT

An act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June 17, 1902, and for other purposes. (Act of April 16, 1906, ch. 1631, 34 Stat. 116)

[Sec. 1. Withdrawal of lands for reclamation town sites—Survey of town sites—Reservations for public purposes.]—The Secretary of the Interior may withdraw from public entry any lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June 17, 1902, not exceeding one hundred and sixty acres in each case, and survey and subdivide the same into town lots, with appropriate reservations for public purposes. (34 Stat. 116; 43 U.S.C. § 561)

EXPLANATORY NOTES

Codification. The section is codified as 43 U.S.C. § 561 with a proviso added that expresses the later authority to modify the 160-acre limit.

Supplementary Provision: 160-Acre Limit Modified. Section 4 of the Act of June 27, 1906, 34 Stat. 520, authorizes the Secretary of the Interior to exceed the 160-acre limit on reclamation town-sites when advisable in his opinion for the public interest. The Act appears herein in chronological order.

Cross References, General. The Act of October 5, 1914, 38 Stat. 727, authorizes the reservation of public lands in reclamation projects for parks, playgrounds, and community centers. The Act appears herein in chronological order. Provisions relating to the reservation and sale of town sites on public lands generally are codified in 43 U.S.C. §§ 711–31.

Cross Reference, Special Act. The Act of July 3, 1926, 44 Stat. 890, 43 U.S.C. § 569a, extends this act to a lot in the Black Canyon unit, Boise project, Idaho.

NOTE OF OPINION

1. Park in town site

A park within a town site established under this act is not a country park, public playground, or community center contemplated by the Act of October 5, 1914, 38 Stat. 727, and water cannot be delivered thereon free of charge. Departmental decision, June 18, 1915.

Sec. 2. [Appraisal of lots—Sale at auction—Subsequent sale—Expenses and proceeds.]—The lots so surveyed shall be appraised under the direction of the Secretary of the Interior and sold under his direction at not less than their appraised value at public auction to the highest bidders, from time to time, for cash, and the lots offered for sale and not disposed of may afterwards be sold at not less than the appraised value under such regulations as the Secretary of the Interior may prescribe. Reclamation funds may be used to defray the necessary expenses of appraisement and sale, and the proceeds of such sales shall be covered into the reclamation fund. (34 Stat. 116; 43 U.S.C. § 562)

EXPLANATORY NOTES

Supplementary Provision: Reappraisals; Installment Payments. The Act of June 11, 1910, 36 Stat. 465, authorizes reappraisal of unsold lots and installment payments for the sale of any town lot. The Act appears herein in chronological order.

Supplementary Provision: School Purposes. The Act of October 31, 1919, 41 Stat. 326, authorizes the conveyance of not to exceed six acres within a reclamation town site for school purposes. The Act appears herein in chronological order.

Supplementary Provision: Disposition of Unplatted Portion. The Act of March 2,

1929, 45 Stat. 1522, as amended by the Act of February 14, 1931, 46 Stat. 1107, authorizes the disposition of unplatted portions of reclamation town sites. The 1929 and 1931 Acts appear herein in chronological order.

Cross Reference, Prior Town Sites. Section 3 of the Act of June 27, 1906, 34 Stat. 519, extends the appraisal and disposal provisions of the above act to town sites previously established in or near reclamation projects under R.S. §§ 2380–81 (43 U.S.C. §§ 711–12). The 1906 Act appears herein in chronological order.

Cross References, Special Acts. See index for references to special acts dealing with individual townsites.

NOTES OF OPINIONS

1. Receipts, application of

The gross receipts from the sale of townsite lots should be considered as revenues, and not as a repayment in part and revenues in part. Comp. Dec., December 6, 1906.

It is not permissible to deduct the receipts from the sale of town lots from construction or operation and maintenance cost. Neither is it permissible to class such receipts as repayments under the comptroller's decision of December 6, 1906. They are accretions to the reclamation fund directly resulting from the operations of the Reclamation Service. C.L. 639, March 22, 1917.

It is not the intent of Congress by this act to take away the right of the State of Idaho to the 5 per cent of the net proceeds of sales of public lands lying within said State for the support of the common schools of the State. If, however, the whole proceeds of said sales have been covered into the reclamation fund and the 5 per cent paid to the State out of the permanent indefinite appropriation therefor, the reclamation fund should be charged therewith. 20 Comp. Dec. 365 (1913).

Sec. 3. [Public reservations to be maintained by town authorities—Conveyances of same to municipal corporations.]—The public reservations in such town sites shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as municipal corporations the said reservations shall be conveyed to such corporations by the Secretary of the Interior, subject to the condition that they shall be used forever for public purposes. (34 Stat. 116; 43 U.S.C. § 566)

NOTE OF OPINION

1. Public purposes

Reservations for fire house, town hall, and armory approved. Departmental decision, July 15, 1916, Shoshone.

Sec. 4. [Water rights for towns—Contracts therefor.]—The Secretary of the Interior shall, in accordance with the provisions of the reclamation act, provide for water rights in amount he may deem necessary for the towns established as herein provided, and may enter into contract with the proper authorities of such towns, and other towns or cities on or in the immediate vicinity of irrigation projects, which shall have a water right from the same source as that of said project for the delivery of such water supply to some convenient point, and for the payment into the reclamation fund of charges for the same to be paid by such towns or cities, which charges shall not be less nor upon terms more favorable than those fixed by the Secretary of the Interior for the irrigation project from which the water is taken. (34 Stat. 116; 43 U.S.C. § 567)

EXPLANATORY NOTE

Cross References, Water Supply. The Act of February 25, 1920, 41 Stat. 451, and section 9(c) of the Reclamation Project Act of 1939, 53 Stat. 1187, 1194, authorize the Secretary to furnish water from reclamation projects for purposes other than irrigation under stated conditions. Both Acts appear herein in chronological order.

NOTES OF OPINIONS

Effect of later acts 2
Individual contracts 1

1. Individual contracts

Application for water rights under the reclamation act by individual lot owners for lands which have been subdivided into town lots will not be allowed hereafter; but water may be supplied to towns from reclamation projects by delivery to some convenient point, to be handled and distributed to the inhabitants of the town by the municipal authorities in accordance with the provisions of this act. Instructions, 39 L.D. 591 (1911).

It is within the discretion of the Secretary of the Interior to contract with towns in the manner provided by this section, or contract directly with water users upon town lots or tracts within the corporate limits of town sites regardless of the size of such lots or tracts. Opinion Chief Counsel, Reclamation Service, February 22, 1916, Commission Minutes 147, Docket 658.

2. Effect of later acts

Section 4 of the Act of April 16, 1906, authorizes the furnishing of project water to a town in the immediate vicinity of the project which has a pre-existing water right in the same source of water as the project source. The authority to furnish water in such a case under the 1906 Act is neither repealed by, nor subject to the conditions of, the Act of February 25, 1920, 41 Stat. 451, or section 9(c) of the Reclamation Project Act of 1939. Memorandum of Acting Commissioner Lineweaver to Regional Director, Boise, September 26, 1950, in re contracts with cities of Culver and Metolius, Deschutes Project, Oregon.

Sec. 5. [Development and lease of surplus power—Proceeds—Impairment of projects prohibited—Longer lease permitted on Rio Grande project.]—Whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said reclamation act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: *Provided,* That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: *Provided further,* That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water users' association or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section six of the reclamation act approved June seventeenth, nineteen hundred and two. (34 Stat. 117; Act of February 24, 1911, 36 Stat. 930; 43 U.S.C. § 522)

EXPLANATORY NOTES

1911 Amendment. The Act of February 24, 1911, added the second proviso authorizing a 50-year lease in connection with the Rio Grande project. The Act appears herein in chronological order.

Cross Reference, General. Section 9(c) of the Reclamation Project Act of 1939, 53 Stat. 1194, authorizes the sale of electric power or lease of power privileges for periods not to exceed 40 years. The Act appears herein in chronological order.

Cross References, Application of Power Revenues, General. General provisions relating to the application of power revenues for the benefit of water users are found in subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, and in the Act of July 1, 1946, 60 Stat. 366. The so-called Hayden-O'Mahoney amendment in the Act of May 9, 1938, 52 Stat. 322, provides generally that power revenues from reclamation projects shall be covered into the reclamation fund until power costs are repaid. The relevant provisions from the 1924, 1946 and 1938 Acts appear herein in chronological order.

Cross References, Special Acts. See index for references to special acts dealing with the development of power and disposition of power revenues.

Legislative History. S. 87, Public Law 103 in the 59th Congress. S. Rept. No. 648. H.R. Rept. No. 2113.

NOTES OF OPINIONS

Generally 1
Revenues, application of 3
Utility companies, contracts with 2

1. Generally

The development and sale of surplus power not required for pumping or other uses of irrigation is authorized by this section only as an incidental phase of reclamation, not as a primary or independent end in itself. Consequently, those who benefit from the net profits of the commercial power operation of a project are not entitled as a matter of right to have water released for power production rather than held for irrigation use, nor are they entitled to receive credit for the profits attributable to the sale of replacement power acquired from another source. *Burley Irr. Dist.* v. *Ickes,* 116 F. 2d 529 (D.C. Cir. 1940), *cert. denied,* 312 U.S. 687 (1941).

The limitations in the power leasing act do not apply to the lease of a power privilege to a Warren Act contractor for the purpose of generating power for irrigation pumping. Solicitor Margold Opinion, M–28725 (October 6, 1936), in re use of power site at C canal drop, Klamath project.

2. Utility companies, contracts with

By the terms of a contract between the United States and the Pacific Gas & Electric Co. in connection with the construction, operation, and maintenance of the Salt River Project, the company surrendered and conveyed all of its rights within the physical limits of the project, and in lieu thereof the United States agreed to furnish the company in the city of Phoenix, Ariz., a specified amount of electrical energy generated at its works at the Roosevelt Reservoir at a stipulated sum of money and for a term not exceeding 10 years, and the United States further agreed that while serving power to the company under the terms of the contract, it would refrain from entering into a general retailing of power to customers in the city of Phoenix and from furnishing power to anyone in said city to be again sold or retailed. This contract neither violates the provisions of the antitrust law of July 2, 1890, 26 Stat. 209, nor the provision of the Act of April 16, 1906 (34 Stat. 116), which, in authorizing the Secretary of the Interior to lease surplus power derived from reclamation projects, provides that preference be given to municipal usage. 30 Op. Atty. Gen. 197 (1913).

3. Revenues, application of

The receipts arising from the sale or leasing of water rights to towns or others, and from the leases of power to towns or others, should be classed as repayments. Comp. Dec., December 6, 1906. (Reclamation B58.)

Returns from the sale of power and power privileges are to be credited as a refund on account of the construction cost of the project. Departmental decision, December 28, 1916.

The Hayden-O'Mahoney amendment of 1938 amends section 5 of the Act of April 16, 1906, by providing that after net power revenues have repaid project construction costs allocated to be repaid by such revenues, they shall then be covered into the General Treasury as miscellaneous receipts. Solicitor Harper Opinion, M–33504 (September 26, 1944), in re disposition of power revenues from Grand Valley project.

The practice of using power revenues to assist in the payment of irrigation costs and in determining whether a project will probably return its cost to the United States originated with section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; was followed in a number of subsequent enactments, including section 9 of the Reclamation Project Act of 1939, 53 Stat. 1187, 1193, 43 U.S.C. § 485h; and has repeatedly been recognized and accepted by Congress. Letter from Acting Commissioner Markwell to Rep. Leroy Johnson, April 2, 1948.

The availability of power revenues to aid irrigation has, in one form or another, been a part of general reclamation law almost since its beginning. This is evident from section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; the Act of February 24, 1911, 36 Stat. 930, 43 U.S.C. § 522; and subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, 43 U.S.C. § 501. This general trend has been reinforced by the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, 52 Stat. 322, 43 U.S.C. § 392a, and a provision in

the Interior Department Appropriation Act, 1947, 60 Stat. 366, as well as section 9 of the Reclamation Project Act of 1939, 53 Stat. 1193, 43 U.S.C. § 485h. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

CONVENTION WITH MEXICO FOR THE UPPER RIO GRANDE

Convention providing for the equitable distribution of the waters of the Rio Grande for irrigation purposes. (Signed at Washington, May 21, 1906; ratification advised by the Senate, June 26, 1906; ratified by the President, December 26, 1906; ratified by Mexico, January 5, 1907; ratifications exchanged at Washington, January 16, 1907; proclaimed, January 16, 1907; 34 Stat. 2953)

The United States of America and the United States of Mexico being desirous to provide for the equitable distribution of the waters of the Rio Grande for irrigation purposes, and to remove all causes of controversy between them in respect thereto, and being moved by considerations of international comity, have resolved to conclude a convention for these purposes and have named as their plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

The President of the United States of Mexico, His Excellancy Senor Don Joaquin D. Casasus, ambassador extraordinary and plenipotentiary of the United States of Mexico at Washington.

Who, after having exhibited their respective full powers, which were found to be in good and due form, have agreed upon the following articles:

ARTICLE I

After the completion of the proposed storage dam near Engle, New Mexico, and the distributing system auxiliary thereto, and as soon as water shall be available in said system for the purpose, the United States shall deliver to Mexico a total of 60,000 acre-feet of water annually, in the bed of the Rio Grande at the point where the head works of the Acequia Madre, known as the Old Mexican Canal now exist above the city of Juarez, Mexico.

ARTICLE II

The delivery of the said amount of water shall be assured by the United States and shall be distributed through the year in the same proportions as the water supply proposed to be furnished from the said irrigation system to lands in the United States in the vicinity of El Paso, Texas, according to the following schedule, as nearly as may be possible:

	Acre-feet per month	Corresponding cubic feet of water
January	0	0
February	1, 090	47, 480, 400
March	5, 460	237, 837, 600
April	12, 000	522, 720, 000
May	12, 000	522, 720, 000
June	12, 000	522, 720, 000
July	8, 180	356, 320, 800
August	4, 370	190, 357, 200
September	3, 270	142, 441, 200
October	1, 090	47, 480, 400
November	540	23, 522, 400
December	0	0
Total for the year	60, 000	2, 613, 600, 000

In case, however, of extraordinary drought or serious accident to the irrigation system in the United States, the amount delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under said irrigation system in the United States.

ARTICLE III

The said delivery shall be made without cost to Mexico, and the United States agrees to pay the whole cost of storing the said quantity of water to be delivered to Mexico, of conveying the same to the international line, of measuring the said water, and of delivering it in the river bed above the head of the Mexican Canal. It is understood that the United States assumes no obligation beyond the delivering of the water in the bed of the river above the head of the Mexican Canal.

ARTICLE IV

The delivery of water as herein provided is not to be construed as a recognition by the United States of any claim on the part of Mexico to the said waters; and it is agreed that in consideration of such delivery of water Mexico waives any and all claims to the waters of the Rio Grande for any purpose whatever between

the head of the present Mexican Canal and Fort Quitman, Texas, and also declares fully settled and disposed of, and hereby waives, all claims heretofore asserted or existing, or that may hereafter arise, or be asserted, against the United States on account of any damages alleged to have been sustained by the owners of land in Mexico by reason of the diversion by citizens of the United States of waters of the Rio Grande.

ARTICLE V

The United States in entering into this treaty does thereby concede, expressly or by implication, any legal basis for any claims heretofore asserted or which may be hereafter asserted by reason of any losses incurred by the owners of land in Mexico due or alleged to be due to the diversion of the waters of the Rio Grande within the United States; nor does the United States in any way concede the establishment of any general principle or precedent by the concluding of this treaty. The understanding of both parties is that the arrangement contemplated by this treaty extends only to the portion of the Rio Grande which forms the international boundary from the head of the Mexican Canal down to Fort Quitman, Texas, and in no other case.

ARTICLE VI

The present convention shall be ratified by both contracting parties in accordance with their constitutional procedure, and the ratification shall be exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the convention, both in the English and Spanish languages, and have thereunto affixed their seals.

Done in duplicate at the City of Washington this 21st day of May, 1906.

ELIHU ROOT. [SEAL.]
JOAQUIN D. CASASUS. [SEAL.]

EXPLANATORY NOTES

Cross Reference, Elephant Butte Dam and the Rio Grande Project. The Engle Dam referred to in Article I was completed in 1916 and renamed the Elephant Butte Dam. In addition to its function in providing storage to meet the water delivery obligation to Mexico under the 1906 Convention, the dam also provides irrigation water for the Rio Grande reclamation project, New Mexico and Texas, as authorized by the Act of February 25, 1905, 33 Stat. 814. The 1905 Act appears herein in chronological order, and annotations of opinions and further cross references regarding the Rio Grande project appear thereunder.

Cross Reference, American Diversion Dam and Rio Grande Canalization Project. In order to provide better control, measurement and use of the water released from Elephant Butte storage, for purposes both of the Rio Grande reclamation project and the water delivery obligation to Mexico, the United States Section of the International Boundary Commission was authorized in 1935 to construct a new diversion dam just above the point where the river becomes the international boundary, and was authorized in 1936 to improve the river channel between there and Caballo Dam. The two authorizing acts of August 29, 1935, 49 Stat. 961, and June 4, 1936, 49 Stat. 1463, appear herein in chronological order.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treaty with Mexico of Feb-

ruary 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Cross References, Statutory Authority of the Commission. The Act of August 19, 1935, which appears herein in chronological order, provides general authority for the work of the Commission, and the notes following the Act briefly summarize other statutory provisions relating to its program.

Fort Quitman. For international purposes, Fort Quitman, Texas, is recognized as the point on the Rio Grande separating the Upper Rio Grande (river and basin) from the Lower Rio Grande (river and basin). The Treaty of February 3, 1944, deals with the utilization of the waters of the Rio Grande below Fort Quitman. The name "Lower Rio Grande Valley", however, applies to the valley beginning about 200 miles above the mouth of the River.

Cross References, Miscellaneous. Other related subjects include the Rio Grande Compact, Middle Rio Grande project (above Elephant Butte reservoir), Rio Grande rectification project (I.B.W.C.), and the 1944 Treaty with Mexico.

Validity of Mexican Claim to Rio Grande Water. The disclaimers in Articles IV and V, that the Convention constitutes no recognition by the United States of the validity of Mexican claims to the waters of the Upper Rio Grande, stems in part from the 1895 opinion of Attorney General Harmon holding that the United States is completely free under international law to utilize all of the waters of the basin above the point where the river becomes the international boundary. 21 Op. Atty. Gen. 274 (1895). The validity of this holding has been questioned in later years. See *Legal Aspects of the Use of Systems of International Waters*, S. Doc. No. 118, 85th Cong., 2d Sess. 66–67 (1958).

Editor's Note, Annotations. Annotations of opinions are not included because this Convention does not relate primarily to activities of the Bureau of Reclamation.

DISPOSITION OF LANDS IN ABANDONED FORT SHAW MILITARY RESERVATION

An act to provide for the disposition under the public land laws of the lands in the abandoned Fort Shaw Military Reservation, Mont. (Act of June 9, 1906, ch. 3066, 34 Stat. 228)

[Disposal of lands—Reservation—Withdrawal under reclamation act.]—The Secretary of the Interior is hereby authorized to dispose of the lands in the abandoned Fort Shaw Military Reservation, in Montana, under the provisions of the public land laws, and the public-land surveys shall be extended over the lands therein: *Provided,* That he may reserve for Indian school purposes the following-described lands in township twenty north, range two west, Montana principal meridian, as determined by the extension of the public surveys: That portion of section two lying south of Sun River, all of sections eleven, fourteen, and twenty-three, and that portion of section twenty-six lying within the present reservation boundary: *Provided further,* That before opening the reservation to entry, the Secretary of the Interior may withdraw any other lands therein needed in connection with an irrigation project under the provisions of the act of June seventeenth, nineteen hundred and two, known as the reclamation act, for use or disposition thereunder. (34 Stat. 228)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Sun River Project. The lands of the Fort Shaw Military Reservation opened for entry pursuant to this Act became the first unit of the Sun River project.

Legislative History. H.R. 17114, Public Law 215 in the 59th Congress. H.R. Rept. No. 3633. S. Rept. No. 3616.

EXTEND RECLAMATION ACT TO TEXAS

An act to extend the irrigation act to the State of Texas. (Act of June 12, 1906, ch. 3288, 34 Stat. 259)

The provisions of the Act entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, be, and the same are hereby, extended so as to include and apply to the State of Texas. (34 Stat. 259; 43 U.S.C. § 391)

Explanatory Notes

Cross Reference, Extension of Reclamation Act to Area of Texas Bordering the Rio Grande. The Act of February 25, 1905, 33 Stat. 814, extended the reclamation act to the portion of Texas bordering upon the Rio Grande which can be irrigated from a dam near Engle, New Mexico. The 1905 Act appears herein in chronological order.

Legislative History. H.R. 14184, Public Law 225 in the 59th Congress. H.R. Rept. No. 1790. S. Rept. No. 2799.

SALE OF INDIAN ALLOTTED LANDS IN RECLAMATION PROJECTS

[**Extract from**] An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1907. (Act of June 21, 1906, ch. 3504, 34 Stat. 325)

* * * * *

[**Sales of Indian allotted lands within reclamation projects—Proceeds.**]—Any Indian allotted lands under any law or treaty without the power of alienation, and within a reclamation project approved by the Secretary of the Interior, may sell and convey any part thereof, under rules and regulations prescribed by the Secretary of the Interior, but such conveyance shall be subject to his approval, and when so approved shall convey full title to the purchaser the same as if final patent without restrictions had been issued to the allottee: *Provided,* That the consideration shall be placed in the Treasury of the United States and used by the Commissioner of Indian Affairs to pay the construction charges that may be assessed against the unsold part of the allotment, and to pay the maintenance charges thereon during the trust period, and any surplus shall be a benefit running with the water right to be paid to the holder thereof. (34 Stat. 327; 25 U.S.C. § 409)

* * * * *

Explanatory Note

Legislative History. H.R. 15331, Public Law 258 in the 59th Congress. H.R. Rept. No. 1634. S. Rept. No. 2561. H.R. Rept. No. 4436 (conference report).

Note of Opinion

1. Sale to United States of canal right-of-way

Under this clause, a contract by an Indian allottee to convey to the United States a strip over his allotted lands, as a right of way for a canal under a reclamation project, executed during the trust period, may properly be approved by the Secretary of the Interior. *Lucy Hawk Shively,* 36 L.D. 135 (1907).

FARM UNITS, TOWN SITES, AND DESERT-LAND ENTRIES

An act providing for the subdivision of lands entered under the reclamation act, and for other purposes. (Act of June 27, 1906, ch. 3559, 34 Stat. 519)

[**Sec. 1. Minimum entries of less than 40 acres—Subdivision—Entries of lesser areas.**]—Whenever, in the opinion of the Secretary of the Interior, by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than forty acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the act of June seventeenth, nineteen hundred and two, known as the reclamation act, he may fix a lesser area than forty acres as the minimum entry and may establish farm units of not less than ten or more than one hundred and sixty acres. Wherever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said reclamation act, the Secretary of the Interior may cause subdivision surveys to be made by the officers of the Reclamation Service, which subdivisions shall be rectangular in form, except in cases where irregular subdivisions may be necessary in order to provide for practicable and economical irrigation. Such subdivision surveys shall be noted upon the tract books in the General Land Office, and they shall be paid for from the reclamation fund: *Provided,* That an entryman may elect to enter under said reclamation act a lesser area than the minimum limit in any State or Territory. (34 Stat. 519; 43 U.S.C. § 434)

Explanatory Notes

Codification. This section is codified as a proviso to the acreage limitation provisions of section 3 of the Reclamation Act.

Earlier Provision. This Act amends section 3 of the Reclamation Act, which places a minimum of 40 acres on the size of farm units.

Notes of Opinions

1. Subdivision of lands

Under the authority conferred upon the Secretary by this act, to "fix a lesser area than 40 acres as the minimum entry" and to "establish farm units of not less than 10 or more than 160 acres," as to all lands withdrawn and entered under the reclamation act, he may make such subdivisions of the public land entered under the reclamation act as in his judgment may be deemed advisable in units of 10 acres or multiples thereof up to 160 acres. Op. Asst. Atty. Gen., 35 L.D. 110 (1906).

This act authorizes the Secretary to fix a lesser area than 40 acres as a farm unit when "by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce a lesser area than 40 acres may be sufficient for the support of a family," or when necessary "in order to provide for practical and economical irrigation," and there is no authority for subdividing a smallest legal subdivision under any other circumstances. *Jerome M. Higman,* 37 L.D. 718 (1909).

Lands platted to farm units can only be taken in accordance with the established units; and there cannot be included in the same entry lands within a farm unit and other lands without. *McDonald* v. *Rizor,* 42 L.D. 554 (1913).

March 8, 1930, the Commissioner, Bureau of Reclamation, requested the Secretary of the Interior to consider the matter of combining public and private land for the creation of a farm unit. This was thought advisable on the Kittitas division, Yakima project, in order that the lateral system might be more scientifically and economically laid out. The First Assistant Secretary, March 24, 1930, cited the act of June 27, 1906, fixing the area "as the maxi-

mum [minimum?] entry," stating that this could apply to public land only; and expressed the opinion that no authority is vested in the Secretary to establish a farm unit composed partly of public land and partly of adjacent private land.

Sec. 2. [Additional entries for relinquished lands.]—Wherever the Secretary of the Interior, in carrying out the provisions of the reclamation act, shall acquire by relinquishment lands covered by a bona fide unperfected entry under the land laws of the United States, the entryman upon such tract may make another and additional entry, as though the entry thus relinquished had not been made. (34 Stat. 519; 43 U.S.C. § 446)

NOTES OF OPINIONS

Entries affected 1
Settlers on unsurveyed lands 2

1. Entries affected

This section refers to entries so initiated under the land laws as to confer on the entryman vested rights which are voluntarily relinquished. *United States* v. *Hanson,* 167 Fed. 881, 93 C. C. A. 371 (9th Cir. 1909).

2. Settlers on unsurveyed lands

The statutes contain no provision for recognition or protection of any right of a settler on unsurveyed public lands which may be withdrawn and reserved thereunder for construction of irrigation works, and he has no right to oppose taking the land therefor. *United States* v. *Hanson,* 167 Fed. 881, 93 C. C. A. 371 (9th Cir. 1909).

Sec. 3. [Disposal of town sites within irrigation projects.]—Any town site heretofore set apart or established by proclamation of the President, under the provisions of sections twenty-three hundred and eighty and twenty-three hundred and eighty-one of the Revised Statutes of the United States, within or in the vicinity of any reclamation project, may be appraised and disposed of in accordance with the provisions of the act of Congress approved April sixteenth, nineteen hundred and six, entitled "An act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes"; and all necessary expenses incurred in the appraisal and sale of lands embraced within any such town site shall be paid from the reclamation fund, and the proceeds of the sales of such lands shall be covered into the reclamation fund. (34 Stat. 519; 43 U.S.C. § 563)

EXPLANATORY NOTE

Reference in the Text. The Act of April 16, 1906, referred to in the text, which authorizes the withdrawal and disposition of reclamation town sites, appears herein in chronological order.

Sec. 4. [Heyburn and Rupert, Idaho—Limitation not applicable—Withdrawal of larger town sites.]—In the town sites of Heyburn and Rupert, in Idaho, created and surveyed by the Government, on which town sites settlers have been allowed to establish themselves, and had actually established themselves prior to March fifth, nineteen hundred and six, in permanent buildings not easily moved, the said settlers shall be given the right to purchase the lots so built upon at an appraised valuation for cash, such appraisement to be made under rules to be prescribed by the Secretary of the Interior. Providing that the limitation on the size of town sites contained in the act of April sixteenth, nineteen hundred and six, entitled "An act providing for the withdrawal from public

entry of lands needed for town site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," shall not apply to the town sites named in this section; and whenever, in the opinion of the Secretary of the Interior, it shall be advisable for the public interest, he may withdraw and dispose of town sites in excess of one hundred sixty acres under the provisions of the aforesaid act, approved April sixteenth, nineteen hundred and six, and reclamation funds shall be available for the payment of all expenses incurred in executing the provisions of this act, and the aforesaid act of April sixteenth, nineteen hundred and six, and the proceeds of all sales of town sites shall be covered into the reclamation fund. (34 Stat. 520; 43 U.S.C. §§ 561, 568)

EXPLANATORY NOTES

Codification. That part of this section which authorizes the Secretary to withdraw and dispose of town sites in excess of 160 acres is codified as a proviso in section 561, title 43, U.S. Code. The provisions relating to payment of expenses from, and crediting of proceeds to, the reclamation fund, are codified in section 568, title 43.

Supplementary Provision: Block 223, Town Site of Heyburn. The Act of May 17, 1926 (44 Stat. 1471), authorizes issuance of patent under the above Act and the Act of April 16, 1906 (34 Stat. 116), to the Boyle Commission Company for block No. 223, town site of Heyburn, Idaho, without further payment on account of purchase price fixed for said land. The Act appears herein in chronological order.

Supplementary Provision: Town Site of Rupert. The Act of February 14, 1931, 46 Stat. 1102, authorized the Secretary to quitclaim to the City of Rupert, Idaho, all right, title and interest of the United States in a certain tract of land in the Government townsite.

Reference in the Text. The Act of April 16, 1906, referred to in the text, which authorizes the withdrawal and disposition of reclamation town sites, appears herein in chronological order.

Sec. 5. [Allowance of time to desert-land entrymen—Where irrigation project is abandoned—Relinquishment of excess areas if project is completed—Owners of water rights.]—Where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: *Provided,* That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection herewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been or may be filed; but if the reclamation project is carried to completion so as to make

available a water supply for the land embraced in any such desert-land entry the entryman shall thereupon comply with all the provisions of the aforesaid act of June 17, 1902, and shall relinquish within a reasonable time after notice as the Secretary may prescribe and not less than two years all land embraced within his desert-land entry in excess of one farm unit, as determined by the Secretary of the Interior, and as to such retained farm unit he shall be entitled to make final proof and obtain patent upon compliance with the regulations of said Secretary applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in said act of June 17, 1902, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act. (34 Stat. 520; Act of June 6, 1930, 46 Stat. 502; 43 U.S.C. § 448)

Explanatory Notes

1930 Amendment. The Act of June 6, 1930, 46 Stat. 502, amended the proviso in section 5 by, among other things, inserting in it the phrases "within a reasonable time after notice as the Secretary may prescribe and not less than two years" and "with the regulations of the said Secretary applicable to the remainder of the irrigable land of the project," and by substituting "one farm unit, as determined by the Secretary of the Interior" for "one hundred and sixty acres." The 1930 Act appears herein in chronological order.

Cross Reference, Assignment of Direct Land Entries. The Act of July 24, 1912, which appears herein in chronological order, authorizes the assignment of desert land entries.

Notes of Opinions

Abandonment of entry 5
Acreage limit 2
Assignment of entry 3
Extension of time 1
Farm units 7
Issue of patent 4
Rule of approximation 6

1. Extension of time

This section, authorizing an extension of time for compliance with law on desert entries within reclamation projects, applies only to entrymen who have been directly or indirectly delayed or prevented from carrying out their plans and works for obtaining a water supply by creation of a reclamation project. *Frank C. Jones,* 41 L.D. 377 (1912).

Section 5 of the act of June 27, 1906, which provides that the time that a desert-land entryman is hindered or prevented from making improvements on or from reclaiming the lands in his entry by reason of the fact that the land has been within a reclamation withdrawal, shall not be computed in determining the period within which he must complete his entry, is not applicable where the method of irrigation is by the use of water to be procured from wells sunk on the land, and the failure to make timely reclamation is due solely to lack of funds. *Donald K. McLennan,* 53 L.D. 21 (1930).

In certain circumstances desert-land entries in Imperial and Riverside Counties affected by the notice of December 2, 1965, repealing the suspension under *Maggie L. Havens,* A–5580 (October 11, 1923), which have been reclaimed or are in the process of being reclaimed, will be considered in accordance with the principles of equity and justice as authorized by 43 U.S.C. § 1161, even though development was not completed within the statutory life remaining in the entry after March 4, 1952. *Clifton O. Myll,* A–29920 (Supp. II), 72 I.D. 536 (1965), *vacating* 71 I.D. 458 (1964), as supplemented by 71 I.D. 486 (1964).

2. Acreage limit

A desert entryman of lands falling within a Government reclamation project who seeks to secure water for the reclamation thereof from the project is required by this section as a condition precedent to his right to water, to relinquish to the Government all of the land embraced within his entry in excess of 160 acres. Instructions, 40 L.D. 38((1912).

A desert entryman whose land is included within a reclamation project may elect t proceed with the reclamation thereof o:

his own account, and thus acquire title to all, or so much of, the land included within his entry as he can secure water to irrigate, or accept the conditions of the reclamation act and acquire title thereunder to 160 acres; but be cannot avail himself of both the reclamation project and other means of reclamation and thus acquire title to more than 160 acres of land. *Robert J. Slater,* 39 L.D. 380 (1910).

The effect of the 1930 amendment to the proviso is to require a reduction of area of the desert-land entry, in case it is to be perfected under the project, to a farm unit instead of 160 acres as originally provided and to allow the entryman a minimum period of two years within which to make such a reduction. Instructions of General Land Office (Circular No. 1229), 53 I.D. 151 (1930).

3. Assignment of entry

An unperfected desert-land entry in a reclamation project which has been reduced to 160 acres by relinquishment of the excess area under this act, and has thereby become subject to the reclamation act and qualified to take water from the project, may be assigned in part under the act of March 28, 1908 (35 Stat. 52). *George H. Upthegrove,* 40 L.D. 622 (1912).

4. Issue of patent

Under the desert-land act as modified by this act, final proof upon a desert entry within a reclamation project cannot be held to have been made and completed until the payments required by said acts and the reclamation act have been made; and the department is without authority to accept or regard final proof in such cases as complete, or to issue patent thereon, until after such full compliance with the terms of payment imposed by the reclamation act. *W. H. Skinner, et al.,* 39 L.D. 519 (1911).

When, however, the parties in interest are able to negotiate loans for amounts sufficient to pay the entire reclamation charges upon an entry, contingent upon the prompt issuance of final certificate and patent, consideration of the final proof and issuance of final certificate and patent, in cases otherwise regular, may be expedited. *W. H. Skinner, et al.,* 39 L.D. 519 (1911). See also *Leroy W. Furnas,* 38 L.D. 194 (1909).

5. Abandonment of entry

The failure of an entryman on arid lands withdrawn under the reclamation act, as susceptible of irrigation, continuously to reside upon or cultivate the land, which, though later withdrawn for irrigation works, was finally released during the time when no reclamation project had been devised or installed, cannot be deemed an abandonment; the act of June 27, 1906 (34 Stat. 520), expressly saving such cases, and the entryman having prepared the land for cultivation and established a residence thereon. *Edwards* v. *Bodkin,* 249 Fed. 562 (D.C. Cal. 1918) and 267 Fed. 1004 (D.C. Cal. 1919), *affirmed,* 265 Fed. 621 (9th Cir. 1920), *affirmed,* 255 U.S. 221 (1921).

6. Rule of approximation

Rule applied to desert entries coming within the provisions of the reclamation act that when the excess area in an entry above 160 acres is less than the deficiency would be if the smallest subdivision were excluded, it may be included in the entry; where it is greater it must be excluded. General Land Office Instructions, March 30, 1910, 38 L.D. 513.

7. Farm units

The 1930 amendment to the proviso contemplates that farm units shall be established in the case of all unpatented desert-land entries within the limits of Federal irrigation projects. C.L. 1928, January 2, 1931.

EXPLANATORY NOTE

Legislative History. H.R. 18536, Public Law 308 in the 59th Congress. H.R. Rept. No. 3717. S. Rept. No. 3897. H.R. Rept. No. 4958 (conference report).

EMPLOYMENT OF INDIAN LABOR, HIRING OF INDIAN PROPERTY, CONVEYANCE OF INDIAN LANDS, AND IRRIGATION IN PIMA INDIAN RESERVATION

[Extracts from] An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June thirtieth, nineteen hundred and eight. (Act of March 1, 1907, ch. 2285, 34 Stat. 1015)

* * * * *

[Employment of Indian labor and hiring of Indian property—Exemption.]—* * * the employment of such Indians and the hiring of their property, in connection with the construction of any irrigation project under the Reclamation Service, shall be exempt from the provisions of sections thirty-seven hundred and nine and thirty-seven hundred and forty-four, Revised Statutes. (34 Stat. 1015)

EXPLANATORY NOTE

References in the Text. R.S. § 3709, referred to in the text, generally requires advertisement for purchases and contracts for supplies and services. It is codified at 41 U.S.C. § 5. R.S. § 3744, since repealed, related to requirement that certain contracts be in writing.

* * * * *

[Irrigation for Pima Indians from Salt River project.]—The Secretary of the Interior may, in his discretion, use such part of the $300,000 heretofore appropriated for an irrigation system for the Pima Indians in the payment of such Indians' proportionate part of the construction of the Salt River project, and such funds may be transferred to the reclamation fund, to be expended by that service in accordance with its rules and regulations, the Indians to receive a credit upon the reclamation charge assessed against their lands under the Salt River project for the amount so transferred. (34 Stat. 1022)

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts of this act shown here are not codified in the U.S. Code.

Legislative History. H.R. 22580, Public Law 154 in the 59th Congress. H.R. Rept. No. 5486. S. Rept. No. 5689. H.R. Rept. No. 8069 (conference report).

APPROPRIATION FOR ELEPHANT BUTTE DAM

[**Extract from**] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and eight, and for other purposes. (Act of March 4, 1907, ch. 2918, 34 Stat. 1295)

* * * * *

[**$1,000,000 appropriated from General Treasury in accordance with convention with Mexico.**]—Toward the construction of a dam for storing and delivering sixty thousand acre-feet of water annually, in the bed of the Rio Grande, at the point where the headworks of the Acequia Madre now exist, above the city of Juarez, Mexico, as provided by a convention between the United States and Mexico, proclaimed January sixteenth, nineteen hundred and seven, one million dollars, to be available as needed and to be expended under the direction of the Secretary of the Interior in connection with the irrigation project on the Rio Grande: *Provided,* That the balance of the cost of said irrigation project over and above the amount herein appropriated shall be allotted by the Secretary of the Interior, as may be needed and as may be available from time to time, from the reclamation fund and collected from the settlers and owners of the land benefited under the provisions of the reclamation act approved June seventeenth, nineteen hundred and two, and acts supplemental thereto or amendatory thereof. (34 Stat. 1357)

* * * * *

EXPLANATORY NOTES

Not Codified. The extract from this act shown here is not codified in the U.S. Code.

Legislative History. H.R. 25745, Public Law 253 in the 59th Congress. H.R. Rept. No. 8033. S. Rept. No. 7284. H.R. Rept. No. 8174 (conference report).

IRRIGATION OF INDIAN LANDS

[Extract from] An act making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1909. (Act of April 30, 1908, ch. 153, 35 Stat. 70)

* * * * *

[Authority to arrange for reclamation of Indian lands—No lien or charge created against reserved lands—Limit of cost.]—In carrying out any irrigation project which may be undertaken under the provisions of the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), known as the reclamation act, and which may make possible, and provide for, in connection with the reclamation of other lands the irrigation of all or any part of the irrigable lands heretofore included in allotments made to Indians under the fourth section of the general allotment act, the Secretary of the Interior be, and he hereby is, authorized to make such arrangement and agreement in reference thereto as said Secretary deems for the best interest of the Indians: *Provided,* That no lien or charge for construction, operation, or maintenance shall thereby be created against any such reserved lands: *And provided further,* That to meet the necessary cost of carrying out this legislation the Secretary of the Interior is authorized to expend, out of the sum appropriated in this act for irrigation, an amount not exceeding $13,000. (35 Stat. 85; 25 U.S.C. § 382)

* * * * *

Explanatory Notes

Provision Repeated. An identical provision appears in the Act of March 3, 1909, 35 Stat. 781, 798, making appropriations for the Indian Department for the following year.

Legislative History. H.R. 15219, Public Law 104 in the 60th Congress. H.R. Rept. No. 437. S. Rept. No. 278. H.R. Rept. No. 1417 (conference report).

BOUNDARY WATERS TREATY WITH GREAT BRITAIN

Treaty between the United States and Great Britain relating to boundary waters between the United States and Canada. (Signed at Washington, January 11, 1909; ratification advised by the Senate, March 3, 1909; ratified by the President, April 1, 1910; ratified by Great Britain, March 31, 1910; ratifications exchanged at Washington, May 5, 1910; proclaimed, May 13, 1910; 36 Stat. 2448.)

The United States of America, and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable James Bryce, O. M., his Ambassador Extraordinary and Plenipotentiary at Washington;

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

PRELIMINARY ARTICLE

[**Boundary waters defined.**]—For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

ARTICLE I

[**Navigation.**]—The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be con-

structed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

ARTICLE II

[**Jurisdiction over diversions—Legal remedies.**]—Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right, which it may have, to object to any interference with or diversion of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

ARTICLE III

[**Activities affecting natural flow.**]—It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other use or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on the one side and the Government of the Dominion of Canada on the other, to undertake and carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbors, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of

the boundary waters on the other, nor are such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

ARTICLE IV

[**Commission approval required—Pollution.**]—The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

ARTICLE V

[**Niagara River.**]—The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licenses authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of twenty thousand cubic feet of water per second.

The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

ARTICLE VI

[**St. Mary and Milk Rivers.**]—The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the

Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

EXPLANATORY NOTES

Milk River Project. This article permits construction of the Milk River project, under which water of the headwaters of the St. Mary River is diverted to the North Fork of the Milk River and flows through Canada for 216 miles before returning to the United States, where it is used for irrigation.

Rules for Measurement and Apportionment. Following extensive hearings, the International Joint Commission issued an order on October 4, 1921, setting forth rules and procedures for measurement and apportionment of the waters of the St. Mary and Milk Rivers. The order is reprinted in 12 *Reclamation Record* 515 (1921). (Editor's note: I.J.C. records have not been checked to ascertain whether any further order has been issued.)

ARTICLE VII

[**International Joint Commission.**]—The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

ARTICLE VIII

[**Commission jurisdiction—Uses of water.**]—This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under articles III and IV of this treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules

or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation, including the service of canals for the purposes of navigation;

(3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal divisions cannot be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commisisoners on each side to their own Government. The High Contracting Parties shall thereupon endeavor to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

ARTICLE IX

[Questions involving the common frontier.]—The High Contracting Parties further agree that any other questions or matters of difference arising between

them involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of differences be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matters referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

ARTICLE X

[**Other questions.**]—Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or execptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure prescribed in the fourth,

fifth, and sixth paragraphs of Article XLV of The Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

ARTICLE XI

[Duplicate reports.]—A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

ARTICLE XII

[Organization and procedures of Commission.]—The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner, upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be enforced on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expenses of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expenses of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceeding before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

ARTICLE XIII

[Legislation.]—In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such agreements are understood and intended to include not only direct agreements between the

High Contracting Parties but also any mutual arrangement between the United States and the Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

ARTICLE XIV

[**Ratification.**]—The present treaty shall be ratified by the President of the United States of America, and by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

IN FAITH WHEREOF the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

DONE at Washington the 11th day of January, in the year of our Lord, one thousand nine hundred and nine.

ELIHU ROOT [SEAL]
JAMES BRYCE [SEAL]

EXPLANATORY NOTE

Editor's Note, Annotations. Annotations of opinions are not included because this Treaty does not relate primarily to activities of the Bureau of Reclamation.

PAYMENT FOR UINTAH INDIAN LANDS, STRAWBERRY VALLEY PROJECT

[Extract from] An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1911. (Act of April 4, 1910, ch. 140, 36 Stat. 269)

* * * * *

[Payment to Uintah Indians from reclamation fund for lands withdrawn for Strawberry Valley project—Installments—Reimbursement.]—The Secretary of the Interior is hereby authorized to pay from the reclamation fund for the benefit of the Uintah Indians the sum of $1.25 per acre for the lands in the former Uintah Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March third, nineteen hundred and five, chapter fourteen hundred and seventy-nine, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June seventeenth, nineteen hundred and two, in connection with the reservoir for the Strawberry Valley project. Such payment shall be made in five annual installments, and the moneys paid shall be subject to the same disposition as the proceeds of the sales of lands in the former Indian reservation. All such payments shall be included in the cost of construction of said Strawberry Valley project to be reimbursed by the owners of lands irrigated therefrom, all receipts from said lands, as rentals or otherwise, being credited to the said owners. All right, title, and interest of the Indians in the said lands are hereby extinguished, and the title, management, and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the reclamation act. (36 Stat. 285)

* * * * *

Explanatory Notes

Not Codified. The extract of this act shown here is not codified in the U.S. Code.

Background. The Comptroller of the Treasury ruled in 1907 that where, under the Act of March 3, 1905, 33 Stat. 1069, lands of the Uintah Indian Reservation have been set apart and reserved as a reservoir site for general agricultural development and subesquently have been withdrawn under section 3 of the Reclamation Act from all forms of sale and entry, the United States is liable upon an implied contract to the Indians of said Reservation for the occupancy and use of said land to the extent that the use made of them is inconsistent with the rights of the Indians to use and occupy them or leave them open to sale and entry for their benefit, and the reclamation fund is applicable to the payment thereof. 14 Comp. Dec. 49 (1907).

Legislative History. H.R 19028, Public Law 114 in the 61st Congress H.R. Rept. No. 298. S. Rept. No. 357. H.R. Rept. No. 823 (conference report).

NOTES OF OPINIONS

Mineral leasing 2
Purpose 1

1. Purpose

By this act, Congress intended to transfer to the water users the beneficial interest in the watershed lands pending the transfer of legal title. Solicitor White Opinion, M–36051 (December 7, 1950).

2. Mineral leasing

Because the Act of April 4, 1910, transfers to the water users of the Strawberry Valley project the beneficial interest in certain lands formerly included in the Uintah Indian Reservation, even though the legal title remains in the United States, these lands are not in the public-domain category, and therefore are not subject to leasing under the Mineral Leasing Act. Neither are they subject to leasing under the Mineral Leasing Act for Acquired Lands. Consequently, oil and gas leases for such lands can only be issued by the Strawberry Water Users' Association. This can be done directly or by ratification of leases previously issued by the Department. Solicitor White Opinion, M–36051 (December 7, 1950). See also M–36051 (Supp.) (November 1, 1951).

The proceeds from oil and gas leases issued by the Strawberry Water Users' Association on former Indian reservation lands should be applied in conformity with subsection I of the Fact Finders Act of 1924. Solicitor White Opinion, M–36051 (December 7, 1950).

GLACIER NATIONAL PARK

[**Extract from**] An act to establish "The Glacier National Park" in the Rocky Mountains south of the international boundary line in the State of Montana, and for other purposes. (Act of May 11, 1910, ch. 226, 36 Stat. 354)

[**Sec. 1. Glacier National Park—Rights-of-way for railways—Reclamation projects.**]—* * * the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project: * * * (36 Stat. 354; 16 U.S.C. § 161)

* * * * *

Explanatory Notes

Cross Reference, Other Statutes Authorizing the Use of National Parks for Reclamation Purposes. The Act of January 26, 1915, 38 Stat. 798, establishing the Rocky Mountain National Park; the Act of August 9, 1916, 39 Stat. 442, establishing the Lassen Volcanic National Park; and the Act of February 26, 1919, 40 Stat. 1178, establishing the Grand Canyon National Park, each contain authority for certain Reclamation activities within the parks. Extracts from each of these acts appear herein in chronological order.

Cross Reference, Water and Power Works Within National Parks or Monuments. The Act of March 3, 1921, 41 Stat. 1353, requires the consent of Congress for the construction of water and power facilities within a national park or monument. The Notes of Opinion following it should be consulted with respect to the effect of that Act. The 1921 Act appears herein in chronological order.

Legislative History. S. 2777, Public Law 171 in the 61st Congress. S. Rept. No. 106. H.R. Rept. No. 767. H.R. Rept. No. 1142 (conference report).

Note of Opinion

1. Proceeds from withdrawn lands

Proceeds from the lease of, or sale of products from, lands in Rocky Mountain and Glacier National Parks that are withdrawn under reclamation laws but are not used for constructed reclamation projects, are subject to disposition under laws relating to the national parks and are not covered into the reclamation fund, as provided by the Act of July 19, 1919. C.L. 866, January 19, 1920.

REAPPRAISAL OF UNSOLD TOWN LOTS

An act providing for the reappraisement of unsold lots in town sites on reclamation projects, and for other purposes. (Act June 11, 1910, ch. 284, 36 Stat. 465)

[**Sec. 1. Reappraisal and sale of unsold lots within reclamation town sites.**]—The Secretary of the Interior is hereby authorized, whenever he may deem it necessary, to reappraise all unsold lots within town sites on projects under the reclamation act heretofore or hereafter appraised under the provisions of the act approved April sixteenth, nineteen hundred and six, entitled "An act providing for the withdrawal from public entry of lands needed for townsite purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," and the act approved June twenty-seventh, nineteen hundred and six, entitled "An act providing for the subdivision of lands entered under the reclamation act, and for other purposes"; and thereafter to proceed with the sale of such town lots in accordance with said acts. (36 Stat. 465; 43 U.S.C. § 564)

Sec. 2. [**Terms of payment.**]—In the sale of town lots under the provisions of the said acts of April sixteenth and June twenty-seventh, nineteen hundred and six, the Secretary of the Interior may in his discretion, require payment for such town lots in full at time of sale or in annual installments, not exceeding five, with interest at the rate of six per centum per annum on deferred payments. (36 Stat. 466; 43 U.S.C. § 565)

Explanatory Notes

References in the Text. The Acts of April 16, 1906, and June 27, 1906, relating to town sites, appear herein in chronological order.

Legislative History. S. 5, Public Law 206 in the 61st Congress. S. Rept. (no number). H.R. Rept. No. 1349.

NEW MEXICO AND ARIZONA ENABLING ACT

[Extracts from] An act to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States. (Act of June 20, 1910, ch. 310, 36 Stat. 557)

* * * * *

Sec. 2. [**Constitutional convention.**]— * * * And said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State [New Mexico]—

* * * * *

[**Disclaimer of right to public or Indian lands—Taxation.**]—Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries owned or held by any Indian or Indian tribes the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; that the lands and other property belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by the State upon lands or property therein belonging to or which may hereafter be acquired by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands and other property are taxed, any lands and other property outside of an Indian reservation owned or held by any Indian, save and except such lands as have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any Act of Congress, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as Congress has prescribed or may hereafter prescribe.

* * * * *

[**Acquiescence in reclamation projects.**]—Seventh. That there be and are reserved to the United States, with full acquiescence of the State [New Mexico] all rights and powers for the carrying out of the provisions by the United States of the act of Congress entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, and acts amendatory thereof or supplementary thereto, to the same extent as if said State had remained a Territory. (36 Stat. 559)

EXPLANATORY NOTE

Companion Arizona Provisions. Identical provisions regarding the State of Arizona will be found in section 20 of the same act, at pages 569 and 570.

* * * * *

Sec. 10. [Sale of reclaimable lands—Relinquishment of irrigation work—Lieu grants.]—* * * no lands [in New Mexico] which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre: *Provided,* That said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such Government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character named and in the manner prescribed in section eleven of this Act. (36 Stat. 564)

EXPLANATORY NOTE

Companion Arizona Provision. A similar provision regarding the State of Arizona will be found in section 28 of the same act, at page 574, the only difference being found in the next to the last line of the provision. Instead of "section eleven" reference is made to section twenty-four.

NOTES OF OPINIONS

Prospecting permit 1
Status of required lands 2

1. Prospecting permit

Lands reconveyed to the United States by the State of New Mexico for reclamation purposes pursuant to the enabling act of June 20, 1910, which contains an indemnity provision as consideration for such transfers, occupy a status similar to that of withdrawn public lands rather than that of lands acquired by purchase or condemnation, and the granting of permits to prospect for oil or gas upon such lands will be dependent upon the determination of whether or not their restoration will be detrimental to the project. *J. D. Mell et al.,* 50 L. D. 308 (1924)

2. Status of required lands

The United States is not in a position to condemn land owned by the State of Arizona which is required for irrigation works in connection with a Government reclamation project because of the provision in the Arizona Enabling Act requiring the State to relinquish title to such lands to the United States. Letter of Assistant Secretary Holum to Mr. Obed M. Lassen, November 26, 1962.

[Water-power reservations—Lieu selections.]—There is hereby reserved to the United States and exempted from the operation of any and all grants made or confirmed by this act to said proposed State all land actually or prospectively valuable for the development of water powers or power for hydroelectric use or transmission and which shall be ascertained and designated by the Secretary of the Interior within five years after the proclamation of the President declaring the admission of the State; and no lands so reserved and excepted shall be subject to any disposition whatsoever by said State, and any conveyance or transfer of such land by said State or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants there be, and is hereby, granted to the proposed State an equal quantity of land to be selected

from land of the character named and in the manner prescribed in section eleven of this act. (36 Stat. 564)

EXPLANATORY NOTE

Companion Arizona Provision. A similar provision regarding the State of Arizona will be found in section 28 of the same act, at page 575, the word "exempted" in the second line reading "excepted", and reference being made to "section twenty-four" instead of to "section eleven", in the last line.

* * * * *

Sec. 24. [Additional grant for common schools—Selections in lieu of mineral, etc., lands.]—In addition to sections sixteen and thirty-six, heretofore reserved for the Territory of Arizona, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this act are hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any parts thereof, are mineral, or have been sold, reserved or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made heretofore or hereafter, and before the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, and acts amendatory thereof or supplementary thereto, are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein. * * * (36 Stat. 572)

EXPLANATORY NOTE

Companion New Mexico Provision. A substantially similar provision regarding the State of New Mexico will be found in section 6 of the same act, at page 561.

NOTES OF OPINIONS

1. Withdrawals

A reclamation withdrawal existent at the date of the grant made to the State of Arizona by section 24 of the act of June 20, 1910, of certain designated sections of public lands for school purposes, does not defeat the operation of the grant as to lands subsequently restored from the withdrawal, but the right of the State attaches to surveyed lands within the specified sections immediately upon their restoration from the withdrawal, if the State has not selected indemnity therefor. *Elizabeth J. Laurence,* 49 L.D. 611 (1923).

The right of the State of Arizona which attaches to surveyed school lands immediately upon their restoration from a reclamation withdrawal cannot be defeated by the initiation of a desert-land claim subsequently to the date of the restoration. *Elizabeth J. Laurence,* 49 L.D. 611 (1923).

Reclamation withdrawals issued prior to Arizona statehood are effective with respect to lands in sections 16 and 36 that were reserved for the benefit of the Territory of Arizona but not granted to it. Assistant Secretary Davidson Opinion, 59 I.D. 280 (1946).

Lands covered by an existing reclamation withdrawal are excepted from the grant of school lands made to the State of Arizona under section 24 of the Enabling Act. *State of Arizona,* A–26767 (September 14, 1953).

* * * * *

EXPLANATORY NOTES

Not Codified. The above provisions of this act are not codified in the U.S. Code.

Legislative History. H.R. 18166, Public Law 219 in the 61st Congress. H.R. Rept. No. 152. S. Rept. No. 454.

COAL LANDS MAY BE WITHDRAWN UNDER RECLAMATION ACT

[**Extracts from**] An act to provide for agricultural entries on coal lands. (Act of June 22, 1910, ch. 318, 36 Stat. 583)

[Sec. 1. **Agricultural entries for surface allowed—Withdrawal under reclamation act—Right to prospect, etc., for coal reserved—Limit and conditions—Perfection of present entries.**]—From and after the passage of this act unreserved public lands of the United States exclusive of Alaska which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject * * * to withdrawal under the act approved June seventeenth, nineteen hundred and two, known as the reclamation act, whenever such entry, selection, or withdrawal shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. (36 Stat. 583; 30 U.S.C. § 83)

* * * * *

Sec. 2. [**Applications to state nature of entry.**]—* * * The Secretary of the Interior, in withdrawing under the reclamation act lands classified as coal lands, or valuable for coal, with a view of securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of this act. (36 Stat. 584; 30 U.S.C. § 84)

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 13907, Public Law 227 in the 61st Congress. H.R. Rept. No. 377. S. Rept. No. 703. H.R. Rept. No. 1572 (conference report).

ASSIGNMENT OF RECLAMATION HOMESTEAD ENTRIES

An act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under original homestead act. (Act of June 23, 1910, ch. 357, 36 Stat. 592)

[**Assignment of homestead entries within reclamation projects—Patent—Conditions—Confirmation of certain assignments made between June 23, 1910, and January 1, 1913.**]—From and after the filing with the Commissioner of the General Land Office of satisfactory proof of residence, improvement, and cultivation for the five years required by law, persons who have, or shall make, homestead entries within reclamation projects under the provisions of the act of June seventeenth, nineteen hundred and two, may assign such entries, or any part thereof, to other persons, and such assignees, upon submitting proof of the reclamation of the lands and upon payment of the charges apportioned against the same as provided in the said act of June seventeenth, nineteen hundred and two, may receive from the United States a patent for the lands: *Provided,* That all assignments made under the provisions of this act shall be subject to the limitations, charges, terms, and conditions of the reclamation act: *Provided,* That in the absence of any intervening valid adverse interests any assignment made between June twenty-third, nineteen hundred and ten, and January first, nineteen hundred and thirteen, of land upon which the assignor has submitted satisfactory final proof and the assignee purchased with the belief that the assignment was valid and under the act of June twenty-third, nineteen hundred and ten, is hereby confirmed, and the assignee shall be entitled to the land assigned as under the act of June twenty-third, nineteen hundred and ten, notwithstanding that said original entry was conformed to farm units and that the part assigned was canceled and eliminated from said entry prior to the date of final proof: *Provided further,* That all entries so assigned shall be subject to the limitations, terms, and conditions of the reclamation act and acts amendatory thereof or supplemental thereto, and all of said assignees whose entries are hereby confirmed shall, as a condition to receiving patent, make the proof heretofore required of assignees. (36 Stat. 592; Act of May 8, 1916, 39 Stat. 65; 43 U.S.C. §§ 441, 442)

Explanatory Notes

Codification. The original 1910 Act is codified as section 441, title 43 of the U.S. Code. The last proviso, which was added by the Act of May 8, 1916, is codified as section 442.

1916 Amendment. The Act of May 8, 1916, 39 Stat. 65, amended the act by adding to it the second and third provisos as they appear above. The 1916 Act appears herein in chronological order.

Legislative History. S. 5048, Public Law 243 in the 61st Congress. S. Rept. No. 268. H.R. Rept. No. 937.

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1. Lands assignable

A settler on unsurveyed land in a school section, who, after survey and after withdrawal of the land under the reclamation act as susceptible of reclamation under an irrigation project, was permitted to make entry for the full area of 160 acres, must conform his entry to a farm unit, but is entitled under the provisions of this act to assign the remaining portion of his entry; and the rights acquired by such settlement and entry bar the attachment of any rights to the land on behalf of the State under its school grant. *Sarah E. Allen,* 44 L.D. 331 (1915).

Where a homestead entry within a reclamation project was, after the submission of final proof, conformed to a farm unit and canceled on relinquishment as to the remainder, prior to the act of June 23, 1910, the entry will not be reinstated as to the canceled portion for the purpose of permitting the entryman to assign such portion under the provisions of that act. *Douglas Lytle,* 42 L.D. 157 (1913).

The act has no application to entries which prior thereto had been adjusted to farm units and canceled as to the residue, after due notice; and an attempted assignment under the act of land so eliminated as residue is without authority of law and cannot be recognized. *Dennis Bell,* 41 L.D. 394 (1912).

Where, in conforming a homestead entry within a reclamation project to farm units, a legal subdivision thereof, not retained by the entryman, is, with other vacant land, embraced in a farm unit, the entryman can not thereafter, under the provisions of this act, assign such tract as a legal subdivision, for the reason that the legal subdivision, as such, no longer exists, having been merged in the farm unit; nor can he make assignment under the act of the farm unit into which such legal subdivision has been merged, for the reason that the farm unit includes land not embraced in his original entry. *Robert C. Newton, et al.,* 41 L.D. 421 (1912).

Where a homestead entry within a reclamation project was conformed to a farm unit and canceled as to the remainder, at a time when the entryman could not have made five-year proof, the entry will not thereafter be reinstated as to the canceled portion for the purpose of permitting the entryman to submit final five-year proof thereon with a view to assigning such portion under the provisions of the act of June 23, 1910. *Alexander P. Jacobs,* 40 L.D. 322 (1911).

The act of June 23, 1910, authorizing assignments of entries within reclamation projects, after the acceptance of final proof thereon, does not limit such assignments to legal subdivisions; and an entryman may thereunder assign his entry as a whole or "any part thereof." *Blanche W. Peabody,* 44 L.D. 219 (1915).

Where farm units have been established within a reclamation project, they become the smallest legal subdivisions subject to disposition, and assignments of lands within the project under the act of June 23, 1910, can thereafter be made only in accordance with such subdivisions. *Sarah S. Long,* 39 L.D. 297 (1910).

Where, prior to an exchange of reclamation farm units under the act of March 4, 1915 (38 Stat. 1215), the entryman has, in connection with the original unit, fulfilled the ordinary homestead requirements and submitted proper proof thereof, the lieu farm unit may be assigned under this act, subject to compliance with the requirements of the reclamation law as to payment, reclamation, and cultivation. *Sarah E. Lewellen,* 46 L.D. 385 (1918).

This act, which authorizes the assignment of a reclamation homestead, does not require that an assignee shall have the qualifications of a homesteader, nor does it contemplate that the assignment shall in any sense be considered as a "homestead entry", and consequently a transfer thereunder is not invalid for the reason that it embraces two incontiguous tracts. *Breipohl, Assignee of Minnick,* 48 L.D. 295 (1921).

The equitable title which vests in a homestead entryman under the Act of June 8, 1880, upon his becoming insane, is subject, where the land lies within a reclamation project, to the provisions of the Reclamation Act; and upon the establishment of farm units, patent can issue to him for only one of the farm units formed from his entry, the remaining units being subject to assignment under the Act of June 23, 1910, by his legal guardian duly authorized to act for him during his mental disability. *Julia E. Ward, et al.,* 41 L.D. 634 (1913).

An alien who has submitted five-year proof upon a reclamation homestead entry which is satisfactory except as to his citizenship qualifications may make a valid assignment of the entry under the act of June 23, 1910. *Benner Powell, Transferee,* 50 L.D. 4 (1923).

On July 2, 1902, a quarter section of land under the Salt River project was included in a first form withdrawal. On August 26, 1902, the withdrawal was changed to the second form. In 1910 homestead entry was made for the land by Emile J. Robichaux. In 1914 the north half of said quarter section was restored from reclamation withdrawal. In 1928 an assignment of the land to Edith J. Robichaux was filed in the local land office. The department held that the assignment was proper, it being stated that prior to the establishment of a farm unit for the south half of the tract neither the entryman nor his assignee could be required to relinquish any part of the entry. In re *Edith J. Robichaux,* A–12228, (February 23, 1929).

The Act of April 21, 1928, as amended, provides that the holder of a tax title on a reclamation homestead entry is entitled to the benefits of an assignee of such an entry under the Act of June 23, 1910; and the privileges under the Act of June 23, 1910, which are granted to the holder of a tax title under the Act of April 21, 1928, as amended, are not extinguished by the elimination of the entry from the reclamation withdrawal after the interest of the holder of the tax title was acquired. *Ralph O. Baird,* A–26773 (November 3, 1953).

2. Fraudulent assignment

The land department has jurisdiction to determine the truth of a charge that an assignment of a homestead entry within a reclamation project, under the act of June 23, 1910, was obtained by fraud, and if found to have been so obtained, to annul the assignment. *Delano* v. *Messer et al.,* 44 L.D. 199 (1915).

3. Qualifications of assignees—General

To entitle one to take by assignment under the Act of June 23, 1910, he must show that he has not acquired title to and is not claiming any other farm unit or entry under the Reclamation Act. *Sarah S. Long,* 39 L.D. 297 (1910).

It is not necessary that assignees of homestead entries within reclamation projects under the Act of June 23, 1910, be qualified to make entry under the general homestead laws. *Sadie A. Hawley,* 43 L.D. 364 (1914).

An unqualified assignee of a reclamation homestead entry will be given a reasonable time within which to assign the entry to a qualified holder as required by Paragraph 41 of Circular of May 18, 1916 (45 L.D. 385) and failure to do so will subject the entry to cancellation. Decision, A–22739 (March 28, 1941).

The owner of a homestead entry under the Reclamation Act is not qualified to take by assignment another such entry. Instructions, 46 L.D. 227 (1917).

The limitations imposed on assignments of reclamation homestead entries are limitations, not on the qualifications of the assignee, but on the right of the assignee to receive water. *Amos N. Kelly,* 50 L.D. 268 (1924).

One who acquires lands of a reclamation homestead entryman at a tax sale pursuant to the Act of April 21, 1928, as amended, is subject to the provisions of reclamation law including the excess lands provisions. This result follows from the provisions of the 1928 Act that the holder of such tax deed or tax title is entitled to the rights and privileges of an assignee under the Act of June 23, 1910; and the latter Act makes the assignee "subject to the limitations, charges, terms and conditions of the reclamation act." *James P. Balkwill,* 55 I.D. 241 (1935).

4. —Residence

An assignee under the Act of June 23, 1910, of a homestead entry within a reclamation project, made under the provisions of the Reclamation Act, is not required to reside upon the land or in the vicinity thereof as a condition prerequisite to obtaining a patent and water right. Instructions, 43 L.D. 456 (1914).

The residence requirements provided for in section 5 of the Reclamation Act of June 17, 1902, apply to all persons acquiring by assignment water-right contracts with the United States, unless prior to such assignment the final water-right certificate contemplated by section 1 of the Act of August 9, 1912, has been issued, in which event the land may be freely alienated, subject to the lien of the United States. *H. G. Colton,* 43 L.D. 518 (1915).

5.—Married women

A married woman, otherwise qualified, is competent to take an assignment of lands within a reclamation project under the Act of June 23, 1910. *Sadie A. Hawley,* 43 L.D. 364 (1914), overruling *Robert C. Newlon,* 41 L.D. 421 (1912) and *Noah A. Snook,* 41 L.D. 428 (1912).

A married woman may, under the act of June 23, 1910, take an assignment of a homestead entry made under the reclamation act, upon which satisfactory final proof has been made, showing residence and cul-

tivation for the required time, but upon which not all of the water-right charges have been paid, provided the laws of the State or Territory in which the entry is located permit a married woman to purchase and hold real estate as a *femme sole;* but she will be required to show, in addition to the usual requirements in such cases; that the purchase is made with her own separate money, in which her husband has no interest or claim; that the assignment is not taken for the use or benefit of her husband, and that she has no agreement or understanding by which any interest therein will inure to his benefit; and that the water right thus sought by assignment, together with such other water rights as may be already held in possession by such assignee, will not aggregate water rights for more than 160 acres of land, furnished under the reclamation act. Instructions, 39 L.D. 504 (1911).

6. —Minors

Minors are not qualified to take by assignment farm units upon which reclamation charges have not been paid in full. Instructions, 45 L.D. 22 (1916).

7. —Aliens

The Act of June 23, 1910, authorizing assignments of homestead entries within reclamation projects after the submission of satisfactory final proof, does not limit such assignments to citizens of the United States; and assignment under that act may be made and patent issued to an alien, the rights thereby acquired depending upon the statutes of the State respecting the rights of aliens to acquire and hold real property. Instructions, 44 L.D. 202 (1915).

An alien who has submitted five-year proof upon a reclamation homestead entry which is satisfactory except as to his citizenship qualifications may make a valid assignment of the entry under the Act of June 23, 1910. *Benner Powell, Transferee,* 50 L.D. 4 (1923).

8.—Corporation

To entitle a corporation to take an assignment of a portion of a reclamation entry under the act of June 23, 1910, it must show that it is not claiming any other farm unit or entry under the reclamation act, and that each of its stockholders is duly qualified to take an assignment under that act, notwithstanding the entryman from whom the corporation is seeking to take the assignment has complied with the provisions of the homestead law as to residence, improvement, and cultivation upon the land involved. *Pleasant Valley Farm Co.,* 42 L.D. 253 (1913).

In decision A–16335, dated February 8, 1932, the Assistant Secretary reversed the decision of the Commissioner of the General Land Office in the case of the *Great Western Insurance Co.,* a corporation, assignee of reclamation homestead entry for lands in the Cheyenne, Wyo., land district. It was found that the appellant company did not take the assignment and apply for a water right with intention of holding and cultivating the land in competition with individuals or families, and it was believed that the recognition of the assignment and the granting of a water right to the company would not be in violation of the spirit of the regulations of July 11, 1913, there being no statute which prohibits a corporation from taking a reclamation entry by assignment.

The Grand Valley Water Users Association bought in at tax sale three farm units for which it requested patents. The Solicitor held that a water users association may receive patent to one farm unit if it shows it desires patent only for security purposes and that it owns no other units on which building charges remain unpaid. It was also held that an association may bid in land at tax sales without restriction as to area in order to protect its liens, if the interest so acquired is reassigned within a reasonable time to qualified entrymen. *James P. Balkwill,* 55 I.D. 241 (1935).

9. Assignment, what constitutes

The purchaser at sheriff's sale of the land embraced in a homestead entry within a Federal irrigation project is an assignee of such entry under this act, if otherwise qualified, as of the date of the sheriff's sale, even though the land be eliminated from the project prior to delivery of the sheriff's deed. *Marshall Humphrey,* 46 L.D. 370 (1918).

Where a reclamation homestead entryman dies after he has offered satisfactory final proof the entry becomes a part of the assets of his estate, and when duly sold as such by the administrator, the purchaser, if otherwise qualified, will be recognized as the assignee of the entryman under the act of June 23, 1910. *Edward Pierson,* 47 L.D. 625 (1921).

The departmental regulations relating to an assignment of a homestead entry, within a reclamation project, contemplate that such assignment shall be submitted to the General Land Office for its acceptance or denial and where a party chooses, with the view to effecting a transfer in derogation of law, to proceed contrary to the regulations, he must abide by the consequence of such attempted evasion when the transaction is brought to the attention of the land department by contest; and a breach of the law cannot be excused on the ground that recognition of the transfer had not been sought. A home-

stead entry, within a reclamation project, upon which the ordinary requirements of the homestead laws have been completed, is a property subject to mortgage which cannot be defeated by acts of the entryman or his assignee, and such entry cannot be canceled upon contest in derogation of the right of the mortgagee to comply with the further provisions of the law looking to completion of title. *Watson* v. *Barney et al.*, 48 L.D. 325 (1921).

One who purchases a reclamation homestead entry at a mortgage foreclosure sale upon which satisfactory final five-year proof had previously been submitted is entitled to have the foreclosure deed treated as an assignment of the entry under the act of June 23, 1910. *Benner, Powell, Transferee,* 50 L.D. 4 (1923).

10. Final proof

The departmental rule that where a desert-land entry upon which final certificate had not issued is acquired by an assignee through mesne transfers, that assignee, if qualified, is entitled to hold the entry, although the intervening assignees were not qualified to take an assignment, is applicable prior to payment of final commissions to reclamation homestead entries upon which final proof of compliance with the ordinary requirements of the homestead law has been submitted and accepted. *Amos N. S. Kelly,* 50 L.D. 268 (1924).

11. Taxation

Permission to entrymen within reclamation projects, under this act, to assign their entries, and by circular of the Secretary of the Interior, to mortgage their interests, does not establish that the equitable title is thereby vested in the entryman, so as to be subject to taxation by the State. *Irwin* v. *Wright,* 258 U.S. 219 (1922).

Certainly the equitable title to lands within a reclamation project cannot pass to the entryman, so as to subject it to State taxation before the size of the farm unit is determined by the Secretary of the Interior, since until such time it cannot be determined how much land the entryman will receive. Idem.

ADVANCES TO THE RECLAMATION FUND

An act to authorize advances to the "reclamation fund," and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes. (Act of June 25, 1910, ch. 407, 36 Stat. 835)

[Sec. 1. Advances to reclamation fund to complete projects—Not to exceed $20,000,000—Appropriation—Reimbursement—Board of Engineers to report upon projects—Approval by President—New projects not included.]—To enable the Secretary of the Interior to complete Government reclamation projects heretofore begun, the Secretary of the Treasury is authorized, upon request of the Secretary of the Interior, to transfer from time to time to the credit of the reclamation fund created by the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June seventeenth, nineteen hundred and two, such sum or sums, not exceeding in the aggregate $20,000,000, as the Secretary of the Interior may deem necessary to complete the said reclamation projects, and such extensions thereof as he may deem proper and necessary to the successful and profitable operation and maintenance thereof or to protect water rights pertaining thereto claimed by the United States, provided the same shall be approved by the President of the United States; and such sum or sums as may be required to comply with the foregoing authority are hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided,* That the sums hereby authorized to be transferred to the reclamation fund shall be so transferred only as such sums shall be actually needed to meet payments for work performed under existing law: *And provided further,* That all sums so transferred shall be reimbursed to the Treasury from the reclamation fund, as hereinafter provided: *And provided further,* That no part of this appropriation shall be expended upon any existing project until it shall have been examined and reported upon by a board of engineer officers of the Army, designated by the President of the United States, and until it shall be approved by the President as feasible and practicable and worthy of such expenditure; nor shall any portion of this appropriation be expended upon any new project. (36 Stat. 835; 43 U.S.C. § 397)

EXPLANATORY NOTE

Report of Board of Army Engineers. This report, made in pursuance of the above section, bears date November 28, 1910, and is published under the title "Fund for Reclamation of Arid Lands" as House Document No. 1262, Sixty-first Congress, third session.

Sec. 2. **[Issue of certificates of indebtedness authorized—Disposal—Aggregate limited—Exempt from taxation—Appropriation for preparing.]**—For the purpose of providing the Treasury with funds for such advances to the reclamation fund, the Secretary of the Treasury is authorized to issue certificates of indebtedness of the United States in such form as he may prescribe and in denominations of $50, or multiples of that sum; said certificates to be redeemable at the

option of the United States at any time after three years from the date of their issue and to be payable five years after such date, and to bear interest, payable semiannually, at not exceeding three per centum per annum; the principal and interest to be payable in gold coin of the United States. The certificates of indebtedness herein authorized may be disposed of by the Secretary of the Treasury at not less than par, under such rules and regulations as he may prescribe, giving all citizens of the United States an equal opportunity to subscribe therefor, but no commission shall be allowed and the aggregate issue of such certificates shall not exceed the amount of all advances made to said reclamation fund, and in no event shall the same exceed the sum of $20,000,000. The certificates of indebtedness herein authorized shall be exempt from taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority; and a sum not exceeding one-tenth of one per centum of the amount of the certificates of indebtedness issued under this act is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same. (36 Stat. 835; 43 U.S.C. § 398)

EXPLANATORY NOTE

Certificates Not Issued. The Treasury Department advises that the Secretary of the Treasury was not required to issue any certificates of indebtedness to secure funds for the purpose of this act, that the funds were taken from the general fund of the Treasury, and the general fund was not depleted to the point where the Secretary of the Treasury had to issue the certificates of indebtedness authorized in Sec. 2.

Sec. 3. [One-half of reclamation receipts to be paid into the Treasury.]—Beginning five years after the date of the first advance to the reclamation fund under this act, fifty per centum of the annual receipts of the reclamation fund shall be paid into the general fund of the Treasury of the United States until payments so made shall equal the aggregate amount of advances made by the Treasury to said reclamation fund, together with interest paid on the certificates of indebtedness issued under this act and any expense incident to preparing, advertising, and issuing the same. (36 Stat. 836)

EXPLANATORY NOTES

Codification. This section originally was codified as section 399, title 43, U.S. Code, but was omitted after enactment of the Hayden-O'Mahoney Amendment in 1938.

1917 Amendment. The Act of June 12, 1917, 40 Stat. 149, amends this section by providing that reimbursement be made from the reclamation fund at the rate of $1,000,000 annually beginning July 1, 1920. The Act appears herein in chronological order.

Supplementary Provisions: Moratoria on Repayment, Final Reimbursement. The Act of February 6, 1931, contains a provision granting a moratorium of two years in repayment of money advanced to the reclamation fund by the Act of June 25, 1910, as amended by the above provision. Further postponement of repayment until 1938 was made by the Acts of April 1, 1932, March 3, 1933, and June 22, 1936. A complete reimbursement to the Treasury of funds advanced to the Reclamation Fund under the provisions of the Acts of June 25, 1910, and March 3, 1931, as amended, was effected by the Act of May 9, 1938. Each of these provisions, except that contained in the 1936 Act, appears herein in chronological order.

Sec. 4. [Limitation on use of fund—Order of President required for new projects.]—All money placed to the credit of the reclamation fund in pursuance

of this act shall be devoted exclusively to the completion of work on reclamation projects heretofore begun as hereinbefore provided, and the same shall be included with all other expenses in future estimates of construction, operation, or maintenance, and hereafter no irrigation project contemplated by said act of June seventeenth, nineteen hundred and two, shall be begun unless and until the same shall have been recommended by the Secretary of the Interior and approved by the direct order of the President of the United States. (36 Stat. 836; 43 U.S.C. §§ 400, 413)

EXPLANATORY NOTE

Codification. The clause beginning "hereafter no irrigation project" is codified as section 413, title 43, U.S. Code.

Sec 5. [No entries allowed until announcement as to units, charges and date water can be applied—Entries prior to June 25, 1910—Disposal of relinquished lands.]—No entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry, and water is ready to be delivered for the land in such unit or some part thereof and such fact has been announced by the Secretary of the Interior: *Provided,* That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished, in whole or in part, the lands so relinquished shall be subject to settlement and entry under the reclamation law. (36 Stat. 836; Act of February 18, 1911, 36 Stat. 917; § 10, Act of August 13, 1914, 38 Stat. 689; 43 U.S.C. §§ 436, 437)

EXPLANATORY NOTES

1915 Modification. The Act of March 4, 1915, 38 Stat. 1215, authorizes the selection by entrymen of lieu farm units in cases of nonirrigability notwithstanding the provisions of section 5 of this Act. The 1915 Act appears herein in chronological order.

1914 Amendment. Section 10 of the Act of August 13, 1914, 38 Stat. 689, the Reclamation Extension Act, amended the Act of February 18, 1911, which was an amendment of section 5, so that the section read as it appears above. Section 5 originally read as follows: "No entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and made public announcement of the same." Both the 1911 and 1914 Acts appear herein in chronological order.

1911 Amendment. The Act of February 18, 1911, 36 Stat. 918, amended section 5 by adding to the original text of the section the following proviso: "*Provided,* That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an act entitled 'An act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)." The 1911 Act appears herein in chronological order.

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1. Purpose

This act was designed to withhold lands within a reclamation project from entry of every character until public announcement of the date when the water could be applied. *Roberts* v. *Spencer,* 40 L.D. 306 (1911).

2. Existing rights

Existing entries are not affected by this act, and where settlements have been effected in good faith, prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement will be allowed to complete entry thereof in the manner and within the time provided by law. General Land Office Instructions, 39 L.D. 202 (1910).

A homestead entry of land within a reclamation project, allowed subsequent to this act, upon an application in all respects regular filed prior to the act, and upon which action was delayed only because of pressure of business in the local office, is not in violation of the provisions of this section. *Charles C. Conrad,* 39 L.D. 432 (1910).

3. Contests

A successful contestant of an entry within a reclamation withdrawal is not barred of his preference right by this section. The section has the effect to postpone the exercise of such right until the project is so far completed that water can be applied to the land and the Secretary of the Interior has made public announcement of that fact. *Joseph F. Gladieux,* 41 L.D. 286 (1912).

Where prior to the regulations of October 15, 1910 (39 L.D. 296), a contest was properly initiated, under then-existing laws and regulations, against an entry within a second-form withdrawal under the reclamation act, and the entry was canceled as a result of such contests after the passage of this act, either prior or subsequent to October 15, 1910, the contestant thereby acquired a preference right of entry to the lands involved, notwithstanding the limitations contained in this act, as to entries hereafter allowed for lands within second-form withdrawals, and notwithstanding the said regulations of October 15, 1910, which preference right he is entitled to exercise upon the lands again becoming subject to entry; but contests heretofore dismissed under said regulations will not be reopened where third parties have acquired rights under such adjudications. *Long* v. *Lee,* 41 L.D. 326 (1912).

4. Additional entry

Under the Act of June 25, 1910, as subsequently amended, lands reserved for irrigation purposes are not subject to settlement or entry until the Secretary of the Interior shall have established the unit of acreage per entry and announced that water is ready to be delivered, and no exception to the rule can be made in favor of an applicant who seeks to make an additional entry of such lands in the exercise of a preference right acquired by contest. The prior holding in *Henry W. Williamson,* 38 L.D. 233 (1909), that a person holding an original homestead entry for less than 160 acres could be permitted to make additional homestead entry for land embraced in a second-form withdrawal where farm units had not been established is no longer applicable under the Act of June 25, 1910. *Bert Scott,* 48 L.D. 85 (1921); see also 48 L.D. 113.

5. Withdrawals

In letter of July 8, 1933, to the Commissioner of Reclamation the Secretary ruled that until lands have been opened to entry there is no reason why they may not be leased, the form of withdrawal being unimportant. Statement was made that the distinction formerly made between the two classes of withdrawals was greatly modified by the act of June 25, 1910, which provided that no entry should be made upon lands withdrawn under the reclamation act until the unit of acreage has been established, water charges fixed, and water has become available, etc. Decision re Milk River project.

The distinction between "forms of withdrawals", that is, between "first form withdrawals" (for irrigation works) and "second form withdrawals" (for irrigable land), was made administratively to recognize the distinction that in the latter case, irrigable lands so withdrawn under section 3 of the Reclamation Act could be entered under the homestead laws in advance of the availability of water from the project. This distinction was no longer pertinent after the enactment of section 5 of the Act of June 25, 1910, 36 Stat. 835, which precluded entry until after the Secretary had established the unit of acreage, fixed the water charges and the date of water availability, and made public announcement of the same. For this reason, the Bureau of Reclamation has abandoned the use of second form withdrawals. Associate Solicitor Fisher Opinion, M-36433 (April 12, 1957), in re disposal of lands, Guernsey Reservoir, North Platte Project.

6. Relinquishment—Purpose of proviso

The proviso applies to all entries embracing lands reserved for irrigation purposes made prior to June 25, 1910, which have been or may be relinquished, where the

entrymen, by means of the provisions of the Act of June 25, 1910, prohibiting entries for such lands until public notice of water charges, etc., has been issued, have been or may be prevented from realizing the value of the improvements placed by them on their entries by selling such improvements to others desiring to make entry for the lands upon relinquishment of the existing entries therefor. *Fredrek Steebner,* 43 L.D. 263 (1914).

7. —What constitutes

The proviso contemplates only entries legally made prior to the Act of June 25, 1910, and afterwards relinquished, and has no application where the former entry was one in-form only and in legal contemplation a mere nullity, having been erroneously allowed while the lands were embraced in a first form wtihdrawal under the reclamation act. *Annie G. Parker,* 40 L.D. 406 (1911).

The proviso has no application where cancellation of the entry was the result of a contest and not of a relinquishment. *Fred V. Hook,* 41 L.D. 67 (1912).

The proviso is applicable only to entries under the reclamation act and cannot be invoked as to entries canceled prior to the reclamation act or made before, and afterwards canceled for fraud. *Ethel M. Catron,* 42 L.D. 7 (1913).

Where a homestead entry covering lands within a reclamation withdrawal is conformed to a farm unit, the lands thereby uncovered are not relinquished within the meaning of the proviso and are not subject to entry thereunder. *Robert H. Williams,* 41 L.D. 68 (1912).

This homestead entry of lands within a reclamation withdrawal, allowed after the entryman had in good faith purchased the relinquishment of a prior entry for the same land under this act, is permitted to remain intact, notwithstanding the prior entry had been canceled though not noted as canceled upon the records of the local office at the time the relinquishment was filed and the entry in question allowed, it appearing that the transaction was in entire good faith and neither the prior entryman, the present entryman, nor the local officers had actual knowledge of the cancellation at that time. *Fredrek Steebner,* 43 L.D. 263 (1914).

8. —Application of proviso

The right to enter lands withdrawn under the reclamation act for purposes of irrigation, if the lands were covered by a prior entry, which has since been relinquished, given by act of June 25, 1910, section 5, as amended by act of August 13, 1914, section 10, is not limited to those in privity with the original entryman, through purchase of the relinquishment or otherwise. *United States* v. *Fall,* 276 Fed. 622 (D.C. Cir. 1921).

The proviso of act of June 25, 1910, section 5, as amended by act of August 13, 1914, section 10, making lands reserved for irrigation purposes and relinquished from prior entries subject to entry under the reclamation act, applies only to lands withdrawn under reclamation act of June 17, 1902, section 3, as susceptible of irrigation under a proposed project, and not to lands withdrawn under the latter act, as required for the construction of irrigation works. Ibid.

The proviso has reference only to lands covered by second-form withdrawals, and has no application to lands withdrawn under the first form. *Annie G. Parker,* 40 L.D. 406 (1911); *Ernest Farrington,* 40 L.D. 627 (1912); *Robert H. Williams,* 41 L.D. 68 (1912); Instructions, 47 L.D. 625 (1921).

The proviso to section 10 of the act of August 13, 1914, which amended section 5 of the act of June 25, 1910, does not contemplate that lands entered prior to June 25, 1910, and relinquished subsequently to the creation of a second form withdrawal shall be subject to entry before the establishment of farm units and announcement of the availability of water, except by one who had acquired an equity in the relinquished entry. *William Warnke,* 48 L.D. 55 (1922).

Sec. 6. [Former provision for expenditures repealed.]—Section nine of said act of Congress, approved June seventeenth, nineteen hundred and two, entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," is hereby repealed. (36 Stat. 836)

EXPLANATORY NOTE

Legislative History. H.R. 18398, Public Law 289 in the 61st Congress. H.R. Rept. No. 1635. H.R. Rept. No. 1729 (conference report).

WITHDRAWAL OF PUBLIC LANDS BY THE PRESIDENT

An act to authorize the President of the United States to make withdrawals of public lands in certain cases. (Act of June 25, 1910, ch. 421, 36 Stat. 847)

[Sec. 1. Temporary withdrawals of public lands by the President for irrigation or other public purposes.]—The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including the District of Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an act of Congress. (36 Stat. 847; 43 U.S.C. § 141)

Sec. 2. [Mining laws applicable.]—All lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals * * *. (36 Stat. 847; Act of August 24, 1912, 37 Stat. 497; 43 U.S.C. § 142)

EXPLANATORY NOTES

Codification. The last proviso of section 2, which is not shown, provides that no additional forest reserves shall be established in certain western States without an Act of Congress. It is also codified in section 471, title 16, U.S. Code.

1912 Amendment. The Act of August 24, 1912, 37 Stat. 497, substituted "metalliferous minerals" for "minerals other than coal, oil, gas and phosphate."

Sec. 3. [Reports of withdrawals to Congress.]—*Repealed.*

EXPLANATORY NOTES

1960 Amendment. The Act of June 29, 1960, 74 Stat. 245, repealed section 3, which read: "The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals." The 1960 Act appears herein in chronological order.

Supplementary Provision: Sale of Withdrawn Lands. The Act of January 26, 1921, 41 Stat. 1089, 43 U.S.C. §§ 145–47, provides for the sale, when no longer needed, of lands withdrawn pursuant to the above Act.

Popular Name. This Act is popularly known as the Pickett Act.

Delegation of Authority. Executive Order No. 10355 of May 26, 1952, 43 U.S.C. § 141 note, 17 F.R. 4831, delegates the authority of the President under this Act to the Secretary of the Interior, subject to certain conditions. It supersedes Executive Order No. 9337 of April 24, 1943.

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. H.R. 24070, Public Law 303 in the 61st Congress. H.R. Rept. No. 983.

NOTES OF OPINIONS

General authority of President 1
Power site withdrawals 2

1. General authority of President

The President's power to make temporary withdrawals of lands from entry is not negatived by this Act. *United States* v. *Midwest Oil Co.*, 236 U.S. 459 (1915).

The President is authorized to withdraw and reserve public lands for public uses freed of the operation of the mining laws

under his general authority to withdraw lands notwithstanding the provisions of this Act. 40 Op. Atty. Gen. 71 (1941).

A petition for the restoration to mineral entry of land withdrawn for reclamation purposes under section 3 of the Reclamation Act and subsequently also withdrawn by Presidential Executive Order as part of the Imperial National Wildlife Refuge, is properly denied when mining operations would interfere with the purposes of the refuge, even though the Bureau of Reclamation has no objection to such restoration, and even though the Executive Order cites the Act of June 25, 1910, which extends the mining laws to lands withdrawn thereunder. The President has inherent authority to withdraw public lands for public purposes apart from the statutory authority vested in him by the 1910 Act. *P&G Mining Company*, A–27829, 67 I.D. 217 (1960).

2. Power site withdrawals

A withdrawal of public lands for power-site purposes under the provisions of the Act of June 25, 1910, is a reservation within the meaning of the Act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes. Instructions, 47 L.D. 361 (1920).

RESERVATION OF LANDS IN INDIAN RESERVATIONS FOR POWER AND IRRIGATION PURPOSES

[Extracts from] An act to provide for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for the leasing of all allotments, and for other purposes. (Act of June 25, 1910, ch. 431, 36 Stat. 855)

* * * * *

Sec. 13. [Indian reservations—Power, etc., sites may be reserved—Where no project authorized.]—The Secretary of the Interior is hereby authorized, in his discretion, to reserve from location, entry, sale, allotment, or other appropriation any lands within any Indian reservation valuable for power or reservoir sites, or which may be necessary for use in connection with any irrigation project heretofore or hereafter to be authorized by Congress: *Provided,* That if no irrigation project shall be authorized prior to the opening of any Indian reservation containing such power or reservoir sites the Secretary of the Interior may, in his discretion, reserve such sites pending future legislation by Congress for their disposition. (36 Stat. 858; § 1(13), Act of June 29, 1960, 74 Stat. 248; 43 U.S.C. § 148)

Explanatory Notes

1960 Amendment. The Act of June 29, 1960, 74 Stat. 245, repealed the last clause of section 13 which followed the word "disposition" in the text and read ", and he shall report to Congress all reservations made in conformity with this act." The 1960 Act appears herein in chronological order.

Supplementary Provision: Rights of Way for All Purposes. The Act of February 5, 1948, authorizes the Secretary of the Interior to grant rights of way on Indian lands for all purposes. The Act appears herein in chronological order.

Note of Opinion

1. Application

The Secretary of the Interior has authority under section 13 only to reserve a reservoir and dam site within an Indian reservation from disposition for any other purpose. The section does not vest in the Secretary any power to acquire for the United States the title to any such site. Solicitor White Opinion, M–35093 (March 28, 1949).

Sec. 14. [Trust allotments—Canceling patents in power sites, etc.—Reimbursing Indians—Lieu allotments.]—The Secretary of the Interior, after notice and hearing, is hereby authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress: *Provided,* That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: *Provided further,* That any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project. (36 Stat. 859; 25 U.S.C. § 352)

NOTE OF OPINION

1. Trust patents

Trust patents may be issued embracing lands withdrawn by the Secretary under section 13 where no irrigation project has been authorized. They are to be subject to the provisions of this section which empower him to cancel such patents should the lands be required for the purposes for which they were reserved, in which event the allottees would be reimbursed for their improvements out of funds appropriated for the construction of the project. Solicitor Finney Opinion, 53 I.D. 680 (1932).

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 24992, Public Law 313 in the 61st Congress. H.R. Rept. No. 1135. S. Rept. No. 868. H.R. Rept. No. 1727 (conference report).

LEAVE OF ABSENCE TO HOMESTEADERS

An act granting leaves of absence to homesteaders on lands to be irrigated under the provisions of the act of June 17, 1902. (Act of June 25, 1910, ch. 432, 36 Stat. 864)

[Certain homesteaders allowed leave until water is turned on—Required residence not lessened.]—All qualified entrymen who have heretofore made bona fide entry upon lands proposed to be irrigated under the provisions of the act of June seventeenth, nineteen hundred and two, known as the national irrigation act, may, upon application and a showing that they have made substantial improvements, and that water is not available for the irrigation of their said lands, within the discretion of the Secretary of the Interior, obtain leave of absence from their entries until water for irrigation is turned into the main irrigation canals from which the land is to be irrigated: *Provided,* That the period of actual absence under this act shall be deducted from the full time of residence required by law. (36 Stat. 864)

Explanatory Notes

Codification. This Act originally was codified as section 444, title 43, of the U.S. Code, but has since been omitted.

Supplementary Provision, Relief When Water Unavailable. The Act of April 30, 1912, suspends residency and improvement requirements for qualified entrymen during period that water is unavailable from reclamation project. The Act appears herein in chronological order.

Legislative History. S. 1874, Public Law 314 in the 61st Congress. S. Rept. No. 323. H.R. Rept. No. 806.

Notes of Opinions

Leave of absence 3
Residence 1
Seven year period suspended 2

1. Residence

While this act was intended to relieve entrymen who had made entry for lands within a reclamation project prior to the passage of said act, and prior to the applying of water by the project, from the necessity of maintaining residence upon the land "until water for irrigation is turned into the main irrigation canal from which the land is to be irrigated", it condones the prior failure of the entryman to maintain residence where water has not been available for irrigation of the land, and suspends the running of the seven-year limitation of the life of the entry by allowing the period of residence to commence from the time when the water is made available. *Roberts* v. *Spencer,* 40 L.D. 306 (1911).

By virtue of the Acts of June 25, 1910, 36 Stat. 864, and April 30, 1912, 37 Stat. 105, one who made entry of lands within a reclamation project prior to the Act of June 25, 1910, and in good faith established residence, is not subject to contest for failure to maintain residence prior to the time water is available for irrigation of the land, provided residence is established and application for water right filed within 90 days after the issuance of public notice fixing the date when water will be available; and where an entrywoman marries after establishing residence, and removes to the unperfected homestead entry of her husband, she does not thereby forfeit the protection accorded by these acts, where after final proof upon her husband's claim she returns and reestablishes residence upon her own claim within the time fixed therefor. *Jensen* v. *Kenoyer,* 42 L.D. 528 (1913).

This act applies to all bona fide qualified entrymen who made entry prior to the act and have made substantial improvements, regardless of whether they have established and maintained residence. *John William Roatcap,* 42 L.D. 422 (1913).

2. Seven year period suspended

By virtue of the provisions of this act, a homestead entry within a reclamation project is not limited to the seven-year period

fixed for consummation of ordinary homestead entries elsewhere on the public domain, but may be completed within the time fixed in the public notice for compliance with the requirements of the reclamation act, unless the project be abandoned, notice of which abandonment will terminate the suspension of the seven-year period, and thereafter the entry will fall within the general class of homestead entries and be governed by the general homestead laws. *John H. Haynes,* 40 L.D. 291 (1911).

3. Leave of absence

Leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated, or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry. General Land Office Instructions, 39 L.D. 202 (1910).

Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment and, by the necessary implication of the act, the period of seven years within which the entryman is required to submit final five-year proof will be extended and the entry will not be subject to cancellation for failure to submit proof until seven years from the date of entry, exclusive of the period for which leave of absence may be granted. General Land Office Instructions, 39 L.D. 202 (1910).

PROTECTION OF PROPERTY ALONG COLORADO RIVER

A Joint Resolution making an appropriation to permit the President to protect lands and property in Imperial Valley, California. (Act of June 25, 1910, Pub. Res. 43, 36 Stat. 883)

[**Protection of property along Colorado River.**]—The sum of one million dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended by the President for the purpose of protecting the lands and property in the Imperial Valley and elsewhere along the Colorado River, within the limits of the United States, against injury or destruction by reason of the changes in the channels of the Colorado River, and the President is authorized to expend any portion of such money within the limits of the Republic of Mexico as he may deem proper in accordance with such agreements for the purpose as he may make with the Republic of Mexico. (36 Stat. 883)

Explanatory Notes

Not Codified. This Resolution is not codified in the U.S. Code.

Southern Pacific Company Claim for Closing Earlier Break in Colorado River. The Act of May 26, 1924, 43 Stat. 171, conferred jurisdiction on the Court of Claims to ascertain the cost to the Southern Pacific in 1906–07 of closing and controlling the break in the Colorado River, and to render judgment therefor. The Court of Claims awarded the Southern Pacific Company the costs and amounts expended by it in closing and controlling the break. *Southern Pacific Company* v. *United States,* 68 Ct. Cls. 223 (1929).

Legislative History. S.J. Res. 120, Public Resolution 43 in the 61st Congress.

SALE OF SURPLUS ACQUIRED LANDS

An act to provide for the sale of lands acquired under the provisions of the reclamation act and which are not needed for the purposes of that act. (Act of February 2, 1911, ch. 32, 36 Stat. 895)

[**Sec. 1. Sale of lands not needed for irrigation works—Appraisal—Sale at public auction.**]—Whenever in the opinion of the Secretary of the Interior any lands which have been acquired under the provisions of the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), commonly called the "reclamation act," or under the provisions of any act amendatory thereof or supplementary thereto, for any irrigation works contemplated by said reclamation act are not needed for the purposes for which they were acquired, said Secretary of the Interior may cause said lands, together with the improvements thereon, to be appraised by three disinterested persons, to be appointed by him, and thereafter to sell the same for not less than the appraised value at public auction to the highest bidder, after giving public notice of the time and place of sale by posting upon the land and by publication for not less than thirty days in a newspaper of general circulation in the vicinity of the land. (36 Stat. 895; 43 U.S.C. § 374)

Explanatory Notes

Codification. All three sections of this Act are codified as section 374, title 43, of the U.S. Code.

Cross Reference, Sale of Property Appraised at Less than $300. Section 11 of the Act of August 4, 1939, the Reclamation Project Act, provides that where property to be sold under this Act and the Act of May 20, 1920, is appraised at not to exceed $300, the property may be sold privately or publicly without compliance with the provisions of this Act and the 1920 Act as to notice, publication and mode of sale. Both the 1920 and 1939 Acts appear herein in chronological order.

Notes of Opinions

Interests in land 2
Private lands 1
Publication of notice of sale 3

1. Private lands

In the case of private lands acquired by purchase or condemnation said lands are from the outset definitely segregated from the public domain. The cost of their acquisition must be paid from the reclamation fund, and the lands, when no longer needed for the project, cannot be opened to entry under the public land laws but must be sold at public auction, after appraisal, and the moneys received therefor must be paid into the reclamation fund and credited to the project for which it was purchased. *J. D. Mell et al.*, 50 L. D. 308 (1924)

2. Interests in land

A right-of-way easement for a canal, involving not more than 15 acres of land, acquired by the United States under the reclamation act, comes within the meaning of the word "lands" as used in this section and may be sold pursuant to the provisions of this act. Departmental decision, May 29, 1918, in re Ankeny Canal Klamath. See p. 328, Reclamation Record, August, 1918.

3. Publication of notice of sale

In the Acts of February 2, 1911 (36 Stat. 895), and May 20, 1920 (41 Stat. 605), relating to the sale of lands on Federal irrigation projects, the language "by publication for not less than 30 days" deals with the period during which notice is to be

given, and is not a statutory requirement that publication be had for 30 consecutive days in a daily newspaper. Where a weekly newspaper of general circulation is the paper nearest the land, the purpose of the statutes will be fully subserved by publication in five consecutive issues of such newspaper. Departmental decision, June 21, 1920; printed at p. 382, Reclamation Record, August, 1920.

Sec. 2. [Conveyance of title—Limitation of 160 acres to a person.]—Upon payment of the purchase price, the Secretary of the Interior is authorized by appropriate deed to convey all the right, title, and interest of the United States of, in, and to said lands to the purchaser at said sale, subject, however, to such reservations, limitations, or conditions as said Secretary may deem proper: *Provided,* That not over one hundred and sixty acres shall be sold to any one person. (36 Stat. 895; 43 U.S.C. § 374)

Sec. 3. [Proceeds to credit of irrigation project.]—The moneys derived from the sale of such lands shall be covered into the reclamation fund and be placed to the credit of the project for which such lands had been acquired. (36 Stat. 895; 43 U.S.C. § 374)

EXPLANATORY NOTES

Cross Reference, Sale of Surplus Withdrawn and Improved Public Lands. The Act of May 20, 1920, 41 Stat. 605, authorized the sale of public lands withdrawn and improved under the provisions of the reclamation laws, and which are no longer needed for reclamation purposes. The 1920 Act appears herein in chronological order.

Legislative History. H.R. 25235, Public Law 338 in the 61st Congress. H.R. Rept. No. 1276. S. Rept. No. 963.

NOTE OF OPINION

1. Construction with other laws

The Act of August 27, 1935, 49 Stat. 885 (authorizing the Director of Procurement with the approval of the Secretary of the Treasury, to sell excess lands of the United States) is general legislation and does not repeal the special acts of February 2, 1911, and May 20, 1920. Solicitor's Opinion, M–28724 (September 24, 1936). *Accord* 38 Op. Atty. Gen. 549 (1937)

WITHDRAWAL OF PUBLIC NOTICES

An act to authorize the Secretary of the Interior to withdraw public notices issued under section 4 of the reclamation act, and for other purposes. (Act of February 13, 1911, ch. 49, 36 Stat. 902)

[Withdrawal of public notices—Modification and abrogation of water-right applications and contracts.]—The Secretary of the Interior may, in his discretion, withdraw any public notice heretofore issued under section four of the reclamation act of June seventeenth, nineteen hundred and two, and he may agree to such modification of water-right applications heretofore duly filed or contracts with water users' associations and others entered into prior to the passage of this act as he may deem advisable, or he may consent to the abrogation of such water-right applications and contracts and proceed in all respects as if no such notice had been given. (36 Stat. 902; 43 U.S.C. § 468)

Explanatory Notes

Popular Name. This Act is popularly known as the Curtis Act, being so named for Senator Charles Curtis of Kansas.

Legislative History. S. 6842, Public Law 353 in the 61st Congress. S. Rept. No. 570. H.R. Rept. No. 2003.

Note of Opinion

1. Application

This act relates only to such notices as were existing as of the date of its passage, and does not affect or justify the withdrawal of notices issued after that date. *Shoshone Irrigation Project,* 50 L.D. 223 (1923).

RELINQUISHMENT OF SECOND-FORM LANDS

An act to amend section 5 of the act of Congress of June 25, 1910, entitled "An act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes." (Act of February 18, 1911, ch. 111, 36 Stat. 917)

[Entries prior to June 25, 1910—Disposal of relinquished lands.]—Section five of an act entitled "An act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes," approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and thirty-five), be, and the same hereby is, amended as follows:

"SEC. 5. No entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and made public announcement of the same: *Provided,* That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished in whole or in part, the lands so relinquished shall be subject to settlement and entry under the homestead law as amended by an act entitled 'An act appropriating the receipts from the sale and disposal of the public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands,' approved June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight)." (36 Stat. 917; § 10, Act of August 13, 1914, 38 Stat. 689; 43 U.S.C. §§ 436, 437)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 5 of the Act of June 25, 1910, 36 Stat. 836.

Legislative History. S. 9405, Public Law 386 in the 61st Congress. S. Rept. No. 923. H.R. Rept. No. 1917.

WARREN ACT

An act to authorize the Government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes. (Act of February 21, 1911, ch. 141, 36 Stat. 925)

[**Sec. 1. Sale of excess water—Distribution to individual users—Restriction—Fixing of charges—Limitation on price to water users.**]—Whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under the Act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: *Provided, however,* That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual, as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable, as to water users under the Government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of carriage and delivery of such water through their works. (36 Stat. 925; 43 U.S.C. § 523)

Explanatory Notes

Purpose. "The object of the first section is to remove whatever doubt there may be in respect to the question whether the Secretary of the Interior under the reclamation act has authority to contract for the delivery of water from the government projects to corporations, companies, or irrigation districts in order that they in turn may deliver the same to tracts of land not in excess of 160 acres each and not included within the government project." Letter from Secretary Ballinger to Chairman, Senate Committee on Irrigation of Arid Lands, March 19, 1910; 45 Cong. Rec. 4316 (1910); S. Rept. No. 442, 2d Sess.; H.R. Rept. No. 2002, 3rd Sess., 61st Congress.

Popular Name. This Act is popularly known as the Warren Act, being so named for Senator Francis E. Warren of Wyoming.

Reference in the Text. Extracts from the Act of August eighteenth, eighteen hundred and ninety-four, known as the Carey Act, referred to in the text, appear herein in chronological order.

NOTES OF OPINIONS

Appropriation and water rights 2
Excess lands 7
Generally 1
Payment 5
Seepage 3
Stored water 4
Timber, use of 6

1. Generally

Under the provisions of the Reclamation Act, June 17, 1902, and the Warren Act, February 21, 1911, the Secretary of the Interior is authorized and has the power to contract with an irrigation district for supplying water to such district, or partially supplying it with water, for the irrigation of the lands therein and for the drainage of other lands within such district. *Pioneer Irrigation District v. Stone,* 23 Idaho 344, 130 Pac. 382 (1913), Accord: *Hillcrest Irrigation District v. Brose,* 24 Idaho 376, 133 Pac. 663 (1913); *Nampa and Meridian Irrigation District v. Petrie, et al.,* 28 Idaho 227, 153 Pac. 425 (1915); and *Nampa and Meridian Irrigation District v. Petrie,* 37 Idaho 45, 223 Pac. 531 (1924).

A State may be a contracting party under the Warren Act. Solicitor Barry Opinion, 68 I.D. 412, 423 (1961), *dictum,* in re proposed agreement with the State of California covering the San Luis Unit.

2. Appropriation and water rights

The delivery of water by the United States from the Rio Grande reclamation project under a Warren Act contract conveys to water users no vested rights to the use of the water, but the rights of the contractor are governed by the contract alone. *Bean v. United States,* 163 F. Supp. 838, 143 Ct. Cl. 363 (1958), *cert. denied,* 358 U.S. 906 (1958).

Where Reclamation officials sued were acting under both provisions of this section and contract provisions to preserve first right in water to lands under reclamation project, their acts were not so clearly ultra vires as to permit granting of injunction against them individually, and suit to establish plaintiffs' rights to water and for appropriate injunctive relief was, in essence, one against the United States, subject to dismissal for failure to make the United States a party thereto. *Hudspeth County Conservation and Reclamation Dist. No. 1 v. Robbins,* 213 F. 2d 425 (5th Cir. 1954), *cert. denied* 348 U.S. 833 (1955).

Where the United States and an irrigation district's predecessor entered into a contract providing that the United States would impound and store and release into the North Platte River and furnish from other sources for use of the predecessor an amount of water which would, with all the water the predecessor might be entitled to by reason of any appropriations and all water to which lands of the district were entitled, aggregate a certain scheduled flow, and that delivery of water provided for in the contract would be accepted as in full satisfaction of all the predecessor's rights to water of the North Platte River, but where express assignment of the predecessor's appropriative rights was omitted from the contract, the contract did not transfer to the United States the predecessor's appropriative rights. *United States v. Tilley,* 124 F. 2d 850 (8th Cir. 1941), *cert. denied,* 316 U.S. 691 (1942).

A contract between the United States and an irrigation company by which the latter turned over its canal to become part of a larger government project, which was to include storage reservoirs for the flood waters of the river, but "reserving" to its stockholders and contract holders a designated quantity of water which the company claimed the right to appropriate from the river, and which the government agreed to carry and distribute, "provided that delivery * * * shall be made exclusively from the unregulated flow of the Boise river and shall be limited by the amount thereof," required the government to deliver thereunder only so much water as the company was actually entitled to take from the river under its appropriation, though, as later to be determined in a then pending suit, the quantity might be less than that named in the contract. *New York Canal Co. v. United States,* 277 Fed. 444 (D. Idaho 1913).

In view of the Reclamation Act, the Warren Act, and the legislation of Wyoming and Nebraska, an appropriation of water by the Reclamation Service for the irrigation of lands in Nebraska is valid, though the source of the supply is in Wyoming. *Ramshorn Ditch Co. v. United States,* 269 Fed. 80 (8th Cir. 1920), *affirming* 254 Fed. 842 (D. Neb. 1918).

3. Seepage

The Bureau of Reclamation under its appropriations of water of the Rio Grande River for the Rio Grande Irrigation Project, had control and right to prescribe use of seepage waters from lands within the project, as well as the original use of the waters. *Bean v. United States,* 163 F. Supp. 838, 143 Ct. Cl. 363 (1958), *cert. denied* 358 U.S. 906 (1958).

Under the Warren Act a contract between the United States and a land company for

the delivery to the latter of water which escaped by seepage from the canal of a reclamation project was a valid contract which gave the United States the right to conserve and deliver water thereunder. *Ramshorn Ditch Co. v. United States,* 269 Fed. 80 (8th Cir. 1920), *affirming* 254 Fed. 842 (D. Neb. 1918). *Accord: United States v. Tilley,* 124 F. 2d 850, 858–63 (8th Cir. 1941), *cert. denied* 316 U.S. 691 (1942).

4. Stored water

Where Warren Act contracts obligate the United States to deliver water which will, with all the water to which the land is entitled by appropriation or otherwise, aggregate a stated amount, the decree of the court allocating only natural flow waters of the North Platte River among three States will define "storage water" as "any water which is released from reservoirs for use on lands under canals having storage contracts in addition to the water which is discharged through those reservoirs to meet the requirements of any canal as recognized in the decree." *Nebraska v. Wyoming, et al.,* 325 U.S. 589, 631 (1945).

5. Payment

A contract with the Murtaugh Irrigation District to purchase surplus storage in the American Falls Reservoir on the basis of a $100,000 cash payment and the balance of $500,000 in annual installments over a 20-year period may be entered into by the Secretary of the Interior under the Warren Act provided that the other contributors to the cost of constructing the reservoir, as authorized by the Act of June 5, 1924, 43 Stat. 417, give their consent. Solicitor Patterson Opinion, M–21227 (January 22, 1927).

The Federal statutes relative to the payment of debts and demands due the United States do not require the acceptance of money only in the settlement of such debts and demands, and accordingly the proper administrative official representing the United States may, where it would be to the interest of the United States, accept a "call" warrant for indebtedness of an irrigation district under its contract with the United States Reclamation Service for drainage construction and reservoir storage capacity, such warrant to be held by the United States until paid. *Pioneer Irrigation District,* 54 I.D. 264 (1933).

The Secretary may amend Warren Act contracts to embody the new plan of payment authorized by subsection F of the Fact Finders' Act. Interpretation, 51 L.D. 207, 209–10 (1925).

6. Timber, use of

Under this act authorizing the Reclamation Service to cooperate with private parties in carrying out projects under the Carey Act, the Kuhn Irrigation & Canal Company may be permitted to take timber from the Teton National Forest free of charge for use in raising the dam at Jackson Lake, Wyoming, which is a project authorized under the Reclamation Act of June 17, 1902. 30 Op. Atty. Gen. 398 (1915).

7. Excess lands

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501, (1964), in re application of excess land laws to private lands in Imperial Irrigation District; Solicitor Harper Opinion, M–33902, at 2 (May 31, 1945), in re application of excess land laws to Coachella Valley lands.

Sec. 2. [Cooperation with water users for reservoirs—Title to works—Limit on water furnished—Water rights of United States not enlarged.]—In carrying out the provisions of said reclamation act and acts amendatory thereof or supplementary thereto, the Secretary of the Interior is authorized, upon such terms as may be agreed upon, to cooperate with irrigation districts, water users' associations, corporations, entrymen or water users for the construction or use of such reservoirs, canals, or ditches as may be advantageously used by the Government and irrigation districts, water users' associations, corporations, entrymen or water users for impounding, delivering, and carrying water for irrigation purposes: *Provided,* That the title to and management of the works so constructed shall be subject to the provisions of section six of said act: *Provided further,* That water shall not be furnished from any such reservoir or delivered through any such canal or ditch to any one landowner in excess of an amount

sufficient to irrigate one hundred and sixty acres: *Provided,* That nothing contained in this act shall be held or construed as enlarging or attempting to enlarge the right of the United States, under existing law, to control the waters of any stream in any State. (36 Stat 926; 43 U.S.C. § 524)

NOTES OF OPINIONS

Cancellation 6
Drainage systems 2
Excess lands 5
Generally 1
Operation and maintenance 4
Power development 3

1. Generally

Section 16 of the Act of August 13, 1914 (38 Stat. 686) does not prohibit the execution by the United States of a contract under section 2 of the Warren Act for the advance by the United States of $200,000 to permit the contractor with the United States, the North Side Canal Co., to obtain carriage capacity in the main canal of the gravity extension unit, or Gooding division of the Minidoka project, the construction of which canal for the joint benefit of the United States and the company was under contemplation. Solicitor's Opinion, April 17, 1928.

A contract between the United States and an irrigation company by which the latter turned over its canal to become part of a larger government project, which was to include storage reservoirs for the flood waters of the river, but "reserving" to its stockholders and contract holders a designated quantity of water which the company claimed the right to appropriate from the river, and which the government agreed to carry and distribute, "provided that delivery * * * shall be made exclusively from the unregulated flow of the Boise river and shall be limited by the amount thereof," required the government to deliver thereunder only so much water as the company was actually entitled to take from the river under its appropriation, though, as later to be determined in a then pending suit, the quantity might be less than that named in the contract. *New York Canal Co. v. United States,* 277 Fed. 444 (D. Idaho 1913).

2. Drainage systems

A proposed contract of an irrigation district with the United States for construction by the government of a drainage system for the district was valid. *McLean v. Truckee-Carson Irr. Dist.,* 245 Pac. 285, 49 Nev. 278 (1926).

The Secretary of the Interior is authorized by the Reclamation Act of 1902 alone, and certainly by the Warren Act of 1911, and section 7 of the Reclamation Extension Act of 1914, to enter into a contract with an irrigation district to furnish water and to join in the construction of a drainage system. *Nampa & Meridian Irr. Dist. v. Petrie,* 28 Idaho 227, 153 Pac. 425, 428 (1915).

3. Power development

The Secretary of the Interior is authorized under the Warren Act to contract with an irrigation district for the use of the falling water from the canal drop of a Federal reclamation project to generate power for pumping water diverted by the district from the Federal project under a Warren Act contract. Solicitor Margold Opinion, M–28725 (October 6, 1936), in re use of power site at C drop, Klamath project.

The limitations in the Power Leasing Act of April 16, 1906, do not apply to the lease of a power privilege to a Warren Act contractor for the purpose of generating power for irrigation pumping. Solicitor Margold Opinion, M–28725 (October 6, 1936), in re use of power site at C drop, Klamath project.

Where a canal drop is not developed for power purposes as a part of a Federal reclamation project, the water users do not acquire a property interest in the energy of the falling water either as an incident of their right to the use of project water or as an incident of their obligation to repay the costs of the irrigation works which made the power drop possible; and therefore the United States may make development of the site available to a Warren Act contractor without the concurrence of the water users or the irrigation district which executed the repayment contract. Solicitor Margold Opinion, M–28725 (October 6, 1936), in re use of power site at C drop, Klamath project.

4. Operation and maintenance

Where a State irrigation district had purchased from the Reclamation Service a water right which was not yet paid for, and had contracted to carry through its canals water for the reclamation project, and there was grave danger that the irrigation district would be unable to operate its system, the Reclamation Service had such an interest in the district that it might

contract to take over the operation of the district under this section without acquiring absolute title to the project. *New York Trust Co. v. Farmers' Irr. Dist.*, 280 Fed. 785 (8th Cir. 1922).

A contract made under the Reclamation Act, between the United States and an irrigation company, on behalf of its stockholders, for the furnishing of additional water to the lands of such stockholders from the government reservoir, was construed to be valid, and to authorize the charges made against the company for maintenance and operation. *New York Canal Co., v. Bond,* 265 F. 228 (9th Cir. 1920).

5. Excess lands

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District; Solicitor Harper Opinion, M-33902, at 2 (May 31, 1945), in re application of excess land laws to Coachella Valley lands.

Although section 2 of the Warren Act, standing alone, requires the application of acreage limitations where the United States cooperates with an entity in the construction of irrigation facilities even where no Federal subsidy is extended to the lands served by such non-Federal entity, the legislative history of the San Luis act indicates a Congressional intention that the acreage limitation should apply [only] where Federal investment is made and [only] because of the Federal investment. Solicitor Barry Opinion, 68 I.D. 412, 426 (1961), in re proposed agreement with State of California, covering construction of San Luis unit.

This section, prohibiting sale of irrigation water for tracts exceeding 160 acres, refers only to land in private ownership and only to watered land, and did not vitiate contract whereunder government sold to city, which acquired for entitlement purposes requisite areas of irrigable land, water to be used for municipal purposes. *El Paso County Water Imp. Dist. No. 1 v. City of El Paso,* 133 F. Supp. 894 (D. Tex. 1955), *affirmed in part, reformed in part on other grounds* 243 F. 2d 927, *cert. denied* 355 U.S. 820.

The restriction in the reclamation laws against furnishing project water to an acreage greater than 160 acres in a single ownership does not permit the furnishing of water alternately or in rotation to two or more 160-acre parcels of a larger single holding. Memorandum of Chief Counsel Fix to Commissioner, May 12, 1948.

The limitation intended by the reclamation law, as set forth in section 5 of the Reclamation Act of 1902 and as supported by the plain language of section 3 of the Act of August 9, 1912, relates to the area in private ownership to which water may be delivered, and not to the quantity of water. A private owner will not be supplied with water, whether a full or supplemental supply, for use upon a tract exceeding 160 acres. The language in section 2 of the Warren Act referring to "an amount sufficient to irrigate 160 acres" is not intended to change this rule. Solicitor Patterson Opinion, M-21709 (March 3, 1927), in re proposed contract concerning Gravity Extension Unit, Minidoka project.

The government might refuse to furnish water from a completed project under the Warren Act for more than 160 acres to any one landowner, but if it did furnish water which was accepted and received by the landowner, then the owner would be compelled to pay for the service, *Klamath County v. Colonial Realty Co.,* 139 Ore. 311, 7 P. 2d 976 (1932).

Claim by realty company owning more than 160 acres in an irrigation district that the district could not legally supply water to such excess land under the Warren Act is not a valid defense to a foreclosure action for delinquent taxes assessed by the district against said lands during 1920 to 1925. *Klamath County v. Colonial Realty Co.,* 139 Ore. 311, 7 P. 2d 976 (1932).

There can be no doubt that Congress has the power to restrict the right to the use of water furnished from government projects to 160 acres standing in the name of an individual; but the assessment of benefits to lands within the irrigation district is a different matter which Congress would not assume authority to control. *Nampa and Meridian Irr. Dist. v. Petrie,* 28 Idaho 227, 153 Pac. 425, 430 (1915).

6. Cancellation

Where an irrigation company, pursuant to contract with the United States under the Act of February 21, 1911, failed to secure adequate financial arrangements, the Secretary was justified to cancel the contract and to cancel the rights-of-way in connection with its irrigation project since the execution of the contract did not operate to grant a vested right-of-way. *Verde River Irrigation & Power District v. Work* 24 F. 2d 886 (D.C. Cir. 1928), cert. denied 279 U.S. 854 (1929).

Sec. 3. [Moneys received covered into reclamation fund.]—The moneys received in pursuance of such contracts shall be covered into the reclamation fund and be available for use under the terms of the reclamation act and the acts amendatory thereof or supplementary thereto. (36 Stat. 926; 43 U.S.C. § 525)

EXPLANATORY NOTES

Supplementary Provision: Credit to Project Subsection J of the Fact Finders' Act provides that all money or profits from the sale or rental of surplus water under the Warren Act shall be credited to the project or division of the project to which the construction cost has been charged. The Act appears herein in chronological order under date of December 5, 1924.

Legislative History. S. 6953, Public Law 406 in the 61st Congress. S. Rept. No. 442. H.R. Rept. No. 1410 and H.R. Rept. No. 2002. H.R. Rept. No. 2168 (conference report).

NOTES OF OPINIONS

Penalties, crediting of 2
Proceeds, crediting of 1

1. Proceeds, crediting of

Proceeds paid by a Warren Act contractor for use of a power site at a canal drop on a Federal reclamation project are required to be credited to the project by subsection J, section 4 of the Act of December 5, 1924. Solicitor Margold Opinion M–28725 (October 6, 1936), in re use of power site at C drop, Klamath project.

A suit by an irrigation district representing one of the divisions of the Minidoka project to compel a reallocation by the Secretary of the Interior of the profits arising from the sale of Jackson Lake water under the Warren Act will be dismissed because the Secretary was acting in a quasi-judicial capacity and his decision was not arbitrary or capricious. *Wilbur* v. *Minidoka Irr. Dist.*, 50 F. 2d 495, 60 App. D.C. 205 (1931), *cert. denied* 284 U.S. 634 (1931).

Moneys received from the Imperial Irrigation District for the privilege of connecting with and using the Laguna Dam and the main canal of the Yuma reclamation project for the irrigation of lands in the Imperial Valley cannot be applied in reduction of the assessments against the lands of the Yuma project, but must be covered into the reclamation fund as directed by section 3 of the Act of February 21, 1911 (36 Stat. 926). 32 Op. Atty. Gen. 41 (1919). [Ed. note: The Act of June 28, 1926, which appears herein in chronological order, provides that these monies shall be credited to the individual water users.]

2. Penalties, crediting of

Under contracts with irrigation districts under Act of May 15, 1922 (42 Stat. 541), and also under the Warren Act of February 21, 1911, penalties on account of all classes of charges shall be credited to the reclamation fund generally and not to the project in connection with which they arise. C.L. 1186, January 3, 1923.

50-YEAR POWER LEASE, RIO GRANDE PROJECT

An act to amend an act entitled "An act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June 17, 1902, and for other purposes," approved April 16, 1906. (Act of February 24, 1911, ch. 155, 36 Stat. 930)

[Longer lease of surplus power permitted on Rio Grande project.]—Section five of an act entitled "An act providing for the withdrawal from public entry of lands needed for town-site purposes in connection with irrigation projects under the reclamation act of June seventeenth, nineteen hundred and two, and for other purposes," approved April sixteenth, nineteen hundred and six, be amended so as to read as follows:

"SEC. 5. Whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said reclamation act, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the money derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: *Provided,* That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: *Provided further,* That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water users' association or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section six of the reclamation act approved June seventeenth, nineteen hundred and two." (36 Stat. 930; 43 U.S.C. § 522)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 5 of the Act of April 16, 1906.

Legislative History. S. 10574, Public Law 417 in the 61st Congress. S. Rept. (no number).

50-YEAR EASEMENTS FOR POWER AND COMMUNICATION FACILITIES

[Extract from] An act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and twelve. (Act of March 4, 1911, ch. 238, 36 Stat. 1235)

* * * * *

[Department heads authorized to grant 50-year easements for rights of way for power and communication facilities—Forfeiture by nonuse.]—The head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights-of-way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, to the extent of two hundred feet on each side of the center line of such lines and poles and not to exceed four hundred feet by four hundred feet for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right-of-way herein granted for any one or more of the purposes herein named: *Provided,* That such right-of-way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: *Provided further,* That all or any part of such right-of-way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.

Any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law, may obtain the benefit of this Act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute. (36 Stat. 1253; Act of May 27, 1952, 66 Stat. 95; 43 U.S.C. § 961, 16 U.S.C. §§ 5, 420, 523)

Explanatory Notes

1952 Amendment. The Act of May 27, 1952, 66 Stat. 95, added the authority for rights-of-way for radio, television, and other forms of communication, and increased from 40 feet to 400 feet the maximum width of rights-of-way for lines and poles. For legislative history of the 1952 amendment see S. 1630, Public Law 367 in the 82d Congress; S. Rept. No. 1224; H.R. Rept. No. 1848.

Codification. 43 U.S.C. § 961 omits the specific references to national parks, national forests, and military reservations. These are stated separately in sections 5, 420 and 523 of title 16, United States Code.

Cross Reference, Power Plant Sites and

Primary Transmission Lines. The following statement appears in 43 C.F.R. § 2234.4–1 (a)(3) (1965): "(3) The applicability of the acts of February 15, 1901, and March 4, 1911, to rights-of-way for power purposes over public lands, was superseded by the Federal Power Act of June 10, 1920 (41 Stat. 1063), as amended by sections 201 to 213 inclusive, of the act of August 26, 1935 (49 Stat. 838; 16 U.S.C. 791–825r), as to power projects for the generation and transmission of hydroelectric power, defined in section 3(11) of the act, excepting distribution lines. Applications for hydroelectric power plant sites or rights-of-way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission, Washington, D.C., under the act of June 10, 1920, as amended. Rights-of-way for transmission lines which are not primary lines must be secured under the act of February 15, 1901, or the act of March 4, 1911. See 18 CFR 2.2."

Cross Reference, Permits for Telegraph, Power and Water Facilities. The Act of February 15, 1901, which appears herein in chronological order, authorizes the Secretary of the Interior to grant revocable permits for rights-of-way for telegraph, power and water facilities through certain parks, reservations and other public lands.

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

Legislative History, 1911 Act. H.R. 31596, Public Law 478 in the 61st Congress. 46 Cong. Rec. 3777, 3897, 4014–20 (1911). See also S. Rept. No. 967 and H.R. Rept. No. 2177 on S. 7713.

NOTES OF OPINIONS

Acquired lands 3
Conditions 2
Construction with other laws 1

1. Construction with other laws

The Act of March 4, 1911, 36 Stat. 1253, regarding transmission line easements over public lands, national forests, and reservations, has not been superseded, so far as Federal reclamation project transmission lines are concerned, by the Federal Water Power Act of June 10, 1920, 41 Stat. 1063. Decision of Assistant Secretary, A–17072 (April 25, 1933).

2. Conditions

As a condition to a grant of transmission line right-of-way easement under the Act of March 4, 1911, the Department of the Interior by regulation may properly require the applicant to agree to permit the Department to utilize surplus capacity in the line or to increase the capacity of the line for the transmission of power by the Department. *Southern California Edison Co.*, A–30325, 71 I.D. 405 (1964); *Public Service Co. of New Mexico,* 71 I.D. 427 (1964).

3. Acquired lands

Lands acquired by the United States, by purchase or otherwise, are reservation lands within the meaning of the Acts of February 15, 1901, and March 4, 1911. Solicitor's Opinion, M–30846 (November 1, 1940).

RELIEF OF CERTAIN RECLAMATION HOMESTEAD ENTRYMEN WHEN WATER IS NOT AVAILABLE

An act for the relief of homestead entrymen under the reclamation projects in the United States. (Act of April 30, 1912, ch. 100, 37 Stat. 105)

[Homesteaders under reclamation act allowed time to reestablish residence after water is available—Period of absence not credited.]—No qualified entryman who prior to June twenty-fifth, nineteen hundred and ten, made bona fide entry upon lands proposed to be irrigated under the provisions of the act of June seventeenth, nineteen hundred and two, the national reclamation law, and who established residence in good faith upon the lands entered by him, shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time when water is available for the irrigation of the lands embraced in his entry, but all such entrymen shall, within ninety days after the issuance of the public notice required by section four of the reclamation act, fixing the date when water will be available for irrigation, file in the local land office a water-right application for the irrigable lands embraced in his entry, in conformity with the public notice and approved farm-unit plat for the township in which his entry lies, and shall also file an affidavit that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof: *Provided,* That no such entryman shall be entitled to have counted as part of the required period of residence any period of time during which he was not actually upon the said land prior to the date of the notice aforesaid, and no application for the entry of said lands shall be received until after the expiration of the ninety days after the issuance of notice within which the entryman is hereby required to reestablish his residence and apply for water right. (37 Stat. 105)

Explanatory Notes

Codification. This Act originally was codified as section 445, title 43 of the U.S. Code, but has since been omitted.

Earlier Provision, Leave of Absence to Homesteaders. The Act of June 25, 1910, 36 Stat. 864, authorizes the Secretary of the Interior within his discretion to grant a leave of absence to qualified entrymen until water is available. The Act appears herein in chronological order.

Legislative History. H.R. 18792, Public Law 142 in the 62nd Congress. H.R. Rept. No. 281. S. Rept. No. 540.

ASSIGNMENT OF DESERT-LAND ENTRIES

An act relating to partial assignments of desert-land entries within reclamation projects made since March 28, 1908. (Act of July 24, 1912, ch. 251, 37 Stat. 200)

[Desert-land entries within reclamation projects may be assigned—To conform to farm units.]—A desert-land entry within the exterior limits of a Government reclamation project may be assigned in whole or in part under the act of March twenty-eighth, nineteen hundred and eight (Thirty-fifth Statutes at Large, page fifty-two), and the benefits and limitations of the act of June twenty-seventh, nineteen hundred and six (Thirty-fourth Statutes at Large, page five hundred and twenty), shall apply to such desert-land entryman and his assignees: *Provided,* That all such assignments shall conform to and be in accordance with farm units to be established by the Secretary of the Interior upon the application of the desert-land entryman. All such assignments heretofore made in good faith shall be recognized under this act. (37 Stat. 200; 43 U.S.C. § 449)

Explanatory Notes

Reference in the Text. The Act of March twenty-eighth, nineteen hundred and eight (Thirty-fifth Statutes at Large, Page fifty-two), referred to in the text, provides that no assignment of a desert-land entry shall be allowed or recognized except to an individual qualified to make entry, but no assignment to a corporation or association shall be authorized or recognized.

Reference in the Text. The Act of June twenty-seventh, nineteen hundred and six (Thirty-four Statutes at Large, Page five hundred and twenty), referred to in the text, deals with farm units, town sites and desert-land entries. The Act appears herein in chronological order.

Legislative History. S. 5446, Public Law 239 in the 62nd Congress. S. Rept. No. 479. H.R. Rept. No. 931.

Note of Opinion

1. Relation to farm units

Where a desert-land entry within a reclamation project is assigned in part under this act the entry should be subdivided into farm units; but where such an entry is assigned in its entirety the establishment of a farm unit is unnecessary. *Catherine Baart,* 44 L. D. 386 (1915).

PATENTS AND WATER-RIGHT CERTIFICATES

An act providing for patents on reclamation entries, and for other purposes. (Act of August 9, 1912, ch. 278, 37 Stat. 265)

[**Sec. 1. Homesteaders under reclamation act to receive patents when conditions completed—Purchasers of water-right certificates—Payment in full required.**]—Any homestead entryman under the act of June seventeenth, nineteen hundred and two, known as the reclamation act, including entrymen on ceded Indian lands, may at any time after having complied with the provisions of law applicable to such lands as to residence, reclamation, and cultivation submit proof of such residence, reclamation, and cultivation, which proof, if found regular and satisfactory, shall entitle the entryman to a patent, and all purchasers of water-right certificates on reclamation projects shall be entitled to a final water-right certificate upon proof of the cultivation and reclamation of the land to which the certificate applies, to the extent required by the reclamation act for homestead entrymen: *Provided,* That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate. (37 Stat. 265; Act of February 15, 1917, 39 Stat. 920; 43 U.S.C. § 541)

Explanatory Notes

1917 Amendment. The Act of February 15, 1917, 39 Stat. 920, amended the proviso in section 1 to read as it appears above. Before amendment, the proviso read as follows: "*Provided,* That no such patent or certificate shall issue until all sums due the United States on account of such land or water right at the time of issuance of patent or certificate have been paid." The 1917 Act appears herein in chronological order.

Cross Reference, Patents and Water-Right Certificates for Desert-Land Entrymen on Reclamation Projects. The Act of August 26, 1912, 37 Stat. 595, includes a provision making this act applicable to desert-land entries. The provision is found herein in chronological order.

Notes of Opinions

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1. Patents

Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent. General Land Office circular No. 534, March 17, 1917.

2. Water-right certificate

The terms "water-right certificate" and "certificate" as used in this section relate to final water-right certificates issued in connection with water rights for lands held in private ownership. Letter to Senator William E. Borah, 42 L.D. 207 (1913).

3. Residence

The residence requirements provided for in section 5 of the Reclamation Act of June 17, 1902, apply to all persons acquiring by assignment water-right contracts with the United States, unless prior to such assignment the final water-right certificate

contemplated by section 1 of the Act of August 9, 1912, has been issued, in which event the land may be freely alienated, subject to the lien of the United States. *H. G. Colton,* 43 L.D. 518 (1915).

4. Lands covered

The fact that remunerative crops may be raised without irrigation upon land lying within a reclamation project is not sufficient ground for exclusion of such land from the project. *Lewis Wilson,* 42 L.D. 8 (1913).

5. Ceded Indian lands

If one who has made a reclamation homestead entry for ceded Indian lands but has not paid the full Indian price of the entered lands, seeks to make a second entry under the reclamation law, he must first have paid all reclamation construction charges assessed against the original entry additional thereto. *James E. Hughes,* 52 L.D. 560 (1929).

6. Taxation

Lands entered within a reclamation project are not subject to State taxation before the equitable title has passed to the entryman; and that title does not pass until the conditions of reclamation and payment of water charges due at time of final proof, imposed by the amended reclamation act, have been fulfilled in addition to the requirements of the homestead act. *Irwin v. Wright,* 258 U.S. 219 (1922), *overruling United States v. Canyon County,* 232 Fed. 985 (D. Idaho 1916) and *Cheney v. Minidoka County,* 26 Idaho 471, 144 Pac. 343 (1914), which held that the entryman has a taxable interest after compliance with the requirements of the homestead laws but before compliance with the additional requirements of the reclamation act.

Lands within an irrigation project, as to which reclamation proof had not been made nor certificate of proof issued, was not taxable. *Wood v. Canyon County,* 253 P. 839, 43 Idaho 556 (1927).

7. Irrigation district

The provision of the reclamation law requiring payment by an entryman of all sums due the United States on account of the land or water right at the time of submission of proof as a condition precedent to the issuance of patent is not satisfied by the assumption by an irrigation district of an obligation to pay the water-right charges; nor does an extension of time accorded by the irrigation district for the payment of accrued charges operate as an extension by the Government unless approved by the latter. *Frank Zumpfe,* 51 L.D. 608 (1926).

Sec. 2. [First lien on land reserved to United States—Title forfeited upon default of payment—Redemption within one year—Sale after failure to redeem—United States may bid in.]—Every patent and water-right certificate issued under this act shall expressly reserve to the United States a prior lien on the land patented or for which water right is certified, together with all water rights appurtenant or belonging thereto, superior to all other liens, claims, or interests whatsoever for the payment of all sums due or to become due the United States or its successors in control of the irrigation project in connection with such lands and water rights.

Upon default of payment of any amount so due title to the land shall pass to the United States, free of all encumbrance, subject to the right of the defaulting debtor or any mortgagee, lien holder, judgment debtor, or subsequent purchaser to redeem the land within one year after the notice of such default shall have been given by payment of all moneys due, with eight per centum interest and cost. And the United States, at its option, acting through the Secretary of the Interior, may cause land to be sold at any time after such failure to redeem, and from the proceeds of the sale there shall be paid into the reclamation fund all moneys due, with interest as herein provided, and costs. The balance of the proceeds, if any, shall be the property of the defaulting debtor or his assignee: *Provided,* That in case of sale after failure to redeem under this section the United States shall be authorized to bid in such land at not more than the amount in default, including interest and costs. (37 Stat. 266; 43 U.S.C. § 542)

EXPLANATORY NOTE

Supplementary Provision: Repayment Contract Substituted for Lien. Section 2 of the Act of May 15, 1922, provides that patents and water-right certificates for lands covered by a repayment contract with an irrigation district shall not contain the lien provided for in this section, and authorizes the Secretary of the Interior to release existing liens where such a repayment contract is entered into. The Act appears herein in chronological order.

NOTES OF OPINIONS

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Taxation 1

1. Taxation

Lands for which patent has issued are taxable by the State, subject to the prior lien reserved by the Government for unpaid charges. *Irwin v. Wright,* 258 U.S. 219 (1922); *United States v. Canyon County,* 232 Fed. 985 (D. Idaho 1916).

A sale of land within a reclamation project for state or local taxes does not operate to extinguish a lien on the land created in favor of the United States under a duly recorded water right application to assure the payment of construction, operation and maintenance charges. Solicitor Margold Opinion, 57 I.D. 27 (1939).

2. Collection of charges

The provisions of the Act of August 13, 1914 (38 Stat. 686), shall be followed in all cases of failure to pay charges for construction and operation and maintenance. C.L. 1027, July 9, 1921.

Sec. 3. **[Certificate for final payment—Single holdings limited—Excess acquired by descent, etc.—Forfeiture of prohibited excess.]**—Upon full and final payment being made of all amounts due on account of the building and betterment charges to the United States or its successors in control of the project, the United States or its successors, as the case may be, shall issue upon request a certificate certifying that payment of the building and betterment charges in full has been made and that the lien upon the land has been so far satisfied and is no longer of any force or effect except the lien for annual charges for operation and maintenance: *Provided,* That no person shall at any one time or in any manner, except as hereinafter otherwise provided, acquire, own, or hold irrigable land for which entry or water-right application shall have been made under the said reclamation act of June seventeenth, nineteen hundred and two, and acts supplementary thereto and amendatory thereof, before final payment in full of all installments of building and betterment charges shall have been made on account of such land in excess of one farm unit as fixed by the Secretary of the Interior, as the limit of area per entry of public land or per single ownership of private land for which a water right may be purchased respectively, nor in any case in excess of one hundred and sixty acres, nor shall water be furnished under said acts nor a water right sold or recognized for such excess; but any such excess land acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance, or by devise, may be held for five years and no longer after its acquisition, and water may be temporarily furnished during that time; and every excess holding prohibited as aforesaid shall be forfeited to the United States by proceedings instituted by the Attorney General for that purpose in any court of competent jurisdiction; and this proviso shall be recited in every patent and water-right certificate issued by the United States under the provisions of this act. (37 Stat. 266; Act of July 11, 1956, 70 Stat. 524; 43 U.S.C. §§ 543, 544)

Explanatory Notes

1956 Amendment. The Act of July 11, 1956, 70 Stat. 524, amended section 3 by deleting that portion which reads "but any such excess land acquired at any time in good faith by descent, by will, or by foreclosure of any lien may be held for two years and no longer after its acquisition;" and adding in lieu thereof that portion which now reads "but such excess land acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance, or by devise, may be held for five years and no longer after its acquisition, and water may be temporarily furnished during that time;". Additionally, the 1956 Act authorizes the Secretary of the Interior, upon request of any holder of an existing contract under the Federal reclamation laws, to amend the contract to conform to the provisions of sections 1 and 2 of the Act, section 2 being the amendment of this Act and section 1 being an amendment to section 46 of the Omnibus Adjustment Act of May 25, 1926. Both the 1956 Act, and that of 1926, appear herein in chronological order.

Supplementary Provision: Death of Spouse. The Act of September 2, 1960, 74 Stat. 732, provides that where lands which were eligible to receive water become excess because of the death of a husband or wife, they may continue to receive water while owned by the surviving spouse until remarriage. The Act appears herein in chronological order. (Editor's comment: Although the 1960 Act specifically refers only to excess lands as defined in section 46 of the Omnibus Adjustment Act of May 25, 1926, it presumably also modifies the provision in section 3 of the 1912 Act which otherwise imposes a 5-year limit on the delivery of water to lands which become excess by inheritance or devise.)

Contemporaneous Construction. Secretary Fisher's letter of August 6, 1912, to the President urging approval of the bill states in part:

> "The main purpose of this bill is to authorize the issuance of land patents and water right certificates in reclamation projects in advance of full payment of the building charge. * * *
>
> "Section 3 * * * contains a proviso to prevent the consolidation of holdings until such time as full and final payment of the building charge shall have been made. By that time it is believed that the land will be in the hands of permanent settlers and speculative holdings eliminated."

Notes of Opinions

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1. Excess land laws—Generally

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District; Solicitor Harper Opinion, M–33902 (May 31, 1945), in re application of excess land laws to Coachella Valley lands.

The purpose of the 1912 legislation was to give to homestead entrymen and to the owners of private lands who had applied for water right certificates a vested right so they could raise money to finance their farming activity. At no time was it ever suggested that there was any purpose to modify basic objectives of the excess land provisions of the 1902 Act. Solicitor Barry Opinion, 68 I.D. 372, 382 (1961), in re proposed repayment contracts for Kings and Kern River projects.

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The drainage system authorized by reclamation law is that which will provide drainage necessary to the successful operation of the complete project, and as a general matter the acreage limitations of the law do not apply to it. Memorandum of Chief Counsel Fix to Commissioner, May 12, 1948.

2. —Payout, effect of

Where it will help accomplish the purposes of fostering family-size farms and opposition to monopoly and speculation in

private holdings, the Secretary may (but need not) permit delivery of water under individual water-right applications after payout to lands in excess of 160 acres. Solicitor Barry Opinion, 68 I.D. 372, 383 (1961), *limiting* Chief Counsel King Memorandum Opinion of July 1, 1914, approved by the First Assistant Secretary, July 22, 1914, 43 L.D. 339.

The Act of August 9, 1912, relates to individual contracts, in contrast to the joint liability contract specifically required by section 46 of the Omnibus Adjustment Act of 1926; and the provisions of the former relating to the effect of payout on excess lands cannot be infused with a new life for the purpose of implementing the latter, which contains no comparable provisions. Solicitor Bennett Opinion, 64 I.D. 273 275–6 (1957), in re proposed contract with Kings River Conservation District.

The memorandum opinion by Associate Solicitor Cohen, M–35004 (October 22, 1947), concluding that "upon full payment of construction obligation under a joint-liability repayment contract, the lands receiving water under such contract are, under the provisions contained in section 3 of the Act of August 9, 1912, relieved of the statutory excess-land restrictions," and Administrative Letter 303 of December 16, 1947, based on the opinion, are in error. Solicitor Barry Opinion, 68 I.D. 372, 376, 395 (1961) in re proposed repayment contracts for the Kings and Kern River projects.

Where there are on a project two farm units, which together include less than 160 acres of irrigable land, the owner of one unit will, if he purchases the other, be entitled to receive water for it if all project building charges on account of either tract have been paid in full. *Amaziah Johnson,* 42 L.D. 542 (1913).

3. —Delivery of water

The restriction in the reclamation laws against furnishing project water to an acreage greater than 160 acres in a single ownership does not permit the furnishing of water alternately or in rotation to two or more 160-acre parcels of a larger single holding. Memorandum of Chief Counsel Fix to Commissioner, May 12, 1948.

4. —Supplemental water supply

The limitation intended by the reclamation law, as set forth in section 5 of the Reclamation Act of 1902 and as supported by the plain language of section 3 of the Act of August 9, 1912, relates to the area in private ownership to which water may be delivered, and not to the quantity of water. A private owner will not be supplied with water, whether a full or supplemental supply, for use upon a tract exceeding 160 acres. The language in section 2 of the Warren Act referring to "an amount sufficient to irrigate 160 acres" is not intended to change this rule. Solicitor Patterson Opinion, M–21709 (March 3, 1927), in re proposed contract concerning Gravity Extension Unit, Minidoka project.

10. Ownership of excess lands—Generally

Congress is without power to control or regulate the sale or acreage of lands in private ownership within reclamation projects, but so long as the projects are under Government control, Congress may determine the acreage for which water may be supplied through such projects to any one land owner, *Amaziah Johnson,* 42 L.D. 542 (1913), and the ownership of a water right purchased under the project from the Government, *Keebaugh and Cook,* 42 L.D. 543 (1913).

The limitation in the proviso to section 3 of the Act of August 9, 1912, as to the area of lands for which water right may be acquired or owned by any one person, has reference to *irrigable* lands only. *Amaziah Johnson,* 42 L.D. 542 (1913).

The Secretary of the Interior has authority under the Act of February 25, 1920, 41 Stat. 451, to enter into a contract to supply to the City of El Paso an amount of water from the Rio Grande reclamation project representing the water service for certain project lands acquired by the city and retired from irrigation farming, but not to exceed a maximum of 3½ acre-feet of water a year for each acre of such land acquired by the city. The city's ownership of some 1400 acres of such land does not violate the 160-acre limitation of reclamation law. *El Paso County Water Improvement District No. 1 v. City of El Paso,* 133 F. Supp. 894, 918–920 (W.D. Tex. 1955), *affirmed,* 243 F. 2d. 927 (5th Cir. 1957), *cert. denied,* 355 U.S. 820 (1957).

11. —Farm units and entries

Where there are on a project two farm units (containing 69.95 and 56 acres, respectively, of irrigable land), and the project building charges have not been paid in full for either, the owner of one unit will not, if he purchases the other, be entitled to receive water for it. *Amaziah Johnson,* 42 L.D. 542 (1913).

Two individuals, each of whom is holding under the homestead laws an irrigable farm unit (containing 104 acres and 77 acres, respectively, of irrigable land) for which all building and betterment charges have not been paid, may not acquire a water right for an additional area of private

land (78 acres of irrigable land), owned by them jointly or severally, on which charges have not been paid. *Keebaugh and Cook,* 42 L.D. 543 (1913).

The owner of a homestead entry under the Reclamation Act is not qualified to take by assignment another such entry. Instructions, 46 L.D. 227 (1917).

12. —Coalescence of holdings

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The term "excess land" as used in the Act of July 11, 1956, an act which provides that "excess land" acquired involuntarily in certain cases may be furnished water for five years thereafter, means only lands which are excess after, but not before, the acquisition. The purpose of the act is to prevent a sudden diminution in the privileges respecting the land as the result of the transfer, not to enlarge the estate or its privileges in the hands of the new owner over that or those of the person from whom it was acquired. Memorandum of Associate Solicitor Fisher to Regional Solicitor, Sacramento, April 28, 1959.

The Act of July 11, 1956, does not apply in a case where the death of the prior owner took place before the water service contract was executed, because the land was neither excess nor nonexcess when acquired by the heirs or devisees. Memorandum of Deputy Solicitor Weinberg, December 10, 1965, in re Orlando trusts.

There is no *legal* objection to the acquisition of a water right by a water users association or other corporation if it is not otherwise disqualified under the excess land laws by reason of ownership of other lands on which there exist unpaid betterment and building charges. However, the Department has ruled as a matter of policy that water applications will not be accepted from corporations, Instructions, 42 L.D. 250 (1913), *Pleasant Valley Farm Co.,* 42 L.D. 253 (1913), unless the corporation acquires a patent and water right solely to protect its security in a loan transaction and with the intention of reselling it at more propitious times, *Great Western Insurance Co.,* A–16335 (February 8, 1932). Consequently, under this policy, where the Grand Valley Water Users Association has acquired several farm units at tax sales to protect its lien, it may receive a patent to one farm unit for security purposes and may bid at tax sales for unlimited acreage for the purpose of protecting its lien and with the intent of reassigning its interest to qualified persons within a reasonable time. *James P. Balkwill,* 55 I.D. 241 (1935).

The two year limitation for the holding of excess lands in section 3 of the Act of August 9, 1912, does not apply to irrigation districts which have bid in the lands at tax sales under the Act of August 11, 1916. *Glen L. Kimmel and Goshen Irrigation District,* 53 I.D. 658 (1932).

An irrigation district or other entity with similar powers may receive water for lands acquired by foreclosure or other process of law for five years after acquisition as permitted by the Act of July 11, 1956, 70 Stat. 524. Memorandum of Associate Solicitor Weinberg to Acting Regional Solicitor, Denver, September 25, 1961.

A person who involuntarily acquires lands which become excess in his hands, cannot extend his eligibility to receive water beyond the 5-year period provided by the Act of July 11, 1956, 70 Stat. 524, by executing a recordable contract. Acting Solicitor Fisher Opinion, 68 I.D. 433, 434 (1961) (dictum), *limited on other grounds,* Deputy Solicitor Weinberg Opinion, 72 I.D. 245, 247 (1965).

For purposes of the Act of July 11, 1956, an act which allows lands that become excess by virtue of certain involuntary acquisitions to receive water for five years thereafter, the date of the "acquisition" with respect to an heir or devisee should be considered to be the date of death, whether or not the property is covered by a will and irrespective of provisions of local law relating to the estate of the decedent. Memorandum of Associate Solicitor Fisher to Regional Solicitor, Sacramento, April 28, 1959.

Where one who has entered into a contract to purchase privately owned lands, title remaining in the vendor, files water-right application and makes payments on account of the construction or building charge, and all rights of the vendee under the contract are reacquired by the vendor, the latter is entitled to receive credit for such payments and to complete the same upon showing proper qualifications to acquire and hold, notwithstanding that the transfer was the result of voluntary action instead of foreclosure proceedings; provided, however, that if the original vendor is not so qualified he must within two years from reacquisition of the land, dispose of such excess holding as directed by paragraph 76 of the departmental regulations of

May 18, 1916. *John Mulligan*, 49 L. D. 155 (1922).

13. —Federal government

The Federal Subsistence Homesteads Corporation, being wholly financed and controlled by the United States Government and serving no function other than aiding in the purchase of subsistence homesteads by individuals as provided by section 208 of the National Recovery Act, does not fall within the category of corporations which it was the intention of Congress should be barred from acquiring or controlling lands within Reclamation projects; nor does the statutory limitation of individual holdings to 160 acres apply to such a corporation. Solicitor Margold Opinion, 54 I.D. 566 (1934).

14. —Joint operations

A landowner may deed his excess acreage to one of his children, or anyone else for that matter, and arrange to operate the alienated property with his own as one unit, provided he has divested himself of ownership in good faith and the child or other recipient of the property receives the full benefits of the operation of his own acreage. Letter from Commissioner Straus to Senator Joseph C. O'Mahoney, December 29, 1948.

Several farmers each holding 160 acres may farm their lands jointly as a unit under a proper mutual agreement, assuming all other requirements of Reclamation law have been met. Letter from Commissioner Straus to Senator Joseph C. O'Mahoney, December 29, 1948.

Sec. 4. [United States fiscal agents upon projects—Public record of payments to be kept—Authenticated copies of records to be furnished.]—The Secretary of the Interior is hereby authorized to designate such bonded fiscal agents or officers of the Reclamation Service as he may deem advisable on each reclamation project to whom shall be paid all sums due on reclamation entries or water rights, and the officials so designated shall keep a record for the information of the public of the sums paid and the amount due at any time on account of any entry made or water right purchased under the reclamation act; and the Secretary of the Interior shall make provision for furnishing copies of duly authenticated records of entries upon payment of reasonable fees, which copies shall be admissible in evidence, as are copies authenticated under section eight hundred and eighty-eight of the Revised Statutes. (37 Stat. 267; 43 U.S.C. § 545)

Sec. 5. [United States district courts given jurisdiction.]—Jurisdiction of suits by the United States for the enforcement of the provisions of this act is hereby conferred on the United States district courts of the districts in which the lands are situated. (37 Stat. 267; 43 U.S.C. § 546)

EXPLANATORY NOTE

Legislative History. S. 5545, Public Law 256 in the 62nd Congress. S. Rept. No. 608. H.R. Rept. No. 867 and H.R. Rept. No. 1032.

PATENTS AND WATER-RIGHT CERTIFICATES FOR DESERT-LAND ENTRYMEN ON RECLAMATION PROJECTS

[Extract from] An act making appropriations to supply deficiencies in appropriations for the fiscal year 1912, and for prior years, and for other purposes. (Act of August 26, 1912, ch. 408, 37 Stat. 595.)

* * * * *

[**Patents to desert-land entrymen within reclamation projects—Proof required.**]—Any desert-land entryman whose desert-land entry has been embraced within the exterior limits of any land withdrawal or irrigation project under the act of June seventeenth, nineteen hundred and two, known as the reclamation act, and who may have obtained a water supply for the land embraced in any such desert-land entry from the reclamation project by the purchase of a water-right certificate, may at any time after having complied with the provisions of the law applicable to such lands and upon proof of the cultivation and reclamation of the land to the extent required by the reclamation act for homestead entrymen, submit proof of such compliance, which proof, if found regular and satisfactory, shall entitle the entryman to a patent and a final water-right certificate under the same terms and conditions as required of homestead entrymen under the act entitled "An act providing for patents on reclamation entries, and for other purposes, approved August ninth, nineteen hundred and twelve." (37 Stat. 610; 43 U.S.C. § 547)

* * * * *

Explanatory Notes

Reference in the Text. The act entitled "An act providing for patents on reclamation entries, and for other purposes, approved August ninth, nineteen hundred and twelve," referred to in the text, appears herein in chronological order.

Legislative History. H.R. 25970, Public Law 340 in the 62nd Congress. H.R. Rept. No. 1062. S. Rept. No. 1061. H.R. Rept. No. 1254 (conference report).

SETTLEMENT OF WATER RIGHTS OF YAKIMA INDIANS

[Extract from] An act making apropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1915. (Act of August 1, 1914, ch. 222, 38 Stat. 582)

* * * * *

[Additional water to Yakima Indians—Apportionment—Payment of first installment—Plan for distribution, etc., to be submitted to Congress.]—It appearing by the report of the Joint Congressional Commission, created under section twenty-three of the Indian appropriation act, approved June thirtieth, nineteen hundred and thirteen (Senate Document numbered Three hundred and thirty-seven, Sixty-third Congress, second session), that the Indians of the Yakima Reservation in the State of Washington, have been unjustly deprived of the portion of the natural flow of the Yakima River to which they are equitably entitled for the purposes of irrigation, having only been allowed one hundred and forty seven cubic feet per second, the Secretary of the Interior is hereby authorized and directed to furnish at the northern boundary of said Yakima Indian Reservation, in perpetuity, enough water, in addition to the one hundred and forty seven cubic feet per second heretofore allotted to said Indains, so that there shall be, during the low-water irrigation season, at least seven hundred and twenty cubic feet per second of water available when needed for irrigation, this quantity being considered as equivalent to and in satisfaction of the rights of the Indians in the low-water flow of Yakima River and adequate for the irrigation of forty acres on each Indian allotment; the apportionment of this water to be made under the direction of the Secretary of the Interior, and there is hereby authorized to be appropriated the sum of $635,000 to pay for said water to be covered into the reclamation fund; the amount to be appropriated annually in installments upon estimates certified to Congress by the Secretary of the Treasury. One hundred thousand dollars is hereby appropriated to pay the first installment of the amount herein authorized to be expended, and the Secretary of the Interior is hereby directed to prepare and submit to Congress the most feasible and economical plan for the distribution of said water upon the lands of said Yakima Reservation, in connection with the present system and with a view to reimbursing the Government for any sum it may have expended or may expend for a complete irrigation system for said reservation. (38 Stat. 604)

* * * * *

Explanatory Notes

Not Codified. This section of the Act is not codified in the U.S. Code.

Cross Reference, Appropriation for Additional Water for Yakima Reservation. The Act of July 1, 1940, 54 Stat. 707, authorized an appropriation of $800,000 to be credited to the reclamation fund to defray cost of additional water for Indian allotments of the Yakima Reservation. The 1940 Act appears herein in chronological order.

Legislative History. H.R. 12579, Public Law 160 in the 63rd Congress. H.R. Rept. No. 199 and H.R. Rept. No. 914. S. Rept. No. 519. H.R. Rept. No. 1007 and H.R. Rept. No. 1031 (conference reports). S. Doc. 533 (conference report).

RECLAMATION EXTENSION ACT

An act extending the period of payment under reclamation projects, and for other purposes.
(Act of August 13, 1914, ch. 247, 38 Stat. 686)

[**Sec. 1. Payments of construction charges under future rights—Entry subject to announcement.**]—Any person whose lands hereafter become subject to the terms and conditions of the act approved June seventeenth, nineteen hundred and two, entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and acts amendatory thereof or supplementary thereto, hereafter to be referred to as the reclamation law, and any person who hereafter makes entry thereunder shall at the time of making water-right application or entry, as the case may be, pay into the reclamation fund five per centum of the construction charge fixed for his land as an initial installment, and shall pay the balance of said charge in fifteen annual installments, the first five of which shall each be five per centum of the construction charge and the remainder shall each be seven per centum until the whole amount shall have been paid. The first of the annual installments shall become due and payable on December first of the fifth calendar year after the initial installment: *Provided,* That any water-right applicant or entryman may, if he so elects, pay the whole or any part of the construction charges owing by him within any shorter period: *Provided further,* That entry may be made whenever water is available, as announced by the Secretary of the Interior, and the initial payment be made when the charge per acre is established. (38 Stat. 686; 43 U.S.C. §§ 471, 472)

Explanatory Notes

Codification. The substance of this section is codified as sections 471 and 472, title 43, U.S. Code, but the language is revised to give effect to subsection F of the Fact Finders' Act, which changed the method for paying annual installments after December 5, 1924.

1922 Modification. The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this act. The 1922 Act appears herein in chronological order.

Note of Opinion

1. Lands affected

Upon acceptance of the Extension Act by the filing of a water-right application, or otherwise, the following described lands become subject to the provisions of section 1 of said act, to wit: (*a*) Land in private ownership which was not made subject to the reclamation law prior to August 13, 1914; (*b*) public land entered not subject to the reclamation law and not subjected to said law after entry and before August 13, 1914. Such land is not considered public land in respect to water-right applications, Form B of the application being used; (*c*)

public land entered subject to the reclamation law on or after August 13, 1914. As a general rule, for land of this class, both entry and water-right application are initiated simultaneously. Sometimes, however, entries are permitted under the last proviso of section 1 before public notice is issued, in which event, the order opening the lands should specify a reasonable time after date of public notice within which water-right application must be made and the initial installment paid. In each of the above cases, the initial installment of the construction charge is payable at the time of filing water-right application, and the second on December 1 of the fifth calendar year. For example, if the initial payment was made December 2, 1914, the second installment would be payable on December 1, 1919. There can be no accumulation of either construction or operation and maintenance charges prior to filing water-right application in these cases. Instructions, 47 L.D. 285 (1919).

Sec. 2. [Payments of construction charges under existing rights.]—Any person whose land or entry has heretofore become subject to the terms and conditions of the reclamation law shall pay the construction charge, or the portion of the construction charge remaining unpaid, in twenty annual installments, the first of which shall become due and payable on December first of the year in which the public notice affecting his land is issued under this act, and subsequent installments on December first of each year thereafter. The first four of such installments shall each be two per centum, the next two installments shall each be four per centum, and the next fourteen each six per centum of the total construction charge, or the portion of the construction charge unpaid at the beginning of such installments. (38 Stat. 687; 43 U.S.C. § 475)

EXPLANATORY NOTES

Codification. Section 475 of title 43, U.S. Code, also includes section 14 of this Act.

1922 Modification. The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

NOTES OF OPINIONS

Construction charge installments not cumulative 4
Lands affected 1
Lands not affected 2
Non-residents 5
Water charges 3

1. Lands affected

All persons whose land was, prior to August 13, 1914, subscribed to any reclamation project through the medium of a water-users' association, an irrigation district, a trust deed, a water-right application, a homestead entry, or any form of contract or agreement with the United States under the terms of which the United States may at any time be required to deliver water to said land, were subject to the terms and conditions of the reclamation law within the meaning of this section. Departmental decision, October 17, 1914.

Lands of the State of Idaho and of other States having similar laws prior to August 13, 1914, in reference to the Federal reclamation law, are subject to the terms and conditions of the reclamation law within the meaning of this section. Departmental decisions, February 8, 1918, and April 1, 1918, overruling departmental decisions, October 17, 1914, and January 14, 1915; C.L. 745 and C.L. 751.

2. Lands not affected

The following-named lands are not subject to the terms and conditions of the reclamation law within the meaning of this

section: (*a*) Railroad lands unsold on or before August 13, 1914, whether or not affected by a declaration of the railroad company that purchasers shall comply with the terms of the reclamation law; and (*b*) railroad lands sold on or before August 13, 1914, which on that date had not been included in a water-right application duly accepted. Departmental decision, January 14, 1915.

3. Water charges

Section 2 of the Extension Act specifically provides that the first installment of the construction charge "shall become due on December 1 of the year in which public notice * * * is issued." The subjecting of his land to the reclamation law is an agreement on the part of the owner or entryman to abide by the laws and regulations issued thereunder. Such owner or entryman therefore has no right, after the issuance of public notice, to defer the filing of water-right application or to postpone the payment of installments of water-right charges. Congress evidently had this thought in mind in fixing the date so definitely. This construction charge is due and payable on December 1, as stated in the law, without reference to whether a water-right application is filed, and if payment is not made on that due date the penalties provided by section 3 of the Extension Act become effective. Public notices covering lands subject to section 2 will not be issued, as a rule, in the month of December. Section 9 of the Extension Act does not apply to lands subject to section 2. Instructions, 47 L.D. 285 (1919).

4. Construction charge installments not cumulative

The Reclamation Extension Act taken as a whole does not require that installments of the construction charge, prior to water-right application for either private or public lands, be cumulative. Therefore, the first installment upon a water-right application made under section 2 of the act will fall due on December 1 of the year in which application is made. (Circular letter No. 516, September 2, 1915.) See circular letter No. 595, September 21, 1915, and paragraph 4, circular letter No. 603, October 7, 1916.

5. Non-residents

Members of a water users association who do not comply with the residence requirements of section 5 of the Reclamation Act of 1902 may accept the extension act and make payments thereunder, thereby avoiding the penalties provided therein, but may not receive water for their lands. Departmental decision, May 5, 1915; C.L. 497.

Sec. 3. [Penalties for nonpayment of construction charges—Cancellation and forfeiture—Action for recovery.]—If any water-right applicant or entryman shall fail to pay any installment of his construction charges when due, there shall be added to the amount unpaid a penalty of one per centum thereof, and there shall be added a like penalty of one per centum of the amount unpaid on the first day of each month thereafter so long as such default shall continue. If any such applicant or entryman shall be one year in default in the payment of any installment of the construction charges and penalties, or any part thereof, his water-right application, and if he be a homestead entryman his entry also, shall be subject to cancellation, and all payments made by him forfeited to the reclamation fund, but no homestead entry shall be subject to contest because of such default: *Provided,* That if the Secretary of the Interior shall so elect, he may cause suit or action to be brought for the recovery of the amount in default and penalties; but if suit or action be brought, the right to declare a cancellation and forfeiture shall be suspended pending such suit or action. (38 Stat. 687; 43 U.S.C. §§ 478, 480, 481)

EXPLANATORY NOTES

Codification. The first sentence of this section is codified in section 478, title 43, U.S. Code, with a sentence added to reflect the amendment in subsection H of the Fact Finders' Act reducing the penalty to one-half per centum for installments coming due after December 5, 1924. The second sentence is codified in section 480, and the proviso in section 481.

1924 Modification. Subsection H, section 4 of the Act of December 5, 1924, reduces the penalty of 1 per centum per

month provided for herein to one-half of 1 per centum per month, as to all installments which may thereafter become due. The Act appears herein in chronological order.

1922 Modification. The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

NOTES OF OPINIONS

Right to declare forfeiture 3
Suit for water charges 2
When construction charges become due 1

1. When construction charges become due

Construction charges against lands subject to section 1 of this Act cannot become due until after water-right application has been made; as to lands subject to section 2 of this Act, construction charges against same become due on December 1 of the year in which public notice affecting the land is issued, and if not paid they accumulate against the land. Departmental decision October 18, 1919; C. L. 852. C. L. 862 outlines the accounting procedure under C. L. 852.

2. Suit for water charges

The provisions of sections 3 and 6 of the Extension Act in reference to one year of grace for the payment of overdue water charges refer only to drastic remedies of cancellation and forfeiture, and not to the right to bring suit in a court for collection of a water charge past due and unpaid. Reclamation decision, December 4, 1917, *U. S.* v. *Edison E. Kilgore.*

3. Right to declare forfeiture

Inasmuch as Acts of June 17, 1902, and August 13, 1914, did not peremptorily declare in mandatory language that forfeitures must be declared, or that they will necessarily result by operation of law as soon as defaults in payments by water users on reclamation projects have occurred, it rests within the sound discretion of the Secretary of the Interior to determine whether an entryman may thereafter be permitted to cure the default by payment of the charges. Departmental opinion, 50 L. D. 223 (1923).

The Secretary of the Interior, in his discretion, may follow the procedure outlined in sections 3 and 6 of the Extension Act of August 13, 1914, with respect to construction and operation and maintenance charges more than one year in arrears, rather than apply to the courts under the forfeiture provisions of the Act of August 9, 1912 (37 Stat. 265); i.e., the Secretary may cancel the water rights in such cases and declare a forfeiture of the reclamation charges theretofore paid, at the same time allowing title to the lands to remain in the patentee or his successor. Departmental decision, January 16, 1928, Tieton division, Yakima project. C. L. 1689.

Sec. 4. [Restriction on increasing construction charges—Time for paying increase—Charges subject to certain conditions.]—No increase in the construction charges shall hereafter be made, after the same have been fixed by public notice, except by agreement between the Secretary of the Interior and a majority of the water-right applicants and entrymen to be affected by such increase, whereupon all water-right applicants and entrymen in the area proposed to be affected by the increased charge shall become subject thereto. Such increased charge shall be added to the construction charge and payment thereof distributed over the remaining unpaid installments of construction charges: *Provided,* That the Secretary of the Interior, in his discretion, may agree that such increased construction charge shall be paid in additional annual installments, each of which shall be at least equal to the amount of the largest install-

ment as fixed for the project by the public notice theretofore issued. And such additional installments of the increased construction charge, as so agreed upon, shall become due and payable on December first of each year subsequent to the year when the final installment of the construction charge under such public notice is due and payable: *Provided further,* That all such increased construction charges shall be subject to the same conditions, penalties, and suit or action as provided in section three of this act. (38 Stat. 687; 43 U.S.C. § 469)

EXPLANATORY NOTES

1922 Modification. The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as be may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

Supplementary Provision. The Act of March 3, 1915, 38 Stat. 861, 43 U.S.C. § 470, provides that no work shall be undertaken or expenditure made which will increase an announced construction charge until an agreement to repay the cost shall have been made in accordance with the provisions of this section. Extracts from the Act appear herein in chronological order.

NOTES OF OPINIONS

Change of payment date 3
Construction v. operation costs 1
Increase of costs 2

1. Construction v. operation costs

Expenditures are properly chargeable to "construction" when they (1) are incurred to construct an irrigation system and put it in condition to furnish and properly distribute water, (2) are made necessary by faulty original construction in violation of contract and statutory requirements, or (3) are for the purpose of increasing the capacity of the original system. On the other hand, expenditures are properly chargeable to "operation and maintenance" when they are required to remedy conditions brought about by the *use* of a completed system or to maintain and operate it effectively for the end to which it is designed. *U.S. v. Fort Belknap Irr. Dist.,* 197 F. Supp. 812, 819 (D. Mont. 1961).

The cost of raising a dike to cut off a spillway that was never completed and never used for 40 years is a "construction" expense and may not be charged to defendant irrigation districts without their consent. *U.S. v. Fort Belknap Irr. Dist.,* 197 F. Supp. 812, 821 (D. Mont. 1961).

When an irrigation system has been completed under the Reclamation Act, subsequent construction of a drainage system to remove injurious consequences of its normal operation on the lands included is chargeable to maintenance and operation rather than to construction and section 4 of the Reclamation Extension Act, preventing increase of construction charges when once fixed except by agreement between the Secretary of the Interior and a majority of water-right applicants and entrymen affected, does not apply. *Nampa & Meridian Irr. Dist. v. Bond,* 268 U.S. 50 (1925) *affirming* 288 Fed. 541 (9th Cir. 1923), 283 Fed. 569 (D. Idaho 1922).

2. Increase of costs

Notice issued by the Secretary of the Interior expressly limiting measure of water right of water users in Sunnyside division of Yakima reclamation project to 3 acre-feet and providing that water in excess of 3 acre-feet might be rented by water users and money collected applied to payment of unsecured portion of reservoir system of Yakima project was a nullity, as unauthorized and constituting an attempt to destroy vested rights. *Lawrence v. Southard,* 73 P. 2d 722, 192 Wash. 287 (1937).

In a suit to determine whether an increase in the construction charges, such increase having been agreed to by a majority of the water users, was a lien upon the land, the court held that the lien extended to the increased charges (Orland project). *United*

States v. Chas. L. Donohoe Co., 33 F. 2d 362 (N.D. Cal. 1929).

Where a contract between the United States and a water users' association provided that the latter should promptly collect such charges as should be apportioned to its shareholders, the fact that the cost was greater than expected cannot be urged as a ground for equitable relief. *Yuma County Water Users' Assn. v. Schlecht*, 275 Fed. 885 (9th Cir. 1921), *affirmed* 262 U.S. 138 (1923).

3. Change of payment date

The Act of August 13, 1914, provided for the payment of irrigation construction charges upon a specified date, the only authority for change of which is contained in the Act of May 15, 1922, and where the latter act is invoked to change the date of payment under a prior contract, the procedure prescribed therein must be followed in order to give validity to the amended contract. Solicitor Edwards Opinion, 50 L.D. 142 (1923).

Sec. 5. [Operation and maintenance charges—Basis therefor—Minimum charge—Secretary may transfer care and operation of project—Reduction or increase of charges.]—In addition to the construction charge, every water-right applicant, entryman, or landowner under or upon a reclamation project shall also pay, whenever water service is available for the irrigation of his land, an operation and maintenance charge based upon the total cost of operation and maintenance of the project, or each separate unit thereof, and such charge shall be made for each acre-foot of water delivered; but each acre of irrigable land, whether irrigated or not, shall be charged with a minimum operation and maintenance charge based upon the charge for delivery of not less than one acre-foot of water: *Provided,* That, whenever any legally organized water users' association or irrigation district shall so request, the Secretary of the Interior is hereby authorized, in his discretion, to transfer to such water users' association or irrigation district the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as he may prescribe. If the total amount of operation and maintenance charges and penalties collected for any one irrigation season on any project shall exceed the cost of operation and maintenance of the project during that irrigation season, the balance shall be applied to a reduction of the charge on the project for the next irrigation season, and any deficit incurred may likewise be added to the charge for the next irrigation season. (38 Stat. 687; 43 U.S.C. §§ 492, 499)

EXPLANATORY NOTES

Codification. The proviso in the first sentence is codified in section 499, title 43, U.S. Code. The remainder of the section is codified in section 492.

1922 Modification. The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

NOTES OF OPINIONS

Operation and maintenance charges 1
Transfer of care and maintenance 2
Water users associations 3

1. Operation and maintenance charges

Expenditures are properly chargeable to "construction" when they (1) are incurred

to construct an irrigation system and put it in condition to furnish and properly distribute water, (2) are made necessary by faulty original construction in violation of contract and statutory requirements, or (3) are for the purpose of increasing the capacity of the original system. On the other hand, expenditures are properly chargeable to "operation and maintenance" when they are required to remedy conditions brought about by the *use* of a completed system or to maintain and operate it effectively for the end to which it is designed. *U.S. v. Fort Belknap Irr. Dist.,* 197 F. Supp. 812, 819 (D Mont. 1961).

In making repairs and replacements chargeable to "operation and maintenance" the government is not limited to preserving the status quo, but may, in the exercise of sound discretion, utilize materials or equipment of an improved type or design. *U.S. v. Fort Belknap Irr. Dist.,* 197 F. Supp. 812 (D. Mont. 1961).

After the passage of Section 5 of the Reclamation Extension Act, the Secretary did not have the right to contract to deliver water for a fixed charge not to exceed a certain amount per acre. *Carruthers v. Sunnyside Valley Irrigation Dist.,* 29 Wash. 2d 530, 188 P. 2d 136 (1947).

Reclamation law before passage of the Reclamation Extension Act did not require that the charge for operation and maintenance be based upon beneficial use as a measure of the value of the service rendered, consequently prior contracts made by the Secretary to deliver water at a fixed charge were valid. *Id.*

Where water service is not available for lands—as the trial court found to be the case with respect to the right-of-way of the Oregon Short Line Railroad Company through lands of the Minidoka Irrigation District, Minidoka project—an assessment against such lands is invalid. *Oregon Short Line R.R. Co. v. Minidoka Irr. Dist.,* 283 Pac. 614 (Idaho 1929).

Where lands of an Idaho irrigation district were included in a Federal reclamation project under a contract obliging the Government to furnish water and construct drainage works within the district, which was done and the cost assessed as a construction charge against all the project water users, the district agreeing that the project lands in the district should pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the project, *held* that the project lands within the district were liable with the other project lands to bear, as an operation and maintenance charge, the cost of providing drainage for project lands outside the district which were being ruined by seepage water from the operation of the irrigation system. *Nampa & Meridian Irr. Dist. v. Bond,* 268 U.S. 50 (1925), *affirming* 288 Fed. 541, 283 Fed. 569.

The operation and maintenance deficit arising on the Belle Fourche project, South Dakota, prior to the enactment of the Extension Act of August 13, 1914, was not extinguished by that Act and is collectible. Solicitors Opinion, December 16, 1920, reprinted in Reclamation Record of February, 1921, p. 75.

Against lands subject to section 1 of this Act, operation and maintenance charges cannot become due until after water-right application has been made; against lands subject to section 2 of this Act these charges may accrue before making of water-right application, and accumulate against the land. Instructions, 47 L.D. 285 (1919).

Operation and maintenance charges follow the same rule as construction charges and do not accumulate against lands for which water-right application has not been made. C.L. No. 622, December 16, 1916.

The word "year" used in connection with the operation and maintenance costs is the 12 months ending with December 31. C.L. No. 555, April 17, 1916.

2. Transfer of care and maintenance

The Secretary is authorized to transfer without charge to the Coachella Valley County Water District the care and maintenance of 25 permanent-type houses erected by the United States on land donated by the District. The houses were used by construction workers in connection with the construction of irrigation works and are no longer needed for that purpose. In view of the fact that the land was donated and the permanent-type housing was constructed with the understanding that the houses would subsequently be used by District personnel when the District assumed the responsibility for operation and maintenance of the project, the houses may properly be considered part of "project works" within the meaning of Section 5 of the Reclamation Extension Act of 1914. Disposition under section 203 of the Federal Property and Administrative Services Act of 1949 is not required. 35 Comp. Gen. 287 (1955), *reversing* 34 Comp. Gen. 374 (1955).

The relationship of creditor and debtor between the United States and individual water users continues to exist after the care, operation and maintenance of a project has been transferred to a water users association or an irrigation district under the authority of section 5 of the Reclamation Extension Act of 1914, but is terminated where

contracts or amended contracts have been entered into with an irrigation district pursuant to the Act of May 15, 1922. Solicitor Edwards Opinions, M–11120 and M–12181 (April 17, 1924).

3. Water users associations

A contract made under the reclamation act between the United States and an irrigation company on behalf of its stockholders for the furnishing of additional water to the lands of such stockholders from the Government reservoir, construed, and held valid, and to authorize the charges made against the company for maintenance and operation. *New York Canal Co. v. Bond,* 265 Fed. 228 (9th Cir. 1920).

Where irrigation districts subscribed for stock in an association of water users on a reclamation project entitling them to water, the board of directors and the Secretary of the Interior held authorized to release the irrigation districts from their subscriptions and obligations to take water. *Payette-Boise Water Users' Association v. Cole,* 263 Fed. 734 (D. Idaho 1919).

Where an irrigation district subscribing to stock in an association of water users on a reclamation project was released from its obligations by the association's board of directors, and though the other subscribers learned thereof within a reasonable time, no action to set aside the release was brought for several years during which the district landowners ceased to exercise any rights as stockholders and were not recognized as such, and the district issued bonds by means of which it procured other water, and lands in the district were bought and sold and transfers thereof made, the members of the association were chargeable with laches preventing them from attacking the release in equity. Ibid.

Sec. 6. [Date when charges become due fixed by the Secretary—Discount for prompt payment—Penalty for nonpayment—Cancellation for continued arrears—Actions for recovery.]—All operation and maintenance charges shall become due and payable on the date fixed for each project by the Secretary of the Interior, and if such charge is paid on or before the date when due there shall be a discount of five per centum of such charge; but if such charge is unpaid on the first day of the third calendar month thereafter, a penalty of one per centum of the amount unpaid shall be added thereto, and thereafter an additional penalty of one per centum of the amount unpaid shall be added on the first day of each calendar month if such charge and penalties shall remain unpaid, and no water shall be delivered to the lands of any water-right applicant or entryman who shall be in arrears for more than one calendar year for the payment of any charge for operation and maintenance or any annual construction charge and penalties. If any water-right applicant or entryman shall be one year in arrears in the payment of any charge for operation and maintenance and penalties, or any part thereof, his water-right application, and if he be a homestead entryman his entry also, shall be subject to cancellation, and all payments made by him forfeited to the reclamation fund, but no homestead entry shall be subject to contest because of such arrears. In the discretion of the Secretary of the Interior suit or action may be brought for the amounts in default and penalties in like manner as provided in section three of this act. (38 Stat. 688; 43 U.S.C. §§ 479, 493–97)

EXPLANATORY NOTES

Codification. The provision that no water shall be delivered where an applicant or entryman is in arrears more than one calendar year in payment of annual construction charge and penalties is codified in section 479, title 43, U.S. Code. The remainder of the section is codified in sections 493–97.

1924 Modification. Subsection H, section 4 of the Act of December 5, 1924, 43 Stat. 703, reduces the penalty provided for herein from 1 per cent per month to one-half of 1 per cent per month, as to all installments which may thereafter become due. The Act appears herein in chronological order.

1922 Modification. The Act of May 15, 1922, 42 Stat. 541, authorizes the Secretary

of the Interior to enter into contract with any legally organized irrigation district whereby the irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary, may be dispensed with. In the event of such contract being made, the Secretary in his discretion, may contract for repayment as will best conform to the district and taxation laws of the respective States under which the district is formed and he may contract for penalties and interest charges in case of delinquency in payments as he may deem proper and consistent with such State laws, notwithstanding sections 1, 2, 3, 4, 5 and 6 of this Act. The 1922 Act appears herein in chronological order.

Cross References, Relief to Water Users. Temporary provisions authorizing the furnishing of water to landowners or entrymen in arrears more than one calendar year, notwithstanding the provisions of this section, were contained in Public Resolution No. 3 of May 17, 1921, 42 Stat. 4, and in section 2 of the Act of March 31, 1922, 42 Stat. 490, as amended by section 4 of the Act of February 28, 1923, 42 Stat. 1325. Each of these Acts appears herein in chronological order.

NOTES OF OPINIONS

Calendar year 1
Military service 3
Relief act 6
Suit for water charges 5
When charges due 2
Withholding water delivery 4

1. Calendar year

The term "calendar year" as used in this section refers to a period from January 1 to December 31, inclusive. Secretary's decision, May 24, 1916; C.L. 564, June 6, 1916.

2. When charges due

A suit was brought by landowners to restrain the Board of Directors of the Elephant Butte Irrigation District from including in its budget for the 1927 tax rolls tne estimated cost of operation and maintenance for the ensuing year on the ground that the district would not disburse such amounts to the United States, under its contracts and annual notices, until the year following that in which the charges were incurred, or the second ensuing year from the one in which the budget in question was made. The court sustained the action of the Board and denied a motion for rehearing upon the District's contention that it was deemed sound business practice at the time to anticipate the estimated operation and maintenance cost for the ensuing year even though, under the practice then prevailing, such amount would not necessarily be disbursed by the district during that year. *Sperry v. Elephant Butte Irr. Dist.*, 270 Pac. 889, 33 N. Mex. 482 (1928).

3. Military service

Under section 501, Act of March 8, 1918 (40 Stat. 440), penalties arising under this section upon prior defaulted construction or operation and maintenance charges will not run during the period of the military service. Departmental decision, 47 L.D. 167 (1919).

4. Withholding water delivery

Even if the Federal Government and its agents must conform to the State laws in the matter of initiating and perfecting appropriations from the nonnavigable stream in Idaho, for an irrigation system constructed and maintained under the reclamation act, the manager of such Government project may, as authorized by section 6, act of August 13, 1914, withhold water from land within the project where owner is in arrears for year for maintenance charge, though under the general State rule, held applicable to Carey Act companies and other quasipublic corporations appropriating water for sale, water may be refused only in respect to charges for current expenses, after demanding payment in advance. *Mower v. Bond*, 8 F.2d 518 (D. Idaho 1925).

A lien on the crops of a landowner who is delinquent in payment of charges is required as a condition to right to continue to use water from the project. Ibid.

Where water is rented under a regulation that the unpaid rentals upon the same land for previous years must be paid, before water is furnished, the regulation will be enforced even after a change of ownership, the new owner being required to pay up the water rental charges incurred by the previous owner before water will be delivered. Decision of First Assistant Secretary, June 18, 1935.

5. Suit for water charges

The provisions of sections 3 and 6 of the Extension Act, in reference to one year of grace for the payment of overdue water charges, refer only to the drastic remedies of cancellation and forfeiture and not to the right to bring suit in a court for collection of a water charge past due and unpaid. Reclamation decision, December 4, 1917. *U.S. v. Edison E. Kilgore.*

6. Relief act

The provisions of the Act of March 31, 1922, 42 Stat. 489, which affords relief to settlers on reclamation projects with reference to operation and maintenance charges, simply relax the requirements of section 6 of the Act of August 13, 1914, by permitting the Secretary of the Interior, in his discretion, to furnish irrigation water, during the time specified therein, to landowners or entrymen who are in arrears for more than one calendar year, and nothing contained therein authorizes the extension of time for the payment of such charges. *Lower Yellowstone Irrigation Districts Nos. 1 and 2,* 49 L. D. 301 (1922).

Sec. 7. [Local association may be appointed fiscal agent for the United States to collect charges—Official receipt.]—The Secretary of the Interior is hereby authorized, in his discretion, to designate and appoint, under such rules and regulations as he may prescribe, the legally organized water users' association or irrigation district, under any reclamation project, as the fiscal agent of the United States to collect the annual payments on the construction charge of the project and the annual charges for operation and maintenance and all penalties: *Provided,* That no water-right applicant or entryman shall be entitled to credit for any payment thus made until the same shall have been paid over to an officer designated by the Secretary of the Interior to receive the same. (38 Stat. 688; 43 U.S.C. § 477)

NOTES OF OPINIONS

1. Contract

The Secretary of the Interior is authorized by the Reclamation Act of 1902 alone, and certainly by the Warren Act of 1911, and section 7 of the Reclamation Extension Act of 1914, to enter into a contract with an irrigation district to furnish water and to join in the construction of a drainage system. *Nampa & Meridian Irr. Dist. v. Petrie,* 28 Idaho 227, 153 Pac. 425, 428 (1915).

Where a contract between the United States and a water users' association provided that the latter should promptly collect such charges as should be apportioned to its shareholders, the fact that the cost was greater than expected cannot be urged as a ground for equitable relief. *Yuma County Water Users' Assn. v. Schlecht,* 275 Fed. 885 (9th Cir. 1921), *affirmed* 262 U.S. 138 (1923).

Sec. 8. [Authority to make regulations governing use of water, reclamation, and cultivation—Penalty for noncompliance with regulations.]—The Secretary of the Interior is hereby authorized to make general rules and regulations governing the use of water in the irrigation of the lands within any project, and may require the reclamation for agricultural purposes and the cultivation of one-fourth the irrigable area under each water-right application or entry within three full irrigation seasons after the filing of water-right application or entry, and the reclamation for agricultural purposes and the cultivation of one-half the irrigable area within five full irrigation seasons after the filing of the water-right application or entry, and shall provide for continued compliance with such requirements. Failure on the part of any water-right applicant or entryman to comply with such requirements shall render his application or entry subject to cancellation. (38 Stat. 688; 43 U.S.C. § 440)

Sec. 9. [Additional construction charges for certain lands.]—In all cases where application for water right for lands in private ownership or lands held under entries not subject to the reclamation law shall not be made within one year after the passage of this act, or within one year after notice issued in pursuance of section four of the reclamation act, in cases where such notice has not

heretofore been issued, the construction charges for such land shall be increased five per centum each year until such application is made and an initial installment is paid. (38 Stat. 689; 43 U.S.C. § 464)

NOTES OF OPINIONS

Date when increase attaches 2
Date when increase ceases 3
Purpose of section and lands affected 1
Status of State lands 4

1. Purpose of section and lands affected

Section 9 of the Extension Act is intended to encourage the early filing of water-right applications for land which has not been subjected to the reclamation law. In the Extension Act, Congress kept clear the distinction between the two classes of land involved, one subjected to the reclamation law and one not subjected to that law. In the former case Congress fixed a definite rate when the first installment of the construction charge should become due and provided a penalty of 1 per cent a month for nonpayment. In the latter case, where the lands were not bound by any prior agreement, Congress provided the 5 per cent increase in section 9 to induce early application. From a careful survey of the entire law it appears evident that the application of section 9 is limited to lands in private ownership not subject to the reclamation law and to entries not subject to the reclamation law. Section 9, therefore, does not apply to any lands under section 2, which section deals exclusively with lands "subject to the terms and conditions of the reclamation law." Instructions, 47 L.D. 285 (1919); C.L. 862, December 19, 1919.

2. Date when increase attaches

The date on which the increase in construction charges provided by this section first becomes effective is the day next following the expiration of one year after date of approval of the act, or one year after date of public notice, as the case may be. In the former instance the increases accrue on August 14. Reclamation decision, October 18, 1917, C.L. 704, supplementing C.L. 516.

3. Date when increase ceases

In the case of lands for which water-right application is made under section 2 of this act the 5 per cent increase in construction charges provided for by this section ceases when the water-right application is made; but in cases where water-right application is made for lands under section 1, said increase does not cease until both the application is made and the initial installment is paid. Reclamation commission decision, March 17, 1917, C.L. 640.

4. Status of State lands

School lands in private ownership as the result of purchase from the State are not subject to the penalty provided in section 9 of the Act of August 13, 1914. *Benjamin F. Newkirk,* 46 L.D. 400 (1918).

Sec. 10. [Entries prior to June 25, 1910—Disposal of relinquished lands.]—The act of Congress approved February eighteenth, nineteen hundred and eleven, entitled "An act to amend section five of the act of Congress of June twenty-fifth, nineteen hundred and ten, entitled 'An act to authorize advances to the reclamation fund and for the issuance and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes,'" be, and the same hereby is amended so as to read as follows:

"Sec. 5. No entry shall be hereafter made and no entryman shall be permitted to go upon lands reserved for irrigation purposes until the Secretary of the Interior shall have established the unit of acreage per entry, and water is ready to be delivered for the land in such unit or some part thereof and such fact has been announced by the Secretary of the Interior: *Provided,* That where entries made prior to June twenty-fifth, nineteen hundred and ten, have been or may be relinquished, in whole or in part, the lands so relinquished shall be subject to settlement and entry under the reclamation law." (38 Stat. 689; 43 U.S.C. §§ 436, 437)

EXPLANATORY NOTE

Editor's Note, Annotations. Annotations of opinions for this section, if any, are found under section 5 of the Act of June 25, 1910.

Sec. 11. [Furnishing water before regular rates are fixed.]—Whenever water is available and it is impracticable to apportion operation and maintenance charges as provided in section five of this act, the Secretary of the Interior may, prior to giving public notice of the construction charge per acre upon land under any project, furnish water to any entryman or private landowner thereunder until such notice is given, making a reasonable charge therefor, and such charges shall be subject to the same penalties and to the provisions for cancellation and collection as herein provided for other operation and maintenance charges. (38 Stat. 689; 43 U.S.C. § 465)

NOTE OF OPINION

1. Reduction of penalty

Subsection H of the Fact Finders' Act, which reduces from one to one-half per cent per month the delinquency penalty on all charges coming due thereafter, also applies to rental charges fixed under section 11 of the Reclamation Extension Act of 1914. Instructions, 51 L.D. 218 (1925).

Sec. 12. [Owners of private lands under new projects must dispose of excess area—Lands excluded upon refusal.]—Before any contract is let or work begun for the construction of any reclamation project hereafter adopted the Secretary of the Interior shall require the owners of private lands thereunder to agree to dispose of all lands in excess of the area which he shall deem sufficient for the support of a family upon the land in question, upon such terms and at not to exceed such price as the Secretary of the Interior may designate; and if any landowner shall refuse to agree to the requirements fixed by the Secretary of the Interior, his land shall not be included within the projects if adopted for construction. (38 Stat. 689; 43 U.S.C. § 418)

EXPLANATORY NOTE

Cross Reference, Valid Recordable Contracts. Section 46 of the Omnibus Adjustment Act of May 25, 1926, provides that no water shall be delivered to excess lands if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those set by the Secretary. The 1926 Act appears herein in chronological order.

NOTES OF OPINIONS

Excess land laws 1—3
Assessments 3
Generally 1
Pre-existing holdings 2

1. Excess land laws—Generally

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District, Solicitor Harper Opinion, M-33902 (May 31, 1945), in re application of excess land laws to Coachella Valley.

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Sec-

tion 46 is an extension of the policy embodied in section 12. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

2. —Pre-existing holdings

The preconstruction requirement of section 12 of the Reclamation Extension Act of 1914 that owners of private lands agree to dispose of all lands in excess of the area deemed sufficient for the support of a family, was designed specifically to cope with the special problem of initially breaking up excess holdings and of preventing owners of excess lands from profiting by the existence of the project at the expense of purchasers. Solicitor Barry Opinion, 68 I.D. 372, 390 (1961), in re proposed repayment contracts for Kings and Kern River projects.

3. —Assessments

A corporate landowner which, as required by section 12 of the Reclamation Extension Act of 1914, agreed to dispose of its excess lands, could not, after construction of the project, escape assessment of such lands by an irrigation district under state law on the grounds that its lands were not benefited. *Lincoln Land Co. v. Goshen Irr. Dist.*, 42 Wyo. 229, 293 Pac. 373 (1930).

Sec. 13. [Entries to be reduced to single farm units—Time for making proof—Cancellation of excess entries—Issue of patents—Assignments restricted.]—All entries under reclamation projects containing more than one farm unit shall be reduced in area and conformed to a single farm unit within two years after making proof of residence, improvement and cultivation, or within two years after the issuance of a farm-unit plat for the project, if the same issues subsequent to the making of such proof: *Provided,* That such proof is made within four years from the date as announced by the Secretary of the Interior that water is available for delivery for the land. Any entryman failing within the period herein provided to dispose of the excess of his entry above one farm unit, in the manner provided by law, and to conform his entry to a single farm unit shall render his entry subject to cancellation as to the excess above one farm unit: *Provided,* That upon compliance with the provisions of law such entryman shall be entitled to receive a patent for that part of his entry which conforms to one farm unit as established for the project: *Provided further,* That no person shall hold by assignment more than one farm unit prior to final payment of all charges for all the land held by him subject to the reclamation law, except operation and maintenance charges not then due. (38 Stat. 690; 43 U.S.C. §§ 435, 443)

EXPLANATORY NOTE

Codification. The last proviso is codified as section 443, title 43, U.S. Code. The rest of the section is codified as section 435.

NOTES OF OPINIONS

1. Conformation of entry

Farm-unit plats are a part of the public notice affecting same, and where such plats are approved by the Secretary of the Interior prior to date of the public notice the latter date controls, and entrymen who submitted proof on or prior thereto will have two years from the date of notice within which to conform their entries and dispose of excess lands under this section. Where proof is submitted after date of public notice the two years begin to run from the date of such proof, provided that same is submitted within four years from the date fixed by the Secretary when water will be available for irrigation of the lands in question. General Land Office decision, March 28, 1917, Salt River.

Where an entryman of lands within a reclamation project fails, after notice, to conform his entry to an established farm unit the Secretary of the Interior has the power to conform the entry. *Mangus Mickelson,* 43 L. D. 210 (1914).

Prior to the due establishment of farm units and the conformation of the particular entry to an approved unit, proof of reclamation of the land embraced within the rec-

lamation homestead entry under the national irrigation act of June 17, 1902, will not be accepted. *Charles A. Galusha,* 46 L. D. 417 (1918).

In this case an original reclamation entry was made in 1903 on lands embraced in a second-form reclamation withdrawal, the entry was relinquished in 1905 and reinstated in 1915, but the announcement of water availability was not made until 1947. Meanwhile, in 1943 and 1944 the Secretary of the Interior granted permission to the Federal Public Housing Authority to use part of the land included in the entry for a war housing project. Under these circumstances, the Secretary may exclude the housing project lands in establishing the remainder of the entry as a farm unit where the remaining lands are adequate to support a family. *David C. Caylor,* A-25416, 60 I.D. 333 (1949).

Sec. 14. [Acceptance of extension of payments to be made within six months—Upon showing, may be made later.]—Any person whose land or entry has heretofore become subject to the reclamation law who desires to secure the benefits of the extension of the period of payments provided by this act shall, within six months after the issuance of the first public notice hereunder affecting his land or entry, notify the Secretary of the Interior in the manner to be prescribed by said Secretary, of his acceptance of all the terms and conditions of this act, and thereafter his lands or entry shall be subject to all of the provisions of this act: *Provided,* That upon sufficient showing the Secretary of the Interior may, in his discretion, permit notice of acceptance of all the terms and conditions of this act to be filed at any time after the time limit hereinbefore fixed for filing such acceptance shall have expired, conditioned, however, that where the applicant for such acceptance is in arrears on construction charges he shall at the time of acceptance pay such installments of the construction charge as he would have been required to pay had he accepted this act within the time limit hereinabove fixed plus the penalties that would have accrued had he so accepted, and such applicant shall thereafter be upon the same status that he would have been had he accepted the provisions of this act within the time limit hereinabove fixed, and thereafter the lands or entry of any such persons so filing such notice of acceptance shall be subject to all the provisions of this act. (38 Stat. 690; Proviso added by Act of July 26, 1916, 39 Stat. 390; 43 U.S.C. § 475)

EXPLANATORY NOTE

1916 Amendment. The Act of July 26, 1916, 39 Stat. 390, amended section 14 by adding to it the proviso that appears in the section. The 1916 Act appears herein in chronological order.

Sec. 15. [General authority.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect. (38 Stat. 690; 43 U.S.C. § 373)

NOTE OF OPINION

1. Suspension of public notices

The Secretary of the Interior has no general supervisory authority or authority under section 441, Revised Statutes, under section 10 of the Act of June 17, 1902, or under section 15 of the Act of August 13, 1914, to suspend public notices issued under the reclamation law. *In re Shoshone Irrigation Project, etc.,* 50 L.D. 223 (1923).

Sec. 16. [Expenditures after July 1, 1915, limited to specific appropriations—To be paid out of reclamation fund.]—From and after July first, nineteen

hundred and fifteen, expenditures shall not be made for carrying out the purposes of the reclamation law except out of appropriations made annually by Congress therefor, and the Secretary of the Interior shall, for the fiscal year nineteen hundred and sixteen, and annually thereafter, in the regular Book of Estimates, submit to Congress estimates of the amount of money necessary to be expended for carrying out any or all of the purposes authorized by the reclamation law, including the extension and completion of existing projects and units thereof and the construction of new projects. The annual appropriations made hereunder by Congress for such purposes shall be paid out of the reclamation fund provided for by the reclamation law. (38 Stat. 690; 43 U.S.C. § 414)

NOTES OF OPINIONS

Practicability of project 2
Use of reclamation fund 1

1. Use of reclamation fund

Moneys in the reclamation fund arising from operation and maintenance charges, regardless of date of payment or collection thereof, can be made available for expenditure only in accordance with provisions of section 16 of the Act of August 13, 1914. 27 Comp. Dec. 849 (1921).

2. Practicability of project

Section 16 of the Act of August 13, 1914, did not relieve the Secretary of the Interior of the duty imposed by section 2 of the Act of June 17, 1902, to report at each session of Congress "all facts relative to the practicability of each irrigation project," nor did it relieve him of the duty imposed by section 4 of the Act of June 17, 1902, to determine the practicability of irrigation projects before the letting of contracts. 34 Op. Atty. Gen. 545 (1925).

EXPLANATORY NOTE

Legislative History. S. 4628, Public Law 170 in the 63rd Congress. S. Rept. No. 312. H.R. Rept. No. 505. H.R. Rept. No. 1076 (conference report).

RESERVATIONS FOR PARKS AND COMMUNITY CENTERS

An act to authorize the reservation of public lands for country parks and community centers within reclamation projects, and for other purposes. (Act of October 5, 1914, ch. 316, 38 Stat. 727)

[Sec. 1. Lands in reclamation projects reserved for country parks, public playgrounds, and community centers.]—The Secretary of the Interior is hereby authorized to withdraw from other disposition and reserve for country parks, public playgrounds, and community centers for the use of the residents upon the lands such tracts as he may deem advisable not exceeding twenty acres in any one township in each reclamation project or the several units of such reclamation projects undertaken under the act of June seventeenth, nineteen hundred and two, known as the reclamation act .(38 Stat. 727; 43 U.S.C. § 569)

EXPLANATORY NOTE

Cross Reference, Reservations for Town Sites. Section 1 of the Act of April 16, 1906, 34 Stat. 116, authorizes the Secretary of the Interior to withdraw from public entry any lands needed for town site purposes in connection with irrigation projects. The 1906 Act appears herein in chronological order.

Sec. 2. [Free water supply—Reservations to be used in perpetuity.]—Subject to the provisions hereinafter contained every such tract of land so set apart shall be supplied with water from the Government irrigation system, the cost thereof to be charged to the remaining lands of the project as a part of the construction charge of such project, and shall be maintained and used in perpetuity by the people upon said reclaimed lands for a pleasure park, public playground, and community center. (38 Stat. 727; 43 U.S.C. § 569)

Sec. 3. [Contracts with irrigation organizations to maintain lands so reserved for purposes prescribed—Reversion.]—For the purpose of carrying out and effecting the objects of this act the Secretary of the Interior is authorized to enter into a contract with the organization formed by the owners of the lands irrigated within said project or project unit pursuant to section six of the act of June seventeenth, nineteen hundred and two, stipulating and providing that the organization will maintain and use such of the lands so reserved for the purposes prescribed in this act as such organization may desire, and that upon failure to so maintain and use such lands, or in the event that same shall be permitted to be used or occupied for other purposes than those stipulated in this act, the control of the lands shall revert to the United States. (38 Stat. 728; 43 U.S.C. § 569)

Sec. 4. [Disposal of lands not taken within 10 years—Proceeds covered into reclamation fund.]—Any of such lands not contracted for in accordance with the provisions of section three of this act within ten years from the time water is available for the same, or sooner, if the Secretary of the Interior may deem it desirable, shall be disposed of in accordance with the public-land laws applicable thereto, and the proceeds from the disposition of lands reverting to the

United States under the provisions of this act, and from sales of water rights, shall be covered into the reclamation fund and placed to the credit of the project wherein the lands are situate. (38 Stat. 728; 43 U.S.C. § 569)

EXPLANATORY NOTES

Codification. The entire act is codified as section 569, title 43, of the U.S. Code.

Supplementary Provision, Lot in Black Canyon Unit. The Act of July 3, 1926, 44 Stat. 890, extends the provisions of this act to a 25-acre tract in the Black Canyon unit of the Boise project, Idaho.

Legislative History. S. 657, Public Law 208 in the 63rd Congress. S. Rept. No. 85. H.R. Rept. No. 426. H.R. Rept. No. 1121.

ROCKY MOUNTAIN NATIONAL PARK

[Extracts from] An Act to establish the Rocky Mountain National Park in the State of Colorado, and for other purposes. (Act of January 26, 1915, ch. 19, 38 Stat. 798)

[**Sec. 1. Establishment of park—Use for reclamation project.**]—The tract of land in the State of Colorado particularly described by and included within metes and bounds as follows, to wit:

* * * * *

(Legal description omitted.)

* * * * *

is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States, and said tract is dedicated and set apart as a public park for the benefit and enjoyment of the people of the United States, under the name of the Rocky Mountain National Park: *Provided,* That the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project. (38 Stat. 798–800; 16 U.S.C. §191)

Explanatory Notes

Cross Reference, Water and Power Works Within National Parks or Monuments. The Act of March 3, 1921, 41 Stat. 1353, requires the consent of Congress for the construction of water and power facilities within a national park or monument. Notes of Opinions following it should be consulted with respect to the effect of that act. The 1921 Act appears herein in chronological order.

Cross Reference, Federal Power Act. Section 212 of the Act of August 26, 1935, 49 Stat. 847, the Federal Power Act, specifically provides that the Act of March 3, 1921, respecting water and power works in national parks, and any other acts relating to national parks and monuments are not affected by the 1935 Act.

Cross Reference, Other Statutes Authorizing the Use of National Parks for Reclamation Purposes. The Act of May 11, 1910, 36 Stat. 354, establishing the Glacier National Park; the Act of August 9, 1916, 39 Stat. 442, establishing the Lassen Volcanic National Park; and the Act of February 26, 1919, 40 Stat. 1178, establishing the Grand Canyon National Park each contain authority for certain reclamation activities within the Park. Extracts from each of these Acts appear herein in chronological order.

Notes of Opinions

Proceeds from lands 2
Reclamation projects 1

1. Reclamation projects

The Act of March 3, 1921, 41 Stat. 1353, repealing the authority of the Federal Power Commission to grant licenses for works in national parks and monuments applies only to power projects, and does not apply to reclamation projects. Consequently, the 1921 Act does not repeal the specific authority granted by the Act of January 26, 1915, 38 Stat. 800, for the utilization of Rocky Mountain National Park for a "Government reclamation project." 38 Op. Atty. Gen. 310 (1935).

The tunnel under the Rocky Mountain National Park, proposed as part of the Grand Lake-Big Thompson transmountain diversion project (later renamed the Colorado-Big Thompson project), is authorized by the proviso in section 1 of the Act of January 26, 1915, 38 Stat. 800, establishing the park; and this authority was not repealed by the Act of March 3, 1921, 41 Stat. 1353, requiring Congressional authorization for water and power facilities in national parks and monuments. Solicitor Margold Opinion, M–28081 (July 19, 1935).

2. Proceeds from lands

Proceeds from the lease of, or sale of products from, lands in Rocky Mountain and Glacier National Parks that are withdrawn under reclamation laws but are not used for constructed reclamation projects, are subject to disposition under laws relating to the national parks and are not covered into the reclamation fund, as provided by the Act of July 19, 1919. C.L. 866, January 19, 1920.

Sec. 2. [**Rights of way.**]—Nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. Whenever consistent with the primary purposes of the park the Act of February fifteenth, nineteen hundred and one, applicable to the location of rights of way in certain national parks and the national forests for irrigation and other purposes, shall be and remain applicable to the lands included within the park. (38 Stat. 800; § 7, Act of February 26, 1931, 46 Stat. 1044; 16 U.S.C. § 193)

EXPLANATORY NOTES

1931 Amendment. Section 7 of the Act of January 26, 1931, 46 Stat. 1044, repealed the provision originally contained in section 2 authorizing the Secretary of the Interior, in his discretion and upon such terms as he may deem wise, to grant easements or rights of way for steam, electric, or similar transportation upon or across the lands within the Park.

Reference in the Text. The Act of February fifteenth, nineteen hundred and one, applicable to the location of rights-of-way in certain national parks and the national forests for irrigation and other purposes, referred to in the text, appears herein in chronological order.

* * * * *

EXPLANATORY NOTE

Legislative History. S. 6309, Public Law 238 in the 63d Congress. H.R. Rept. No. 1275.

SUNDRY CIVIL EXPENSES APPROPRIATIONS ACT FOR 1916

[Extracts from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and sixteen, and for other purposes. (Act of March 3, 1915, ch. 75, 38 Stat. 822)

* * * * *

RECLAMATION SERVICE

The following sums are appropriated out of the special fund in the Treasury of the United States created by the Act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), and therein designated "the reclamation fund":

[**Damage payments.**]—For * * * payment of claims for damage to or loss of property, personal injury, or death arising out of activities of the Bureau of Reclamation; * * * (38 Stat. 859)

Explanatory Notes

Provision Repeated; Evolution of Wording. A provision for the payment of damage claims has appeared in each annual appropriation act for the Bureau of Reclamation beginning with the Act of March 3, 1915. The shortened form shown above was first used in the Act of September 6, 1950, 64 Stat. 687. It has been carried in each subsequent annual Interior Department Appropriation Act through fiscal year 1955, and thereafter in each annual Public Works Appropriation Act through the most recent one, the Act of October 15, 1966, 80 Stat. 1008.

As first enacted in 1915, the provision read: "payment of damages caused to the owners of lands or private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of irrigation works, and which may be compromised by agreement between the claimant and the Secretary of the Interior."

The appropriation act for fiscal year 1927 and subsequent acts inserted the word "other" before "private property" and added "or such officers as he may designate" at the end. The appropriation act for fiscal year 1939 and subsequent acts dropped the last clause "and which may be compromised by agreement between the claimant and the Secretary of the Interior or such officers as he may designate." The appropriation act for fiscal year 1948 and subsequent acts revised the provision to read "payment of claims for damage to or loss of property, personal injury, or death, arising out of the survey, construction, operation or maintenance of works by the Bureau of Reclamation". The Act of September 6, 1950, substituted "activities of" for the phrase "the survey, construction, operation or maintenance of works by".

Comparable Provision, Indian Irrigation Projects. The Act of February 20, 1929, 42 Stat. 1252, 25 U.S.C. § 388, provides for similar payment in connection with Bureau of Indian Affairs irrigation works.

Remedy Solely Discretionary. The remedies provided by the appropriation acts and the Act of February 20, 1929, have been construed to be matters entirely within the discretion of the Secretary of the Interior, rather than statutory rights to compensation. Solicitor White Opinion, 60 I.D. 451, 454 (1950); *Bill Powers,* TA-271 (Ir.), 71 I.D. 237 (1964).

Procedures for Administrative Determinations. Each Regional Solicitor is authorized to determine, under the annual Public Works Appropriation Act, claims not exceeding $15,000 for damage to or loss of property, personal injury, or death arising from activities of the Bureau of Reclamation. The Regional Solicitor is likewise authorized to make determinations for claims under $15,000 arising from the survey, construction, operation or maintenance of irrigation works on Indian irrigation projects. Appeal lies to the Solicitor, upon written notice of appeal filed with the Regional Solicitor within 30 days of receipt of the determination. Solicitor's Regulation No. 5, amended October 5, 1965.

Relation to Tort Claims. The annual appropriation acts, and the Act of February 20, 1929, 45 Stat. 1252, 25 U.S.C. § 388, relating to claims for damages caused by Indian irrigation projects, provide only for the administrative determination of claims which do not sound in tort, as the Federal Tort Claims Act is considered to provide the exclusive remedy for all tort claims. As a matter of procedure, when a claim is submitted for administrative determination it is considered under both the annual Public Works Appropriation Act and the Federal Tort Claims Act, to determine if a remedy is available under either Act. For cases and determinations involving tort claims, see the Act of June 25, 1948, herein and notes thereunder.

Relation to Claims for Taking of Property. Where the reclamation activities result in a "taking of" property, rather than in "damages to" property (admittedly a difficult distinction to draw), the landowner is entitled to just compensation under the Fifth Amendment to the Constitution. If such property is not acquired by the Bureau of Reclamation by purchase or condemnation, the property owner may bring suit under the Tucker Act in the Court of Claims or the United States District Court. Selected cases are noted herein under the Fifth Amendment to the Constitution, and extracts from the Tucker Act appear herein in the Appendix.

Editor's Note, Annotations of Administrative Determinations. The annotations of administrative determinations which follow should not be considered an exhaustive treatment, as the proceedings in this field are voluminous. However, an attempt has been made to select illustrative decisions spanning the range of fact situations.

NOTES OF OPINIONS

Canal breaks 3
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1. Direct causation

The Government is not liable under the Federal Tort Claims Act for property damage resulting from water escaping through a sudden break in an irrigation canal which was constructed according to plans prepared by engineers based upon the best engineering practices available, and inspected regularly with reasonable diligence and skill after being placed in operation. However, the Government at its discretion may compensate injured parties in these circumstances under the Interior Department Appropriation Act where the cause of the damage is shown to be the direct result of activities of the Bureau of Reclamation. *Northern Pacific Railway Co., et al.*, T–560 (Ir.) (May 10, 1954).

Where action of claimant in removing dirt from banks of irrigation ditch was shown to have been a proximate cause of a break in the ditch resulting in the flooding of his land, no damages may be recovered against the United States under appropriation act provision available therefor. *C. E. Burbridge*, M–32045 (January 30, 1943).

Recovery for alleged damages was denied when the claimant failed to show by a fair preponderance of the evidence that alleged contamination of his spring was caused by an increase in the alkaline or salt content of irrigation waters pumped, "damages resulting from remote or consequent causes" being held not to come within the purview of the statute. *Columbia Basin Orchard Co.*, M–31669 (November 19, 1942).

2. Floods

The Government is not liable, under the Federal Tort Claims Act, for damage caused to crops by a flood diverted to claimant's land by the existence of a Bureau of Reclamation canal because the original decision to build the laterals without placing culverts under them was within the discretionary function exception of the Act. The Flood Control Act, 33 U.S.C. § 702c, is an immunity statute, applicable only where liability would exist without it, and as there was no liability, the Flood Control Act does not bar the payment of claims under the Public Works Appropriation Act. In this instance the flood waters would not have been diverted onto claimant's land but for the lateral, thus the damage done was the direct result of non-tortious activities by the Bureau of Reclamation. Claim allowed. *Bill Powers*, TA–271 (Ir.) 71 I.D. 237 (1964).

Where flooding of land was the result of a rainstorm of unprecedented or cloudburst like proportions, and not the result of direct act or omission, or negligence in the construction, operation or maintenance of a drainage ditch, claimants cannot recover

from the Government for property damaged. *S. L. Tooke, et al.,* M–31871 (August 22, 1942).

No recovery may be had against the United States where it was shown that the operation of certain reservoirs of a Government irrigation project did not cause the flooding of claimants' lands during a severe rainstorm but that in fact they reduced, impeded and retarded the flood waters of a creek above the reservoirs; that large quantities of water were not suddenly released from the reservoirs; that the reservoirs were operated efficiently and in such manner as to utilize the available storage capacity to the fullest possible extent for the regulation and control of the flood waters; and that but for the reservoirs, the flood waters in the creek, and the damage resulting therefrom, would have been appreciably greater. *Lenora Simpson, et al.,* M–30564 (February 16, 1940).

Claims filed against the United States by landowners on the west side of the Rio Grande River who alleged that the Alamo levee, constructed by the United States in 1933 on the east side of the River, had caused their lands to be flooded, were disallowed, the Under Secretary of the Interior holding that the alleged damaged lands were a part of the flood plain of the Rio Grande River which would be flooded independently of the Alamo levee, and that the United States had a right to construct the levee to protect its property against floods in the River even if such construction should result in damage to the lands on the opposite side of the river. *Norberto Butler, et al.,* August 29, 1935.

Floods of unprecedented occurrence and volume are acts of God over which the Government has no control and for which it cannot be held liable. *Palmyra Longuemare, et al.,* February 21, 1930.

3. Canal breaks

Damage caused by flooding when a canal break occurred due to gopher burrowing could not be compensated under the Public Works Appropriation Act since the break was not directly caused by the activities of the Bureau of Reclamation. *Wilbur B. Cassady and Mary A. Cassady, and Farmers Insurance Group,* TA–235 (Ir.), 69 I.D. 193 (1962).

When a canal dike breaks because of the activities of ground squirrels, the direct cause of the break is the presence of *ferae naturae,* over which the United States has no control, thus no liability can attach. *Anna Barnes,* 57 I.D. 584 (1942).

Damages caused by water escaping from a Government canal to railroad trestles and embankments is compensable under the annual appropriation act as the direct result of activities of the Bureau of Reclamation. *Northern Pacific Railway Co., et al.,* T–560 (Ir.) (May 10, 1954).

Flooding caused by tumbleweeds, which sank and rolled along the bottom of a culvert of an irrigation lateral, clogging a drain and causing claimant's land to be overflowed, was held to have resulted from the manner in which the canal was maintained by the Government, to be "damage due to unavoidable causes in which the element of negligence does not appear," and claimant accordingly was permitted to recover for damage resulting therefrom. *George H. Munro,* M–31573 (January 24, 1942).

4. Canal seepage

When an award for damage to property is rendered as a result of seepage from an irrigation canal, and that award is based on the permanent depreciation in value of the property due to the seepage, no additional award may be rendered unless the extent or intensity of the seepage has increased since the first award to a degree which has caused further permanent depreciation in the value of the property. *Norma Streit, et al.,* T–1100 (Ir.) (February 4, 1964). For the earlier award, see *Arnold Streit,* T–476 (Ir.) (Supp.), 62 I.D. 12 (1955).

Claimant contended that seepage water from Bureau of Reclamation ditches and canals had rendered grazing land useless and caused damage to cattle from falls suffered by ice formation. The record showed several other sources for the seepage, however, namely heavy irrigation and rainfall on adjacent upland farms and two springs in the area; therefore the claim was denied. The damages must be the direct result of activities of the Bureau of Reclamation, which required in this context that seepage water from project facilities alone, without contribution from other sources, be sufficient to cause the damage. *Howard D. Galletine,* T–980 (Ir.), 67 I.D. 191 (1960).

Claimant had conveyed the right of way for a canal to the United States, which subsequently caused damage to the basement of his home and his crops by seepage. Upon a showing of damage directly caused by activities of the Bureau of Reclamation, measured by the difference in appraisal value of the property with and without the seepage condition, compensation was made to claimant, past rulings to the contrary being reversed. *Arnold Streit,* T–476 (Ir.) (Supp.), 62 I.D. 12 (1955).

5. Reservoir water releases and escapes

The claimant contended the formation of accumulated ice jams, caused by the fluctuation of river flow in the winter resulting from irregular power releases made through the powerplant, damaged his irrigation diversion dam. However, previous ice jams had developed on the river during periods of continuous water release from the powerplant, ice jams had occurred during the same winter on nearby rivers with no apparent relationship to continuous or fluctuating flows, and reservoir intake records showed the natural flow of the river would have varied over 550 per cent during the period the damage occurred. Therefore, it could not be established that damage to claimant's dam was the direct result of non-tortious activities of employees of the Bureau of Reclamation. *Hanover Irrigation District,* TA–256 (Ir.) (February 20, 1964).

Spillway gates at a Bureau of Reclamation dam gave way, permitting a large volume of water to escape from the dam. Failure of the gates was traced to a defective anchor bolt common to two of the gates, but even a close inspection would not have revealed the defect, therefore there was no negligence on the part of the Government. An award for damage claims for flooded lands could be made from the current Interior Department Appropriation Act (1951), however, even though the damage occurred in 1942, as Congress has provided no statute of limitations for this discretionary power. Solicitor White Opinion, 60 I.D. 451 (1950).

The Government was held not liable for damage caused by flooding when an unprecedented accumulation and flow of heavy ice loosened the structure and caused a dam to break where it was shown that the dam was properly designed and constructed to withstand such pressure as it would be likely to meet based on past experience. *Nashua Booster Club, et al.,* M–30446 (September 13, 1940).

Where a large volume of water from a reservoir was discharged in order to clean and repair it, causing a greatly increased flow of water in the river below the dam and reservoir which overflowed the banks of the river and resulted in damage to owners of adjoining lands, it was held that the one was a direct consequence of the other and that claimants could therefore recover. Dec. Comp. Treasury, June 15, 1915.

6. Livestock losses

Claimant's damages were caused by loss of livestock through drowning in an unfenced irrigation canal. Applicable state law, which determined the result for a negligence theory of liability under the Federal Tort Claims Act, did not require a landowner to fence his land or be liable to the owner of livestock injured while upon that land, therefore the claim was denied under the Federal Tort Claims Act. A long-established policy of the Department did not consider livestock drowning in irrigation facilities to be the direct results of Government employees' activity, thus the claim was denied under the statute relating to claims for damage caused by Indian irrigation works. *John C. Brock,* TA–249 (Ir.), 70 I.D. 397 (1963). For other determinations under the appropriation acts denying awards in cattle drowning cases, see *Dale Jones,* TA–185 (Ir.) (April 23, 1959); *Ray Strouf.* TA–180 (Ir.) (February 6, 1959); *Alfred Koeltzow,* TA–18 (Ir.) (July 25, 1949).

7. Indian irrigation projects

The criteria for an award under the annual Public Works Appropriation Acts and those for awards under the Indian project act are the same, thus determinations made under the one may be used as precedent for the other. Therefore, a claim for losses of livestock by drowning in an Indian irrigation project canal must be denied. *John C. Brock,* TA–249 (Ir.), 70 I.D. 397 (1963).

Realignment of telephone poles brought about through wind action after the footings of the poles had been softened by submersion in water, and through the action of ice formed during the winter in lifting the poles from their settings, in an area inundated by the construction of the Wild Horse Dam on the Duck Valley irrigation project, Nevada, held due to direct acts of Bureau of Indian Affairs employees in the survey, construction, operation or maintenance of irrigation projects for which damages were recoverable under the 1929 act. *Elko County Telephone and Telegraph Co.,* M-31026 (January 17, 1941).

8. Land purchase contract release clauses

Where there was no indication that the original appraisals of a canal right of way purchased by the Government were increased because of inclusion in the contract of a clause requiring claimant to accept the purchase price as full payment for all damages, and no evidence that future damage was within the contemplation of either party when the purchase price was fixed then upon proof of damage by canal seepage, compensation will be allowed. *Arnold Streit,* T–476 (Ir.) (Supp.), 62 I.D. 1 (1955).

Notwithstanding an agreement in land-purchase contract to accept the pur

chase price as full payment for all damages for entry upon the property and the construction, operation and maintenance of reclamation works thereon, a vendor may be awarded damages under the provisions of the annual Interior Department appropriation act when the contract gives the vendor the right of possession until a certain date, and before that date the Bureau of Reclamation overflows the land and destroys the crops growing upon it. *Ruth O. Wiles,* T–462 (Ir.), 61 I.D. 109 (1953).

9. Wells

Claimants alleged their water wells went dry as a result of the construction of a drainage ditch by the Bureau of Reclamation. The record showed the wells went dry within a short time after the drainage ditch was constructed, the wells had supplied water for several years before the ditch was constructed, substantial water was encountered during construction of the ditch past claimant's properties, and the water table had been lowered noticeably since construction. This was enough to constitute a *prima facie* case in favor of the causal relationship between the ditch construction and the drying up of the wells; and in the absence of rebuttal evidence, and particularly because of the difficulty in drawing conclusions with mathematical certainty regarding subterranean water, this showing entitled claimants to recovery under the current Public Works Appropriation Act. *Ed Brewer, et al.,* TA–253 (Ir.), 71 I.D. 84 (1964).

10. Silting

Where silt, exposed by the lowering of the water surface of a Bureau Reservoir, was blown over adjacent lands by the prevailing winds, no claim for damage resulting therefrom could be allowed because the damage was not the direct result of the operation of Government employees. *W. E. Bartlett, et al.,* 57 I.D. 415 (1941).

11. Subirrigated lands

Diversion by the Government of waters of a lake, thereby depriving meadowland of its moisture derived from subirrigation, even though the land was not contiguous to the meander line of the lake, constitutes a valid claim for damages within the contemplation of the appropriation act provision. However, where the meadowland is damaged by the diversion of waters of a lake, the landowner is not entitled to general damages to his remaining lands, as incidental to the damage to the former, if the latter were not directly benefited by those waters prior to their diversion. *George W. Myers and Lillie A. Myers,* 49 L.D. 106 (1922).

12. Property, what constitutes

Claimants sought damages because the construction and operation of a reclamation project had increased the volume of water in a lake, thereby diluting its dissolved mineral content and making claimant's business of extracting salts from the water more expensive. The claim was denied on the grounds no valid property right was damaged, since claimant had never appropriated the dissolved minerals in the lake or obtained a license or permit from the city or state for that purpose. *Roxie Thorson and Marie Downs,* T–710 (Ir.), 63 I.D. 12 (1956).

13. Transfer of facilities

A damage claim submitted for seepage from a canal which resulted in waterlogging land belonging to claimants was undisputed insofar as the damage or its cause was concerned. However, responsibility for the operation and maintenance of the structures was transferred to the Department of Agriculture by agreements made under the Water Conservation and Utilization Act, as soon as the Bureau of Reclamation had finished constructing the main and branch canals and the laterals. The Bureau of Reclamation's original plans called for construction of drainage systems also, anticipating the seepage problem, but its responsibilities for construction were terminated before these structures were built. Therefore, the funds appropriated for the Bureau of Reclamation should not be charged with damages resulting from a failure by other entities to fully execute a plan of construction the Bureau was not allowed to complete. *Marilynn Truscott and Solveig C. Evans,* T–453 (Ir.), 61 I.D. 88 (1953).

14. Fire

Claimant may recover damages from the United States for property damage resulting from a forest fire which occurred during the construction of a reservoir where the forest fire resulted from a shift of the wind during land-clearing operations by burning and was not due to negligence on the part of Government employees. *The Shevlin-Hixon Co.,* 58 I.D. 189 (1942).

Claimant may recover damages from the United States for property damage where during the burning of dry willows necessary to the maintenance of an irrigation ditch a sudden wind came up and carried the fire into adjacent cut-over meadow lands. *Race Harney,* M–31661 (February 4, 1942).

15. Roads and bridges

Damages for the extraordinary use of a public highway bridge by Government personnel in the course of constructing the various units of the Kendrick project,

Wyoming, are compensable from funds made available in the Interior Department Appropriation Act, 1954, for the payment of claims for damage to property arising out of activities of the Bureau of Reclamation. The measure of damages for injury to a public highway bridge ordinarily is the cost of repairing the injured bridge. However, where the bridge is out of date and has become a safety hazard because of the extraordinary use which causes the damage, the estimated cost of repairs may be applied against the cost of a new bridge designed to meet present day traffic requirements. *Claim of Natrona County, Wyoming*, T-512(Ir.), 61 I.D. 264 (1953).

* * * * *

[**Jackson Lake enlargement.**]—Jackson Lake enlargement work, Idaho-Wyoming: For maintenance, operation, continuation of construction, and incidental operations, conditioned upon the deposit of this amount by the Kuhn Irrigation and Canal Company and the Twin Falls Canal Company to the credit of the reclamation fund, $476,000; (38 Stat. 860).

EXPLANATORY NOTE

Provision Repeated. A similar provision is contained in the Sundry Civil Expenses Appropriation Act for 1917, approved July 1, 1916, 39 Stat. 304.

* * * * *

[**Expenditures and obligations not to exceed appropriations or amount in reclamation fund.**]—Under the provisions of this Act no greater sum shall be expended, nor shall the United States be obligated to expend, during the fiscal year nineteen hundred and sixteen, on any reclamation project appropriated for herein an amount in excess of the sum herein appropriated therefor, nor shall the whole expenditures or obligations incurred for all of such projects for the fiscal year nineteen hundred and sixteen exceed the whole amount in the "reclamation fund" for that fiscal year. (38 Stat. 860)

EXPLANATORY NOTES

Provision Repeated. A similar provision is contained in each subsequent annual Sundry Civil Expenses Appropriation Act through fiscal year 1922, and each annual Interior Department Appropriation Act thereafter through the Act of October 12, 1949, 63 Stat. 781.

Cross Reference. Section 16 of the Reclamation Extension Act of August 13, 1914, 38 Stat. 690, provides that after July 1, 1915, no expenditures shall be made out of the reclamation fund except out of appropriations made by Congress. The Act appears herein in chronological order.

* * * * *

[**Interchange of appropriations.**]—Ten per centum of the foregoing amounts shall be available interchangeably for expenditure on the reclamation projects named; but not more than ten per centum shall be added to the amount appropriated for any one of said projects. (38 Stat. 861)

EXPLANATORY NOTE

Provision Repeated. This provision is repeated in each subsequent annual Sundry Civil Expenses Appropriation Act through fiscal year 1922 and each annual Interior Department Appropriation Act thereafter through the Act of October 12, 1949, 63 Stat. 781, with the following modifications: The Act of May 24, 1922, 42 Stat. 586, and subsequent acts include additional authority for emergency repairs; and the Act of July 1, 1946, 60 Stat. 367, and subsequent acts insert the words "for operation and maintenance projects" after "foregoing amounts."

* * * * *

[No obligation increasing fixed construction charge permitted until agreement is made with water users.]—No work shall be undertaken or expenditure made for any lands, for which the construction charge has been fixed by public notice, which work or expenditure shall, in the opinion of the Secretary of the Interior, increase the construction cost above the construction charge so fixed; unless and until valid and binding agreement to repay the cost thereof shall have been entered into between the Secretary of the Interior and the water-right applicants and entrymen affected by such increased cost, as provided by section four of the act of August thirteenth, nineteen hundred and fourteen, entitled "An act extending the period of payment under reclamation projects, and for other purposes." (38 Stat. 861; 43 U.S.C. § 470)

EXPLANATORY NOTES

Reference in the Text. The Act of August thirteenth, nineteen hundred and fourteen, entitled "an act extending the period of payment under reclamation projects, and for other purposes", referred to in the text, is the Reclamation Extension Act. The Act appears herein in chronological order. Section 4 also imposes conditions on increases in construction charges, and notes of opinion are found thereunder.

Supplementary Provision: Repayment Contract with Irrigation District. Section 46 of the Omnibus Adjustment Act of May 25, 1926, requires a repayment contract with an irrigation district for all projects constructed thereafter. The Act appears herein in chronological order.

NOTE OF OPINION

1. Increase of costs

Where construction of a new reservoir was undertaken in violation of this provision, the Secretary of the Interior could not collect costs for unauthorized construction on grounds of "unjust enrichment" of water users. *Fox v. Ickes,* 137 F.2d 30, 78 App. D.C. 84 (1943), *cert. denied,* 320 U.S. 792.

PROTECTION OF LANDS AND PROPERTY IN THE IMPERIAL VALLEY, CALIFORNIA

For protecting lands and property in the Imperial Valley and elsewhere along the Colorado River, within the limits of the United States, against injury or destruction by reason of the changes in the channels of the Colorado River—and the Secretary of the Interior is authorized to expend any portion of such money within the limits of the Republic of Mexico as he may deem proper in accordance with such agreements for the purpose as may be made with the Republic of Mexico—$100,000, which sum shall be available for expenditure as soon as there shall have been paid into the Treasury, by contributions from the Imperial Valley irrigation district, an equivalent amount to the credit of the Secretary of the Interior, to constitute, with the amount hereby appropriated, the total sum of $200,000, to be expended by him for the purposes herein described. (38 Stat. 861.)

EXPLANATORY NOTES

Agreement and Report. An agreement between William L. Marshall, representing the Government and A. F. Andrade representing interests in Mexico was approved by the Secretary of the Interior April 2, 1915. $100,000 was advanced by the Imperial Irrigation District matching the Government's $100,000. Report dated August 1, 1915, by General William L. Marshall, was transmitted to Congress December 30, 1915, House Document 586—64th Congress.

Cross References, Appropriations for Protection of Property along Colorado

River. The Joint Resolution of June 25, 1910, 36 Stat. 883, which appears herein in chronological order, appropriates $1,000,000 to the President in similar terms for the protection of property in Imperial Valley and elsewhere along the Colorado River. See index under Colorado River and Imperial Valley for related material.

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code, except that relating to an increase in construction cost.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 21318, Public Law 263 in the 63rd Congress. H.R. Rept. No. 1365. S. Rept. No. 1000. H.R. Rept. No. 1471 (conference report).

LIEU FARM UNITS IN CASES OF NONIRRIGABILITY

An act for the relief of homestead entrymen under the reclamation projects of the United States. (Act of March 4, 1915, ch. 182, 38 Stat. 1215)

[Relinquishment of homestead entries under reclamation act if land not irrigable—Selection of farm unit in lieu—Residence on original entry credited.]—Any person who has made homestead entry under the act of June seventeenth, nineteen hundred and two (Thirty-second Statutes at Large, page three hundred and eighty-eight), for land believed to be susceptible of irrigation which at the time of said entry was withdrawn for any contemplated irrigation project, may relinquish the same, provided that it has since been determined that the land embraced in such entry or all thereof in excess of twenty acres is not or will not be irrigable under the project, and in lieu thereof may select and make entry for any farm unit included within such irrigation project as finally established, notwithstanding the provisions of section five of the act of June twenty-fifth, nineteen hundred and ten, entitled "An act to authorize advances to the reclamation fund," and so forth, and acts amendatory thereof: *Provided,* That such entrymen shall be given credit on the new entry for the time of bona fide residence maintained on the original entry. (38 Stat. 1215; 43 U.S.C. § 447)

Explanatory Notes

Reference in the Text. Section 5 of the Act of June twenty-fifth, nineteen hundred and ten, entitled "An Act to authorize advances to the reclamation fund," referred to in the text, prohibits irrigation entries to be made until the Secretary of the Interior shall have established the unit of acreage and fixed the water charges and the date when the water can be applied and made public announcement of the same. The 1910 Act appears herein in chronological order.

Legislative History. H.R. 19061, Public Law 331 in the 63rd Congress. H.R. Rept. No. 1345. S. Rept. No. 1026.

Notes of Opinions

Assignment of lieu unit 1
Construction charges 2
Exchange of patented unit 3

1. Assignment of lieu unit

Where, prior to an exchange of reclamation farm units under this act the entryman has, in connection with the original unit, fulfilled the ordinary homestead requirements and submitted proper proof thereof, the lieu farm unit may be assigned, under the Act of June 23, 1910, 36 Stat. 592 subject to compliance with the requirements of the reclamation law as to payment, reclamation, and cultivation. *Sarah E. Lewellen,* 46 L.D. 385 (1918).

2. Construction charges

When an entryman makes a new entry under this act, he may be allowed credit for construction charges paid on his original entry. Instructions, 44 L.D. 544 (1915).

3. Exchange of patented unit

In decision of March 22, 1934, the First Assistant Secretary of the Interior refused to approve an exchange of patented lands in the Frannie division for an unpatented unit in the Willwood division, Shoshone project.

AMEND ASSIGNMENT OF RECLAMATION HOMESTEAD ENTRIES ACT

An act to amend the act of June 23, 1910, entitled "An act providing that entrymen for homesteads within the reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act." (Act of May 8, 1916, ch. 114, 39 Stat. 65)

[Assignment of homestead entries within reclamation projects—Confirmation of certain assignments made between June 23, 1910, and January 1, 1913.]—The act of June twenty-third, nineteen hundred and ten (Public, Two hundred and forty-three, Thirty-sixth Statutes, page five hundred and ninety-two), entitled "An act providing that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years, the same as though said entry had been made under the original homestead act," is hereby amended by adding the following proviso:

"*Provided,* That in the absence of any intervening valid adverse interests any assignment made between June twenty-third, nineteen hundred and ten, and January first, nineteen hundred and thirteen, of land upon which the assignor has submitted satisfactory final proof and the assignee purchased with the belief that the assignment was valid and under the act of June twenty-third, nineteen hundred and ten, is hereby confirmed, and the assignee shall be entitled to the land assigned as under the act of June twenty-third, nineteen hundred and ten, notwithstanding that said original entry was conformed to farm units and that the part assigned was canceled and eliminated from said entry prior to the date of final proof: *Provided further,* That all entries so assigned shall be subject to the limitations, terms, and conditions of the reclamation act and acts amendatory thereof or supplemental thereto, and all of said assignees whose entries are hereby confirmed shall, as a condition to receiving patent, make the proof heretofore required of assignees." (39 Stat. 65; 43 U.S.C. § 442)

Explanatory Notes

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of June 23, 1910.

Legislative History. H.R. 384, Public Law 72 in the 64th Congress. H.R. Rept. No. 127. S. Rept. No. 328.

WATER RIGHTS FOR SALT RIVER INDIANS

[Extract from] An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1917. (Act of May 18, 1916, ch. 125, 39 Stat. 123)

* * * * *

[Perpetual water rights from Salt River project for Salt River Indians—Reimbursement—Initial charges.]—The Secretary of the Interior is hereby authorized and directed to provide for water rights in perpetuity for the irrigation of six hundred and thirty-one Salt River Indian allotments of ten acres each, to be designated by the Commissioner of Indian Affairs, water from works constructed under the provision of the reclamation act and acts amendatory thereof or supplemental thereto: *Provided,* That the reclamation fund shall be reimbursed therefor upon terms the same as those provided in said act or acts for reimbursement by entrymen on lands irrigated by said works, and there is hereby appropriated $20,000, or so much thereof as may be necessary, to pay the initial installment of the charges when made for said water. (39 Stat. 130)

* * * * *

EXPLANATORY NOTES

Not Codified. This section of the Act is not codified in the US. Code.

Legislative History. H.R. 10385, Public Law 80 in the 64th Congress. H.R. Rept. No. 87. S. Rept. No. 244.

ACQUISITION OF PIPE-LINE, ELEPHANT BUTTE RESERVOIR

An act to authorize the Secretary of the Interior to acquire certain right of way near Engle, New Mexico. (Act of July 8, 1916, ch. 227, 39 Stat. 351)

[Conveyance of right of way by Santa Fe Railway Company to United States—Water to grantor—Delivery—Revision on abandonment.]—The Secretary of the Interior is hereby authorized to receive on behalf of the United States from the Atchison, Topeka and Santa Fe Railway Company the conveyance of so much of said company's pipe-line right of way from a point near Engle, New Mexico, to the Rio Grande River as will be flooded by the Elephant Butte Dam; and as the consideration for such conveyance the railway company shall be permitted to take from the water impounded above Elephant Butte Dam now under construction by the Reclamation Service, and which will flood such right of way, such quantity of water as the Secretary of the Interior may find to be necessary for the operation of said company's railway, but not exceeding thirty million gallons of water per month: *Provided,* That the Secretary of the Interior shall at all times have authority to determine the times, place, and manner in which said Atchison, Topeka and Santa Fe Railway Company shall be permitted to take such water from said reservoir, and that all expense incident thereto shall be borne by said railway company; *Provided further,* That neither the United States nor its successors in interest shall be held liable for or obligated to supply the water hereinbefore described, but in the event that the United States or its successors in interest shall abandon the use of the land upon which the said Atchison, Topeka and Santa Fe Railway has its said right of way for a reservoir site as herein contemplated, said right of way, so far as the same may be conveyed to the United States hereunder, shall revert to the said railway company. (39 Stat. 351)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Conveyance and Consideration. The Atchison, Topeka and Santa Fe Railway Company deeded April 5, 1918, to the United States certain lands, a provision of the deed permitting the Railway company to take not exceeding 30 million gallons of water from the reservoir per month in exchange for the lands conveyed. The deed was accepted by the Department October 7, 1918.

Legislative History. S. 1843, Public Law 145 in the 64th Congress. S. Rept. No. 81. H.R. Rept. No. 525.

ACCEPTANCE OF EXTENSION ACT

An act to amend section 14 of the reclamation extension act approved August 13, 1914.
(Act of July 26, 1916, ch. 257, 39 Stat. 390)

[Acceptance of extension of payments to be made within six months—Upon showing, may be made later.]—Section fourteen of an act entitled "An act extending the period of payment under reclamation projects, and for other purposes," approved August thirteenth, nineteen hundred and fourteen, be amended so as to read as follows:

"SEC. 14. Any person whose land or entry has heretofore become subject to the reclamation law who desires to secure the benefits of the extension of the period of payments provided by this act shall, within six months after the issuance of the first public notice hereunder affecting his land or entry, notify the Secretary of the Interior in the manner to be prescribed by said Secretary, of his acceptance of all the terms and conditions of this act, and thereafter his lands or entry shall be subject to all of the provisions of this act: *Provided,* That upon sufficient showing the Secretary of the Interior may, in his discretion, permit notice of acceptance of all the terms and conditions of this act to be filed at any time after the time limit hereinbefore fixed for filing such acceptance shall have expired, conditioned, however, that where the applicant for such acceptance is in arrears on construction charges he shall at the time of acceptance pay such installments of the construction charge as he would have been required to pay had he accepted this act within the time limit hereinabove fixed plus the penalties that would have accrued had he so accepted, and such applicant shall thereafter be upon the same status that he would have been had he accepted the provisions of this act within the time limit hereinabove fixed, and thereafter the lands or entry of any such persons so filing such notice of acceptance shall be subject to all the provisions of this act." (39 Stat. 390; 43 U.S.C. § 475)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 14 of the Act of August 13, 1914.

Legislative History. H.R. 6057, Public Law 167 in the 64th Congress. H.R. Rept. No. 48. S. Rept. No. 318. H.R. Rept. No. 953 (conference report).

LASSEN VOLCANIC NATIONAL PARK

[Extracts from] An act to establish the Lassen Volcanic National Park in the Sierra Nevada Mountains in the State of California, and for other purposes. (Act of August 9, 1916, ch. 302, 39 Stat. 442)

[**Sec. 1. Park created—Rights-of-way—Utilization for reclamation purposes—Indemnity selections.**]—All those certain tracts, pieces, or parcels of land lying and being situate in the State of California and within the boundaries particularly described as follows, to wit:

* * * * *

(Legal description omitted, 39 Stat. 442)

* * * * *

are hereby reserved and withdrawn from settlement, occupancy, disposal, or sale, under the laws of the United States, and said tracts are dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people of the United States under the name and to be known and designated as the Lassen Volcanic National Park; and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and be removed therefrom: *Provided,* That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States or the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: *Provided further,* That the United States Reclamation Service may enter upon and utilize for flowage or other purposes any area within said park which may be necessary for the development and maintenance of a Government reclamation project; that no lands located within the park boundaries now held in private, municipal, or State ownership shall be affected by or subject to the provisions of this Act: *And provided further,* That no lands within the limits of said park hereby created belonging to or claimed by any railroad or other corporation now having or claiming the right of indemnity selection by virtue of any law or contract whatsoever shall be used as a basis for indemnity selection in any State or Territory whatsoever for any loss sustained by reason of the creation of said park. (39 Stat. 442–43; § 4, Act of January 26, 1931, 46 Stat. 1043; 16 U.S.C. § 201)

* * * * *

Explanatory Notes

1931 Amendment. Section 4 of the Act of January 26, 1931, 46 Stat. 1043, amended this section by repealing authority originally contained therein for the acquisition of rights-of-way for steam and electric railways, automobiles or wagon roads.

Cross Reference, Water and Power Works Within National Parks or Monuments. The Act of March 3, 1921, 41 Stat. 1353, requires the consent of Congress for the construction of water and power facilities within a national park or monument. The 1921 Act appears herein in chronological order.

Cross Reference, Federal Power Act. Section 212 of the Act of August 26, 1935, 49 Stat. 847, the Federal Power Act, specifically provides that the Act of March 3, 1921, respecting water and power works in national parks, and any other acts relating

to national parks and monuments are not affected by the 1935 Act.

Cross Reference, Other Statutes Authorizing the Use of National Parks for Reclamation Purposes. The Act of May 11, 1910, 36 Stat. 354, establishing the Glacier National Park; the Act of January 26, 1915, 38 Stat. 798, establishing the Rocky Mountain National Park; and the Act of February 26, 1919, 40 Stat. 1178, establishing the Grand Canyon National Park each contain authority for certain reclamation activities within the Park. Extracts from each of these Acts appear herein in chronological order.

Legislative History. H.R. 348, Public Law 184 in the 64th Congress. H.R. Rept. No. 749. S. Rept. No. 536.

PUBLIC LANDS IN IRRIGATION DISTRICTS

An act to promote the reclamation of arid lands. (Act of August 11, 1916, ch. 319, 39 Stat. 506)

[**Sec. 1. Public lands within irrigation districts made subject to State laws—Benefits of State laws to be extended to holders of public lands—Act not applicable to districts with majority acreage of unentered lands.**]—When in any State of the United States under the irrigation district laws of said State there has heretofore been organized and created or shall hereafter be organized and created any irrigation district for the purpose of irrigating the lands situated within said irrigation district, and in which irrigation district so created or to be created there shall be included any of the public lands of the United States, such public lands so situated in said irrigation district, when subject to entry, and entered lands within said irrigation district, for which no final certificates have been issued, which may be designated by the Secretary of the Interior in the approval by him of the map and plat of an irrigation district as provided in section three, are hereby made and declared to be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes, to the same extent and in the same manner in which the lands of a like character held under private ownership are or may be subject to said laws: *Provided,* That the United States and all persons legally holding unpatented lands under entry made under the public land laws of the United States are accorded all the rights, privileges, benefits, and exemptions given by said State laws to persons holding lands of a like character under private ownership, except as hereinafter otherwise provided: *Provided further,* That this act shall not apply to any irrigation district comprising a majority acreage of unentered land. (39 Stat. 506; 43 U.S.C. § 621)

Explanatory Note

1922 Supplementary Provisions. The Act of May 15, 1922, 42 Stat. 542, authorizes the Secretary of the Interior to enter into repayment contracts with irrigation districts, and in such event water right applications on the part of land owners and entrymen, in the discretion of the Secretary, may be dispensed with. Section 3 of the 1922 Act provides in part: "That upon the execution of any contract between the United States and any irrigation district pursuant to this act the public lands included within such irrigation district, when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the act entitled 'An act to promote the reclamation of arid lands,' approved August 11, 1916: *Provided,* That no map or plan as required by section 3 of the said act need be filed by the irrigation district for approval by the Secretary of the Interior." The 1922 Act appears herein in chronological order.

Note of Opinion

1. Public lands, what constitutes

Lands within irrigation district which were designated as public or which were owned by the United States resettlement administration were not "public lands" subject to entry within Act of August 11, 1916, making such land subject to state laws relating to irrigation, and hence were not sub-

ject to assessment to pay debts of district, notwithstanding state law (O. C. L. A. 125–805) making public land within irrigation district, whether entered or not entered, subject to taxation for irrigation purposes. *Buell v. County Court of Jefferson County et al.*, 152 P. 2d 578 (Or. 1944), rehearing denied, 154 P. 2d 188.

Sec. 2. [Irrigation costs to be apportioned against all lands—Certain charges certified to land offices—No obligation against United States—Charges made lien upon public lands—Lands may be sold therefor—Limitations—Reclamation act.]—The cost of constructing, acquiring, purchasing, or maintaining the canals, ditches, reservoirs, reservoir sites, water, water right, rights of way, or other property incurred in connection with any irrigation project under said irrigation district laws shall be equitably apportioned among lands held under private ownership, lands legally covered by unpatented entries, and unentered public lands included in said irrigation district. Officially certified lists of the amounts of charges assessed against the smallest legal subdivision of said lands shall be furnished to the register and receiver of the land district within which the lands affected are located as soon as such charges are assessed; but nothing in this act shall be construed as creating any obligation against the United States to pay any of said charges, assessments, or debts incurred.

All charges legally assessed shall be a lien upon unentered lands and upon lands covered by unpatented entries included in said irrigation district; and said lien upon said land covered by unpatented entries may be enforced upon said unpatented lands by the sale thereof in the same manner and under the same proceeding whereby said assessments are enforced against lands held under private ownership: *Provided,* That in the case of entered unpatented lands the title or interest which such irrigation district may convey by tax sale, tax deed, or as a result of any tax proceeding shall be subject to the following conditions and limitations: If such unpatented land be withdrawn under the act of Congress of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), known as the reclamation act, or subject to the provisions of said act, then the interest which the district may convey by such tax proceedings or tax deed shall be subject to a prior lien reserved to the United States for all the unpaid charges authorized by the said act of June seventeenth, nineteen hundred and two, but the holder of such tax deed or tax title resulting from such district tax shall be entitled to all the rights and privileges in the land included in such tax title or tax deed of an assignee, under the provisions of the act of Congress of June twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page five hundred and ninety-two), and upon submission to the United States land office of the district in which the land is located of satisfactory proof of such tax title the name of the holder thereof shall be indorsed upon the records of such land office as entitled to the rights of one holding a complete and valid assignment under the said act of June twenty-third, nineteen hundred and ten, and such person may at any time thereafter receive patent upon submitting satisfactory proof of the reclamation and irrigation required by the said act of Congress of June seventeenth, nineteen hundred and two, and acts amendatory thereto, and making the payments required by said acts. (39 Stat. 507; 43 U.S.C. §§ 622, 626)

EXPLANATORY NOTES

Codification. The first paragraph of the above section, and the clause down to the semicolon of the second paragraph, are codified as section 622, title 43, United States Code. The substance of the second paragraph, beginning with "Said lien" in the third line, is codified as section 626, title 43, United States Code.

Reference in the Text. The Act of Congress of June twenty-third, nineteen hundred and ten (Thirty-sixth Statutes, page five hundred and ninety-two), referred to in the text, provides that entrymen for homesteads within reclamation projects may assign their entries upon satisfactory proof of residence, improvement, and cultivation for five years. The 1910 Act appears herein in chronological order.

Cross Reference, Taxation of Entered Lands. The Act of April 21, 1928, provides that lands of homestead entrymen under the reclamation laws may be taxed by the State or political subdivision after proof of residence, improvements and cultivation has been accepted by the General Land Office. The Act appears herein in chronological order.

NOTES OF OPINIONS

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1. Construction with other laws

Neither the Act of April 21, 1928, nor the amendatory Act of June 13, 1930, enlarges, abridges, or impairs the Act of August 11, 1916, in re irrigation districts in their relation to the public lands of the United States, and both the Act of April 21, 1928, as amended, and said Act of August 11, 1916, may have harmonious operation within their proper spheres. Regulations of General Land Office, 53 I.D. 418 (1931), amending Circular 1176, 52 I.D. 511 (1928).

2. Tax deeds

The regulation of the Secretary of the Interior requiring filing in the local land office of assignment of homestead entry within an irrigation district, as authorized by section 1, Act of August 11, 1916, was for the benefit of the United States and its land office only, and did not authorize subsequent purchasers of tax deeds to question the validity of a previous deed for failure to comply with the regulation. *Clinton v. Elder et al.,* 277 Pac. 968 (Wyo. 1929).

3. Acquisition by irrigation districts

Retention by an irrigation district of a homestead bid in a tax sale should be limited to a reasonable time. *Clifford H. Briscoe,* 54 I.D. 256 (1933).

An irrigation district may bid in lands within reclamation entries sold for charges assessed by the district under the authority conferred upon it by the Acts of August 11, 1916, and May 15, 1922, without limit as to acreage and assign them to persons qualified to acquire them under the Act of June 23, 1910, as amended, but patents cannot be issued to the district pursuant to such sales. *Glen L. Kimmel and Goshen Irrigation District,* 53 I.D. 658 (1932).

The two year limitation for the holding of excess lands in section 3 of the Act of August 9, 1912, does not apply to irrigation districts which have bid in the lands at tax sales under the Act of August 11, 1916. *Glen L. Kimmel and Goshen Irrigation District,* 53 I.D. 658 (1932).

4. Withdrawals, effect of

A first form reclamation withdrawal is effective as to unentered public lands notwithstanding the fact that the lands previously were approved by the Secretary as being subject to the Smith Act. *MacDonald,* 69 I.D. 181 (1962), *overruling Bill Fults,* 61 I.D. 437 (1954), in re desert land entries within Imperial Irrigation District.

Where assessments were levied by an irrigation district under the Smith Act of August 11, 1916, against unpatented land in an existing desert-land entry, the irrigation district can enforce the lien arising from such assessment by a sale of the land in accordance with the provisions of the act despite the cancellation of the entry and the withdrawal of the land under the Reclamation Act during the intervening period, because the right of the district to enforce its lien by sale of the lands is a "valid existing right" not affected by the withdrawal. The purchaser of the land at such a sale may obtain a patent to the land only if he submits proof of the reclamation and irrigation of the land, as required by the Reclamation Act, and pays to the United States the amounts required under that act. *George B. Willoughby,* 60 I.D. 363 (1949).

Public land in a state irrigation district

under the Smith Act and burdened with an obligation to pay a proportionate share of irrigation charges is unaffected by the withdrawal under the Executive Order of November 26, 1934, which order declares its operation as a land withdrawal is subject to "existing valid rights." *Harley R. Black,* 55 I.D. 445 (1936).

Sec. 3. [Before lien becomes effective, Secretary of the Interior to approve project—After 10 years he may remove lien if water is not available—In districts with constructed works, public lands made subject to assessments previously made.]—No unentered lands and no entered lands for which no final certificates have been issued shall be subject to the lien or liens herein contemplated until there shall have been submitted by said irrigation district to the Secretary of the Interior, and approved by him, a map or plat of said district and sufficient detailed engineering data to demonstrate to the satisfaction of the Secretary of the Interior the sufficiency of the water supply and the feasibility of the project, and which shall explain the plan or mode of irrigation in those irrigation districts where the irrigation works have not been constructed, and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, and which shall also show the source of water to be used for irrigation of land included in said district: *Provided,* That the Secretary of the Interior may, upon the expiration of ten years from the date of his approval of said map and plan of any irrigation district, release from the lien authorized by this act any unentered land or lands upon which final certificate has not issued, for which irrigation works have not been constructed and water of such district made available for the land: *Provided further,* That in those irrigation districts already organized and whose irrigation works have been constructed and are in operation as soon as a satisfactory map, plat, and plan shall have been approved by the Secretary of the Interior, as in this act provided, such entered and unentered lands shall be subject to all district taxes and assessments theretofore actually levied against the lands in said district and in the same manner in which lands of a like character held under private ownership are subject to liens and assessments. (39 Stat. 507; 43 U.S.C. §§ 623, 625)

EXPLANATORY NOTES

Codification. This section, with the exception of the first proviso is codified as section 623, title 43, United States Code, The first proviso is codified as section 625, title 43, United States Code.

1922 Supplementary Provisions. The Act of May 15, 1922, 42 Stat. 542, authorizes the Secretary of the Interior to enter into repayment contracts with irrigation districts and in such event water right applications on the part of land owners and entrymen, in the discretion of the Secretary, may be dispensed with. Section 3 of the 1922 Act provides in part: "That upon the execution of any contract between the United States and any irrigation district pursuant to this act the public lands included within such irrigation district, when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the act entitled 'An act to promote the reclamation of arid lands,' approved August 11, 1916: *Provided,* That no map or plan as required by section 3 of the said act need be filed by the irrigation district for approval by the Secretary of the Interior." The 1922 Act appears herein in chronological order.

Sec. 4. [Record of approval in land offices.]—Upon the approval of the district map or plat as hereinbefore provided by the Secretary of the Interior the register and receiver will note said approval upon their records where any unentered or entered and unpatented lands are affected. (39 Stat. 508; 43 U.S.C. § 624)

Sec. 5. [Unentered lands not to be sold for taxes—Lien to be continuing—Payment to be made by entryman.]—No public lands which were unentered at the time any tax or assessment was levied against same by such irrigation district shall be sold for such taxes or assessments, but such tax or assessment shall be and continue a lien upon such lands, and not more than one hundred and sixty acres of such land shall be entered by any one person; and when such lands shall be applied for, after said approval by the Secretary of the Interior, under the homestead or desert-land laws of the United States the application shall be suspended for a period of thirty days to enable the applicant to present a certificate from the proper district or county officer showing that no unpaid district charges are due and delinquent against said land. (39 Stat. 508; 43 U.S.C. § 627)

NOTE OF OPINION

1. Withdrawals, effect of

Where assessments were levied by an irrigation district under the Smith Act of August 11, 1916, against unpatented land in an existing desert-land entry, the irrigation district can enforce the lien arising from such assessment by a sale of the land in accordance with the provisions of the act, despite the cancellation of the entry and the withdrawal of the land under the Reclamation Act during the intervening period, because the right of the district to enforce its lien by sale of the lands is a "valid existing right" not affected by the withdrawal. The purchaser of the land at such a sale may obtain a patent to the land only if he submits proof of the reclamation and irrigation of the land, as required by the Reclamation Act, and pays to the United States the amounts required under that act. *George B. Willoughby,* 60 I.D. 363 (1949).

Sec. 6. [Public lands sold under tax lien patented to purchaser—Payment to United States of minimum price of $1.25 per acre—Qualifications and limitations—Purchaser to make complete payment within 90 days or land may be purchased by another—Conditions—Disposal of vacant entered land.]—Any entered but unpatented lands not subject to the reclamation act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), sold in the manner and for the purposes mentioned in this act may be patented to the purchaser thereof or his assignee at any time after the expiration of the period of redemption allowed by law under which it may have been sold (no redemption having been made) upon the payment to the receiver of the local land office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such lands, together with the usual fees and commissions charged in entries of like lands under the homestead laws, and upon a satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land; but the purchaser or his assignee shall, at the time of application for patent, have the qualification of a homestead entryman or desert-land entryman, and not more than one hundred and sixty acres of said land shall be patented to any one purchaser under the provisions of this act.

These limitations shall not apply to sales to irrigation districts, but shall apply to purchasers from such irrigation districts of such land bid in by said district. Unless the purchaser or his assignee of such lands shall, within ninety days after the time for redemption has expired, pay to the proper receiver all fees and commissions and the purchase price to which the United States shall be entitled as provided for in this act, any person having the qualification of a homestead entryman or a desert-land entryman may pay to the proper receiver, for not more than one hundred and sixty acres of said lands, for which payment has not been made, the unpaid purchase price, fees, and commissions to which the United States may be entitled; and upon satisfactory proof that he has paid to the purchaser at the tax sale or his assignee, or to the proper officer of the district for such purchaser or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges or bid in by the district at such sale, and in addition thereto, the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

In any case where any tract of entered land lying within such approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall be required, in addition to the qualifications and requirements otherwise provided, to furnish satisfactory proof by certificate from the proper district or county officer that he has paid all charges then due to the district upon said land and also has paid to the proper district or county officer for the holder or holders of any tax certificates, delinquency certificates, or other proper evidence of purchase at tax sale the amount for which the said land was sold at tax sale, together with the interest and penalties thereon provided by law. (39 Stat. 508; 43 U.S.C. § 628)

NOTE OF OPINION

1. Withdrawals, effect of

Where assessments were levied by an irrigation district under the Smith Act of August 11, 1916, against unpatented land in an existing desert-land entry, the irrigation district can enforce the lien arising from such assessment by a sale of the land in accordance with the provisions of the act, despite the cancellation of the entry and the withdrawal of the land under the Reclamation Act during the intervening period, because the right of the district to enforce its lien by sale of the lands is a "valid existing right" not affected by the withdrawal. The purchaser of the land at such sale may obtain a patent to the land only if he submits proof of the reclamation and irrigation of the land, as required by the Reclamation Act, and pays to the United States the amounts required under that act. *George B. Willoughby,* 60 I.D. 363 (1949).

Sec. 7. [Issue and delivery of district notices—Petition, appeal, etc.—Rights of redemption.]—All notices required by the irrigation district laws mentioned in this act shall, as soon as such notices are issued, be delivered to the register and receiver of the proper land office in cases where unpatented lands are affected thereby, and to the entryman whose unpatented lands are included therein, and the United States and such entryman shall be given the same rights to be heard by petition, answer, remonstrance, appeal, or otherwise as are given to persons holding lands in private ownership, and all entrymen shall be given the same rights of redemption as are given to the owners of lands held in private ownership. (39 Stat. 509; 43 U.S.C. § 629)

Sec. 8. [Disposal of receipts.]—All moneys derived by the United States from the sale of public lands herein referred to shall be paid into such funds and applied as provided by law for the disposal of the proceeds from the sale of public lands. (39 Stat. 509; 43 U.S.C. § 630)

EXPLANATORY NOTES

Popular Name. This Act is popularly known as the Smith Act, being so named for Congressman Addison T. Smith of Idaho.

Transfer of Functions. References in the text to "Receiver" and "Register" should be interpreted as referring to the Secretary of the Interior or an officer designated by him. The Acts of October 28, 1921, 42 Stat. 208, and March 3, 1925, 43 Stat. 1145, consolidated the offices of "Receiver" and "Register" in district land offices, and authorized the President to appoint "Registers" of such offices. Reorganization Plan No. 3 of 1946, 60 Stat. 1100, abolished all Registers of the District Land Offices, their functions to be performed by the Secretary of the Interior or, subject to his direction and control, by such officers and agencies of the Department of the Interior as he may designate.

Legislative History. H.R. 12365, Public Law 196 in the 64th Congress. H.R. Rept. No. 458. S. Rept. No. 578.

ENTRY RIGHTS FOR SETTLERS, YUMA PROJECT

An act for the relief of certain settlers under reclamation projects. (Act of August 17, 1916, ch. 349, 39 Stat. 516)

[Certain settlers under Yuma project allowed to make farm-unit entry, credited with previous residence and improvements.]—*Repealed.*

EXPLANATORY NOTES

Statute Repealed. The Act of December 16, 1930, 46 Stat. 1028, repealed this statute and other "obsolete sections and parts of sections of the Revised Statutes and Statutes at Large." Section 2 of the repealing act provides that: "Rights or liabilities existing under the foregoing statutes or parts thereof on the date of the enactment of this Act shall not be affected thereby." Before repeal, the statute read as follows: "Any person who has heretofore established residence upon and improved any tract of land within the irrigable area of the Yuma reclamation project in Arizona withdrawn from entry under the provisions of the reclamation law and acts supplementary thereto and amendatory thereof, and who shall have made valuable improvements upon such lands, and who has resided thereon in good faith for two years prior to the passage of this act, may make entry for the farm unit upon which his residence is established, and that such residence and improvements heretofore made shall be credited upon his final proof." (39 Stat. 516)

Legislative History. H.R. 10116, Public Law 212 in the 64th Congress. H.R. Rept. No. 654. S. Rept. No. 581.

SALE OF LANDS, TOWN SITE OF NEWELL

An act authorizing the Secretary of the Interior to sell the unsold and unappropriated portions of lands within the town site of Newell, S. Dak., and for other purposes. (Act of September 8, 1916, ch. 477, 39 Stat. 852)

[**Sec. 1. Certain town-site lands in Newell, S. Dak., reserved for Belle Fourche project—Remaining lands to be appraised and sold.**]—The Secretary of the Interior is hereby authorized and directed to reserve and set apart such portions of the unsold and unappropriated lands within the town site of Newell, Butte County, South Dakota, as he deems necessary for administrative purposes in connection with the Belle Fourche irrigation project, and after subdividing the remaining portions of such lands into tracts that in his judgment would render the same most salable, and, appraising the reasonable value of each such tracts, sell the same, for not less than the appraised value, at public auction to the highest bidder, on such terms and under such rules and regulations as he may establish. (39 Stat. 852)

Sec. 2. [$15,000 of proceeds to be special domestic water-supply fund for Newell—Balance to reclamation fund.]—Of the proceeds of such sales, after deducting all expenses incurred in the subdivision, appraisement, and sale of said lands, an amount not exceeding $15,000 shall be covered into the Treasury of the United States in a special fund available only for expenditure by the Secretary of the Interior to provide or assist in providing the said town of Newell, Butte County, South Dakota, an adequate system of water supply for domestic purposes, under such terms and conditions as may be provided by the Secretary of the Interior, or for such other and further public improvements as the Secretary of the Interior and the municipal authorities of said town may agree upon. The net proceeds of such sale in excess of $15,000, if any there be, shall be covered into the Treasury of the United States and credited to the reclamation fund in accordance with existing law for the sale of town sites on reclamation projects. (39 Stat. 852)

Sec. 3. [Authority to make rules and regulations.]—The Secretary of the Interior is hereby authorized to make such rules and regulations as may be necessary for carrying into effect the provisions of this act. (39 Stat. 853)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 12889, Public Law 285 in the 64th Congress. H. R. Rept No. 657. S. Rept. No. 771.

YUMA AUXILIARY PROJECT

An act to provide for an auxiliary reclamation project in connection with the Yuma project, Arizona. (Act of January 25, 1917, ch. 20, 39 Stat. 868)

[**Sec. 1. Certain lands to be set apart and sold—Sale of water rights—Limitation as to works and water delivery—Determination of value and costs by Secretary of the Interior.**]—The Secretary of the Interior is hereby authorized to set apart any lands in the State of Arizona heretofore or hereafter withdrawn under the reclamation law, in connection with the Yuma reclamation project, as an auxiliary reclamation project or unit, and sell, in tracts of such size as he may determine of not more than one hundred and sixty acres to any one purchaser, the lands so set apart and believed to be susceptible of irrigation, at public sale under suitable regulations, for not less than the reasonable value per acre of the land plus the estimated cost per acre of reclamation works to be constructed for the reclamation of said lands, so set apart plus the proportionate cost per acre of the works previously constructed and available therefor. That appurtenant water rights for lands in private ownership may be sold for not to exceed one hundred and sixty acres to any one person at a price equal to the estimated cost per acre of the works to be constructed plus the proportionate cost per acre of the works previously constructed and available for the lands, if any there be, payment to be made under the same terms as for public land under the provisions of section two. Final water-right certificate shall not be issued to such private land until payment has been made in full. No works shall be constructed nor water delivered through any of the works of the Yuma project for the irrigation of any such private lands unless application has been made to purchase a water right for such land under the terms and provisions of this section. The Secretary of the Interior, at or prior to the time of sale, shall fix and determine (a) the reasonable value of the land per acre; (b) the estimated cost per acre of the works to be constructed; and (c) the proportionate cost per acre of the works previously constructed and available for the lands offered for sale. (39 Stat. 868)

Explanatory Notes

Cross References, Project Boundaries Modified. (1) The Act of June 13, 1949, 63 Stat. 172, severed certain lands from the Yuma auxiliary project and legally described the project's boundaries. (2) The boundaries described by the 1949 Act were modified by the Act of February 15, 1956, 70 Stat. 16, to exclude therefrom some two hundred eighty-five and thirteen one-hundredths irrigable acres, more or less, which are legally described in the Act. Both the 1949 and the 1956 Acts appear herein in chronological order.

Cross Reference, Appropriation and Repayment. Public Resolution No. 51 of February 21, 1925, 43 Stat. 962, authorized an appropriation out of the reclamation fund for operation and maintenance and completion of construction of the irrigation system of the first Mesa unit, Yuma auxiliary project, and also provided for the repayment into the fund of the amount appropriated. The 1925 Act appears herein in chronological order.

NOTE OF OPINION

1. Transfer of land to U.S.

There is no authority of law and no regulation under the Yuma auxiliary enactment authorizing the transfer to the United States of a patented tract of land located within the limits of the Yuma auxiliary project on condition that the purchase price of the reconveyed tract shall be applied upon the operation and maintenance charge of a tract of land held by the grantor. *Henry P. Bockrath,* 53 I. D. 617 (1932).

Sec. 2. [Requirements of bidders—Methods of sale—Terms of purchase—Issue of patents—Preference rights—Return of actual cost of irrigation works required.]—All bidders at such public sale shall be required to make a deposit of ten per centum of the amount bid for the tract proposed to be purchased, and upon notice from the Secretary of the Interior that such bid has been accepted shall be required to pay fifteen per centum additional within sixty days after such notice. In case of failure to do so the deposit shall be forfeited and the corresponding lands shall be available for further sale. In case the bids for the lands shall not aggregate a sufficient amount within six months from the time fixed for the filing of bids to meet the probable cost as announced, all deposits shall be returned. The remaining seventy-five per centum of the purchase price shall be paid in three annual installments, with interest at six per centum per annum on deferred payments until paid, running from the date of notice to pay the additional fifteen per centum, but advance payments may be received at any time. Upon full payment of the purchase price patent shall issue for the lands, and no qualification or limitation shall be required of any purchaser or patentee except that he be a citizen of the United States. Such patent shall also contain a grant of a water right appurtenant to the land: *Provided,* That any person who has made an entry which is now valid and subsisting, or who has a preference right to make entry, for any irrigable land embraced within the limits of the auxiliary project, may purchase said land at the price of $2.50 per acre and shall be subject to the same payments for the irrigation works as is required of persons holding private lands under the provisions of section one hereof: *Provided further,* That the purchasers or owners of the land to be irrigated under said auxiliary reclamation project shall also agree to pay to the United States the total actual cost of the works of said auxiliary reclamation project in the event that the actual cost of said works shall exceed the estimated cost thereof. (39 Stat. 869)

NOTE OF OPINION

1. Qualifications of purchasers

Under this act no qualification or limitation shall be required of any purchaser or patentee of public land except that he be a citizen of the United States. A corporation cannot become a purchaser of public land at the sale. A purchaser is not required to live on or in the neighborhood of the land purchased. One who now holds lands under a Federal irrigation project is not barred from becoming a purchaser. Departmental regulations, October 3, 1919.

Section 2 of this act, which imposes the qualification of citizenship upon "any purchaser or patentee" of lands within the Yuma Auxiliary project, Arizona, did not contemplate the restriction of the right of original entry or purchase to native born or to those who had theretofore become citizens, but the conditions of the statute as to citizenship are sufficiently met if, at the time of the issuance of patent, the patentee is a citizen of the United States. Departmental instructions, 48 L. D. 235 (1921).

Sec. 3. [Auxiliary reclamation fund.]—The moneys received under the provisions of this act shall be paid into the Treasury of the United States and be covered into a separate fund known as the auxiliary reclamation fund of the Yuma project, Arizona. (39 Stat. 869)

EXPLANATORY NOTE

Supplementary Provision: Disposition of Receipts. Section 4 (a) and (b) of the Permanent Appropriation Repeal Act, 1934, 48 Stat. 1224, 1227–28, eliminated the crediting of receipts to the separate appropriation account for the Yuma Auxiliary Irrigation Project, Arizona, and authorized annual appropriations of equal amounts for the same purpose. However, the Interior Department Appropriation Act, 1936, contained the following provision: "*Provided further,* That notwithstanding the provisions of section 4 (a) and (b) of the Act of June 26, 1934 (48 Stat., p. 1224), hereafter all moneys received under the provisions of the Act of January 25, 1917 (39 Stat., p. 868), as amended, shall be paid into the Treasury of the United States and be covered into the reclamation fund, special fund, and any unexpended balance in the auxiliary reclamation fund of the Yuma project shall be transferred to and consolidated with the general reclamation fund * * *" 49 Stat. 198 (1935).

Sec. 4. [Use of fund—Payment of charges—Operation and maintenance of works to be turned over to landowners.]—The money in the said auxiliary reclamation fund of the Yuma project, Arizona, shall be available for the construction or completion of irrigation works of the said auxiliary project or unit. The landowners shall pay the cost of operation and maintenance, and the charges to cover such cost as fixed by the Secretary of the Interior shall be paid each year in advance of the delivery of water. Upon the announcement by the Secretary of the Interior of the completion of the said auxiliary project or unit thereof, the operation and maintenance of the irrigation works shall, as soon as practicable, be turned over to an organization representing a majority of the landowners, to be operated and maintained by them at their expense in accordance with a contract therefor to be made with the Secretary of the Interior. (39 Stat. 869)

EXPLANATORY NOTE

1918 Amendment. The Act of February 11, 1918, 40 Stat. 437, amended section 4 by striking the parenthetic phrase that appeared at the end of the first sentence which read as follows: "[to the extent of the moneys received on account thereof in connection with the sale of the lands therein]." The 1918 Act appears herein in chronological order.

NOTE OF OPINION

1. Use of fund

Under above act as amended by Act of February 11, 1918 (40 Stat. 437), moneys received from the sale of public lands under the Yuma Mesa auxiliary project may be utilized for the construction of the irrigation works of said project, but reimbursement therefor must be made by the landowners to the auxiliary reclamation fund. Congress failed to make provision for the final disposition of these moneys and they must remain in said auxiliary reclamation fund after repayment, subject to such disposition as Congress may in the future make. Comp. Dec., May 10, 1921, and July 6, 1921.

Sec. 5. [Application of surplus funds.]—Any surplus of funds paid on account of construction remaining after completion thereof, and any money remaining in said separate fund known as the auxiliary reclamation fund of the Yuma project, Arizona, after completion of the said auxiliary project and after reim-

bursement of the reclamation fund for the proportionate share of works built by means of the latter fund shall be credited to the cost of operation and maintenance of the works of the said auxiliary project, and any balance thereof on hand when the said auxiliary project is taken over, as provided in section four, shall be paid to the contracting organization. (39 Stat. 869)

Sec. 6. [Reclamation law applicable.]—The provisions of the reclamation act of June seventeenth, nineteen hundred and two, and acts amendatory thereof and supplementary thereto, known as the reclamation law, shall be applicable to such auxiliary project, except any portions of such acts as may be in conflict with the provisions hereof. (39 Stat. 870)

Sec. 7. [Rules and regulations.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect. (39 Stat. 870)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 5718, Public Law 293 in the 64th Congress. S. Rept. No. 580. H.R. Rept. No. 1188

AMEND PATENTS AND WATER-RIGHT CERTIFICATES ACT

An act to amend section one of the act of August 9, 1912, providing for patents on reclamation entries, and for other purposes. (Act of February 15, 1917, ch. 71, 39 Stat. 920)

[Issue of patents and final water-right certificates—Payment in full required.]—The proviso to section one of the act of August ninth, nineteen hundred and twelve (Thirty-seventh Statutes, page two hundred and sixty-five), entitled "An act providing for patents on reclamation entries, and for other purposes," is amended to read as follows:

"*Provided,* That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate." (39 Stat. 920; 43 U.S.C. § 541)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 1 of the Act of August 9, 1912.

Legislative History. S. 5014, Public Law 322 in the 64th Congress. S. Rept. No. 484. H.R. Rept. No. 1141.

FLOOD CONTROL ACT OF 1917

[**Extract from**] An act to provide for the control of the floods of the Mississippi River and of the Sacramento River, California, and for other purposes. (Act of March 1, 1917, ch. 144, 39 Stat. 948)

* * * * *

Sec. 3. [Participation by other departments in flood control studies.] * * *. All examinations and surveys of projects relating to flood control shall include a comprehensive study of the watershed or watersheds, and the report thereon in addition to any other matter upon which a report is required shall give such data as it may be practicable to secure in regard to (a) the extent and character of the area to be affected by the proposed improvement; (b) the probable effect upon any navigable water or waterway; (c) the possible economical development and utilization of water power; and (d) such other uses as may be properly related to or coordinated with the project. And the heads of the several departments of the Government may, in their discretion, and shall upon the request of the Secretary of War, detail representatives from their respective departments to assist the Engineers of the Army in the study and examination of such watersheds, to the end that duplication of work may be avoided and the various services of the Government economically coordinated therein: * * *. (39 Stat. 950; 33 U.S.C. § 701)

Explanatory Notes

Codification. Section 701 of title 33, U.S. Code, includes the full text of section 3 of the 1917 Act.

Legislative History. H.R. 14777, Public Law 367 in the 64th Congress. H.R. Rept. No. 616. S. Rept. No. 891.

Note of Opinion

1. Interior Department studies

The Secretary of the Interior has implied authority under section 5 of the Flood Control Act of 1944 to conduct studies on power marketing in those areas respecting which the Army Engineers are concluding surveys looking toward possible reservoir developments. The Secretary also has express authority under section 3 of the Flood Control Act of March 1, 1917 to detail departmental representatives to assist the Army Engineers in the study and examination of watersheds. Solicitor White Opinion, M–36080 (May 16, 1951), in re power study in the New England-New York area.

SUNDRY CIVIL EXPENSES APPROPRIATIONS ACT FOR 1918

[Extracts from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes. (Act of June 12, 1917, ch. 27, 40 Stat. 105)

* * * * *

[King Hill project.]—King Hill project, Idaho. For beginning construction, maintenance, operation, and incidental operations, $200,000: *Provided,* That no part of this appropriation shall be expended until the Secretary of the Interior shall have determined that the said King Hill project is practicable, as provided by section four of the Act approved June seventeenth, nineteen hundred and two, known as the reclamation Act, and shall have adopted the said project under and subject to the provisions and conditions of the said reclamation Act. (40 Stat. 148)

EXPLANATORY NOTES

Subsequent Provisions in Appropriation Acts. Special provisions relating to the King Hill project appear in subsequent appropriation acts as follows: Act of July 1, 1918, 40 Stat. 674, for purposes of issuing patents, U.S. reclamation is equivalent to Idaho reclamation under the Carey Act; Act of July 19, 1919, 41 Stat. 200, no expenditure if lands released from assessments without consent of Secretary; Act of June 5, 1920, 41 Stat. 914, limitation on total expenditures; Act of May 10, 1926, 44 Stat. 480, moneys advanced by District available for expenditure. The excerpt from the 1918 Act appears herein in chronological order.

Termination of Project. The King Hill project was difficult and costly to operate. In 1929 a committee which made an economic survey of certain reclamation projects concluded that the King Hill project was an insolvent enterprise and recommended that no further expenditures be made. The Act of June 18, 1934, 48 Stat. 980, authorized the Secretary to enter into a contract with the King Hill Irrigation District, by which the district and the United States would rescind previous agreements and be released from all obligations. The United States entered into such a contract on September 28, 1934. The 1934 Act appears herein in chronological order.

* * * * *

[Rio Grande project.]—Rio Grande project, New Mexico-Texas: For maintenance, operation, continuation of construction, and incidental operations, $648,000, together with the unexpended balance of the sum appropriated for this project for the fiscal year nineteen hundred and seventeen: *Provided,* That no part of this appropriation shall be expended for drainage except in irrigation districts formed under State laws and upon the execution of agreements for the repayment to the United States of all project investments. (40 Stat. 148)

EXPLANATORY NOTES

Provision Repeated. A similar proviso is contained in the Sundry Civil Expenses Appropriation Acts of July 1, 1918, 40 Stat. 674, and July 19, 1919, 41 Stat. 201.

1917 Modification. The Act of October 6, 1917, 40 Stat. 426, authorizes the Secretary to expend $15,000 in the State of New Mexico pending formation of an irrigation district and to expend in Texas such amount within the limit of available appropriations as the existing district may obligate itself to repay. The modifying act appears herein in chronological order.

* * * * *

[**$1,000,000 annually to be paid from reclamation fund to general funds in Treasury.**]—The Act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes, page eight hundred and thirty-five), is amended to provide that reimbursement of the moneys advanced under the provisions of that act shall be made by transferring annually the sum of $1,000,000 from the reclamation fund to the general funds in the Treasury, beginning July first, nineteen hundred and twenty, and continuing until full reimbursement has been made. (40 Stat. 149)

EXPLANATORY NOTE

Supplementary Provisions: Moratoria on Repayment, Final Reimbursement. The Act of February 6, 1931, contains a provision granting a moratorium of two years in repayment of money advanced to the reclamation fund by the Act of June 25, 1910, as amended by the above provision. Further postponement of repayment until 1938 was made by the Acts of April 1, 1932, March 3, 1933, and June 22, 1936. A complete reimbursement to the Treasury of funds advanced to the Reclamation Fund under the provisions of the Acts of June 25, 1910, and March 3, 1931, as amended, was effected by the Act of May 9, 1938. Each of these provisions, except that contained in the 1936 Act, appears herein in chronological order.

[**Application of moneys refunded or received.**]—All moneys heretofore or hereafter refunded or received in connection with operations under the reclamation law, except repayments of construction and operation and maintenance charges, shall be a credit to the appropriation for the project or operation from or on account of which the collection is made and shall be available for expenditure in like manner as if said sum had been specifically appropriated for said project or operation. (40 Stat. 149; 43 U.S.C. § 415)

EXPLANATORY NOTES

Cross Reference, Refund of Overpayments. Annual appropriation acts beginning with the Act of June 5, 1920, made appropriations for refunds of over-collections. The Act of September 6, 1950, made a permanent appropriation for such purpose. The relevant extracts from the 1920 and 1950 Acts appear herein in chronological order.

Cross Reference, Collections from Defaulting Contractors. The Act of June 6, 1930, which appears herein in chronological order, provides that funds collected from defaulting contractors or their sureties shall be covered into the reclamation fund and credited to the project to which the contract relates. This changed the procedure previously prescribed by the Comptroller General that such funds should be credited as miscellaneous receipts of the Treasury.

NOTE OF OPINION

1. Advance payments

The intention of Congress, as expressed in the Act of June 12, 1917, and other acts, to except "repayments of construction and operation and maintenance charges" from the requirement that moneys refunded or received in connection with operations under the reclamation laws shall be a credit to the appropriation for the project or operation from or on account of which the collection is made and available for direct expenditure without further appropriation by Congress, may not be defeated by administrative action authorizing payments of operation or maintenance charges in advance, thus making them "receipts" instead of "repayments," but all moneys in the reclamation fund arising from operation and maintenance charges, regardless of the date of payment or collection, can be available for expenditure only when appropriated by Congress. 27 Comp. Dec. 849 (1921).

* * * * *

EXPLANATORY NOTES

Codification. Only the last of the extracts shown here is codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 11, Public Law 21 in the 65th Congress. S. Rept. No. 5 H.R. Rept. No. 71 (conference report).

SUSPENSION OF RESIDENCE REQUIREMENTS DURING WORLD WAR I

[Extracts from] An act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products. (Act of August 10, 1917, ch. 52, 40 Stat. 273)

* * * * *

Sec. 11. [Suspension of residence requirements.]—The Secretary of the Interior is hereby authorized, in his discretion, to suspend during the continuance of this act that provision of the act known as the "reclamation act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. (40 Stat. 276)

Sec. 12. [Duration of suspension.]—The provisions of this act shall cease to be in effect when the national emergency resulting from the existing state of war shall have passed, the date of which shall be ascertained and proclaimed by the President; but the date when this act shall cease to be in effect shall not be later than the beginning of the next fiscal year after the termination, as ascertained by the President, of the present war between the United States and Germany. (40 Stat. 276)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Termination of Contracts. The Order of the Secretary of the Interior dated April 23, 1920, terminated all contracts for temporary water service under the Act of August 10, 1917, and the regulations issued thereunder, 46 L.D. 213 (1917). 47 L.D. 370 (1920).

Termination of World War I. Congress on March 3, 1921, 41 Stat. 1359, passed a joint resolution declaring that March 3, 1921, shall be treated as the date of termination of World War I.

Cross Reference, Suspension of Residence Requirements for Servicemen of World War II. Section 508 of the Soldiers' and Sailors' Civil Relief Act of 1940, authorizes the Secretary of the Interior, in his discretion, to suspend residence requirements for military personnel of World War II. Section 508 of the Act, enacted October 17, 1940, appears herein in chronological order.

Legislative History. H.R. 4188, Public Law 40 in the 65th Congress. H.R. Rept. No. 44. H.R. Rept. No. 118 and S. Doc. 73 (conference reports).

RECEIPTS FROM POTASSIUM DEPOSITS TO BE PAID INTO RECLAMATION FUND

[Extract from] An act to authorize exploration for and disposition of potassium. (Act of October 2, 1917, ch. 62, 40 Stat. 297)

* * * * *

Sec. 10. [Disposal of receipts from potassium deposits.]—All moneys received from royalties and rentals under the provisions of this act, excepting those from Alaska, shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the act of Congress approved June 17, nineteen hundred and two, known as the reclamation act, but after use thereof in the construction of reclamation works and upon return to the reclamation fund of any such moneys in the manner provided by the reclamation act and acts amendatory thereof and supplemental thereto, fifty per centum of the amounts derived from such royalties and rentals so utilized in and returned to the reclamation fund shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools. (40 Stat. 300)

* * * * *

Explanatory Notes

Not Codified. The extract of this act shown here is not codified in the U.S. Code.

1927 and 1948 Modifications. This Act was replaced by the Potash Leasing Act of February 27, 1927, 44 Stat. 1057, 1058, which amended sections 1 and 37 of the Mineral Leasing Act of February 25, 1920, to include potassium. However, the 1927 Act continued existing leases in accordance with the terms of this Act. In 1948, one such lease remained under this Act, with the royalties received under the lease being distributed according to section 10 above. Therefore, the Congress enacted the Act of June 1, 1948, 62 Stat. 279, which amended the 1927 Act to include the royalties realized under this Act within the 1927 Act's distribution formula, i.e., 52½ per centum to the Reclamation Fund, 10 per centum to the Treasury as miscellaneous receipts, and 37½ per centum to the State within which the leased lands or deposits are or were located for use in road building and in the support of public schools. The Mineral Leasing Act of February 25, 1920, appears herein in chronological order.

Legislative History. S. 2156, Public Law 49 in the 65th Congress. S. Rept. No. 100. H.R. Rept. No. 145.

DRAINAGE ON RIO GRANDE PROJECT

Joint resolution to authorize the Secretary of the Interior to expend funds in New Mexico and Texas for drainage purposes. (Pub. Res. October 6, 1917, ch. 107, 40 Stat. 426)

[Drainage expenditures allowed.]—In order to provide for immediate and necessary drainage of lands in the Rio Grande reclamation project, New Mexico and Texas, the provisions of the sundry civil act, approved June twelfth, nineteen hundred and seventeen, as far as applicable to said project, are hereby modified and amended so as to authorize and permit the Secretary of the Interior to expend not exceeding $15,000 in drainage work upon that portion of the project located within the State of New Mexico pending the formation of an irrigation district covering the lands within New Mexico under this project, and to expend upon that portion of the project located within the State of Texas such amount, within the limit of available appropriations, as the existing irrigation district may obligate itself to repay. (40 Stat. 426)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Sundry Civil Expenses Appropriation Act for 1918, 40 Stat. 198, approved June 12, 1917, referred to in the text, prohibited the expenditure of funds for drainage on the Rio Grande project unless an irrigation district had executed an agreement for repayment of all project investments. A similar provision also is contained in the Sundry Civil Expenses Appropriation Acts of July 1, 1918, 40 Stat. 674, and July 19, 1919, 41 Stat. 201. The relevant extract from the 1917 Act appears herein in chronological order.

Legislative History. S.J. Res. 89, Public Resolution 14 in the 65th Congress.

AVAILABILITY OF MONEY FOR YUMA AUXILIARY PROJECT

An act to amend section four of the act entitled "An act to provide for an auxiliary reclamation project in connection with the Yuma project, Arizona." (Act of February 11, 1918, ch. 16, 40 Stat. 437)

[Funds available for Yuma Auxiliary project.]—The first sentence of section four of the Act entitled "An Act to provide for an auxiliary reclamation project in connection with the Yuma project, Arizona", approved January twenty-fifth, nineteen hundred and seventeen, be amended so as to read as follows:

"That the money in said auxiliary reclamation fund of the Yuma project, Arizona, shall be available for the construction or completion of irrigation works of the said auxiliary project or unit." (40 Stat. 437)

EXPLANATORY NOTES

Not Codified. This act is not codified in the U.S. Code.

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 4 of the Act of January 25, 1917.

Legislative History. H.R. 3135, Public Law 101 in 65th Congress. H.R. Rept. No. 199. S. Rept. No. 237.

SUNDRY CIVIL EXPENSES APPROPRIATIONS ACT FOR 1919

[Extracts from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1919, and for other purposes. (Act of July 1, 1918, ch. 113, 40 Stat. 634)

* * * * *

[Moneys for extensions of Boise project limited to construction charges collected.]—*Provided,* That no money shall be expended for extensions of the Boise project, except such amounts as may be collected from construction charges on that project under public notice. (40 Stat. 674)

EXPLANATORY NOTE

Provision Repeated. The same proviso is contained in the Sundry Civil Appropriation Act for 1920, Act of July 19, 1919, 41 Stat. 200.

[King Hill project—Subject to Reclamation laws—U.S. reclamation equivalent to Idaho reclamation under Carey Act.]—King Hill project, Idaho: For continuing construction and incidental operations, $423,000: *Provided,* That said project shall be subject to the reclamation Act of June seventeenth, nineteen hundred and two, and all Acts amendatory thereof or supplementary thereto, so far as applicable and consistent with contract heretofore made between the United States and King Hill irrigation district: *Provided further,* That for the purposes of issuing patent to lands reclaimed, the reclamation effected by the operations of the United States Reclamation Service may be considered by the Secretary of the Interior as equivalent to reclamation effected by the State of Idaho, under the Carey Act of August eighteenth, eighteen hundred and ninety-four. (40 Stat. 674; 43 U.S.C. § 595)

* * * * *

[Investigation of swamp and cut-over timber lands.]—For an investigation to be made by the Director of the Reclamation Service of the reclamation by drainage of lands outside existing reclamation projects and of the reclamation and preparation for cultivation of cut-over timber lands in any of the States of the United States, including personal services in the District of Columbia and elsewhere, purchase, maintenance, repair, hire, and operation of motor-propelled or horse-drawn passenger-carrying vehicles and for all other expenses, there is appropriated, out of any money in the Treasury not otherwise appropriated, $100,000. (40 Stat. 676)

EXPLANATORY NOTES

Report. For report of investigation made in pursuance of this provision see House Document No. 262, 66th Congress, 1st Session, dated October 6, 1919.

Cross Reference. Subsection R, section 4, of the Act of December 5, 1924, 43 Stat. 704, authorizes an appropriation of $100,000 for investigations into development of arid and semiarid, swamp, and cut-over timberland.

* * * * *

EXPLANATORY NOTES

Not Codified. The extract relating to the investigation of swamp and cut-over lands is not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 12441, Public Law 181 in the 65th Congress. H.R. Rept. No. 644. S. Rept. No. 521. H.R. Rept. No. 723 (conference report).

GRAND CANYON NATIONAL PARK

[Extracts from] An act to establish the Grand Canyon National Park in the State of Arizona. (Act of February 26, 1919, ch. 44, 40 Stat. 1175)

[Sec. 1. Grand Canyon National Park established.]—There is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the "Grand Canyon National Park," the tract of land in the State of Arizona particularly described by and included within the metes and bounds as follows, to wit:

* * * * *

(Boundary description omitted, 40 Stat. 1175, 16 U.S.C. § 221)

* * * * *

EXPLANATORY NOTE

Editor's Note, Annotations. Annotations of opinions are not included for this section and section 5 because they do not deal primarily with the activities of the Bureau of Reclamation.

Sec. 5. [Rights of way.]—Whenever consistent with the primary purposes of said park the Act of February fifteenth, nineteen hundred and one, applicable to the locations of rights of way in certain national parks and the national forests for irrigation and other purposes, and subsequent Acts shall be and remain applicable to the lands included within the park. The Secretary of the Interior may, in his discretion and upon such conditions as he may deem proper, grant easements or rights of way for railroads upon or across the park. (40 Stat. 1178; 16 U.S.C. § 225)

EXPLANATORY NOTE

Reference in the Text. The Act of February fifteenth, nineteen hundred and one, referred to in the text, appears herein in chronological order.

* * * * *

Sec. 7. [Reclamation project.]—Whenever consistent with the primary purposes of said park, the Secretary of the Interior is authorized to permit the utilization of areas therein which may be necessary for the development and maintenance of a Government reclamation project. (40 Stat. 1178; 16 U.S.C. § 227)

EXPLANATORY NOTE

Legislative History. S. 390, Public Law 277 in the 65th Congress. S. Rept. No. 321. H.R. Rept. No. 832.

LANDS FOR RESERVOIR SITES IN SUN RIVER AND MILK RIVER PROJECTS

An act to authorize an exchange of lands with the State of Montana in connection with Muddy Creek Reservoir site, Sun River project, and Nelson Reservoir site, Milk River project, and for other purposes. (Act of February 28, 1919, ch. 74, 40 Stat. 1205)

[Conveyance by State to United States—Conveyance by United States to State—Lands conveyed to United States reserved—May be restored.]—Upon receipt of proper deeds from the State Board of Land Commissioners of the State of Montana, executed under authority of its legislative assembly, reconveying to the United States of America title to the northwest quarter of the northwest quarter section 2, north half of the northeast quarter and southeast quarter of the northeast quarter section 3, township 22 north, range 1 west, Montana principal meridian; northeast quarter of the northeast quarter, south half of the northeast quarter, and southeast quarter section 20, east half of the northeast quarter, and southeast quarter section 21, southwest quarter of the northwest quarter, east half of the southwest quarter, and southwest quarter of the southeast quarter section 27, northeast quarter, northwest quarter, north half of the southwest quarter, and north half of the southeast quarter section 28, north half of the southwest quarter section 29, southeast quarter of the northwest quarter section 30, north half of the northeast quarter, and north half of the northwest quarter section 32, north half of the northeast quarter, and northeast quarter of the northwest quarter section 33, east half of the northeast quarter, south half of the northwest quarter, east half of the southwest quarter, and west half of the southeast quarter section 34, township 23 north, range 1 west, Montana principal meridian, for the Muddy Creek Reservoir site, Sun River project; and the northwest quarter of the northeast quarter section 35, township 32 north, range 32 east, north half of the southwest quarter section 4, township 31 north, range 32 east, and all of section 36, township 32 north, range 31 east, Montana principal meridian, for the Nelson Reservoir site, Milk River project; the Secretary of the Interior is authorized to issue patents to said State for such vacant, surveyed, unreserved, unoccupied, nonmineral public lands as may be selected by said State within its boundaries, not exceeding the amount of land included in said deeds, and said land when so reconveyed shall not be subject to settlement, location, entry, or selection under the public land laws, but shall be reserved for the use of the United States Reclamation Service for the purposes aforesaid: *Provided, however,* That the Secretary of the Interior may restore such lands as he may determine are not needed for said reservoir sites. (40 Stat. 1205)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2715, Public Law 304 in the 65th Congress. S. Rept. No. 476. H.R. Rept. No. 939.

SUNDRY CIVIL EXPENSES APPROPRIATIONS ACT FOR 1920

[Extract from] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1920, and for other purposes. (Act of July 19, 1919, ch. 24, 41 Stat. 163)

* * * * *

[Receipts from lands withdrawn under reclamation law to go into reclamation fund—Lands needed for irrigation works and affected by other withdrawal—Secretary of the Interior given jurisdiction.]—The proceeds heretofore or hereafter received from the lease of any lands reserved or withdrawn under the reclamation law or from the sale of the products therefrom shall be covered into the reclamation fund; and where such lands are affected by a reservation or withdrawal under some other law, the proceeds from the lease of land and the sale of products therefrom shall likewise be covered into the reclamation fund in all cases where such lands are needed for the protection or operation of any reservoir or other works constructed under the reclamation law, and such lands shall be and remain under the jurisdiction of the Secretary of the Interior. (41 Stat. 202; 43 U.S.C. § 394)

EXPLANATORY NOTE

Legislative History. H.R. 7343, Public Law 21 in the 66th Congress. H.R. Rept. No. 118.

NOTES OF OPINIONS

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1. Purpose

The Act of July 19, 1919, serves two purposes: First, to clearly establish the authority of the Secretary of the Interior to lease, etc., lands withdrawn under the reclamation law; and second, where conflicting authorities exist, to establish the paramount authority of the Secretary to so deal with such lands in all cases where they are needed for the protection or operation of any reservoir or other works constructed under the reclamation law. In the case where conflicting authorities exist but the lands are not essential to protection or operation of the reclamation works, the Act does not apply; and questions of jurisdiction, revenues, and similar problems are for adjustment between the agencies on a mutually agreeable basis consistent with applicable statutes. Memorandum of Chief Counsel Fix, December 12, 1947.

2. Use of withdrawn lands

A use test must be employed to determine whether receipts from activities on lands withdrawn for reclamation purposes are to be covered into the reclamation fund. Consequently, a proposed agreement with the Forest Service is unobjectionable which provides that revenues from lands within national forests that are withdrawn for reclamation purposes but not in actual use in connection with reclamation works shall be covered into the Forest Service Reserve Fund. Memorandum of Associate Solicitor Hogan to Regional Solicitor, Sacramento, September 11, 1963.

Receipts from the sale of timber from reclamation withdrawn lands in national forests should be paid into the reclamation fund under the Act of July 19, 1919, if such lands are needed for the protection or operation of any reservoir or other works—in contrast to withdrawn lands which may be irrigated when construction is completed—even though construction of the reservoir or other works has not been started. Dec. Comp. Gen. B-11729 (August 23, 1940).

Proceeds from the lease of, or sale of products from, lands in Rocky Mountain and

Glacier National Parks that are withdrawn under reclamation laws but are not used for constructed reclamation projects, are subject to disposition under laws relating to the national parks and are not covered into the reclamation fund, as provided by the Act of July 19, 1919. C.L. 866, January 19, 1920.

3. Rights-of-way

The Act of July 19, 1919, 41 Stat. 202, governs the disposition of all rental charges for rights-of-way on or over public lands withdrawn under the reclamation law granted under the Acts of February 15, 1901, 31 Stat. 790, March 4, 1911, 36 Stat. 1253, and January 21, 1895, 28 Stat. 635. The word "lease" was used in the act in a general rather than technical sense and was intended to embrace any authorized use or occupancy. However, rentals for pipeline rights-of-way granted under section 28 of the Act of February 25, 1920, 41 Stat. 437, are to be disposed of under section 35 of that act, which must be regarded as superseding the Act of July 19, 1919, so far as such rentals are concerned, even though lands withdrawn under the reclamation law are affected. Departmental decision, May 9, 1940.

4. Net proceeds

Under the authority of 31 U.S.C. § 489, the costs of the Bureau of Land Management in handling sales of timber from lands under the jurisdiction of the Bureau of Reclamation may be paid from the gross proceeds of the sales, and only the net proceeds need be paid into the reclamation fund under the Act of July 19, 1919. Dec. Comp. Gen. B-48120 (August 8, 1951).

5. Indian projects

The provision contained in this Act directing that the proceeds derived from a lease of lands withdrawn under the reclamation law shall be covered into the reclamation fund, is to be regarded as relating primarily to "reclamation projects," and not to Indian irrigation projects, in the absence of a clear intent to include projects of the latter character. *Flathead Lands,* 48 L.D. 468 (1921).

CONVEYANCE OF TOWN SITE LANDS TO SCHOOL DISTRICTS

An act granting lands for school purposes in Government town sites on reclamation projects. (Act of October 31, 1919, ch. 92, 41 Stat. 326)

[Secretary authorized to grant lands in reclamation town sites for school purposes—Reversion.]—The Secretary of the Interior is hereby authorized, upon application by the proper officers of a school district located wholly or in part within the boundaries of a project of the United States Reclamation Service, to issue patent conveying to such district such unappropriated undisposed of lands, not exceeding six acres in area, within any Government reclamation town site situated within such school district as, in the opinion of the Secretary of the Interior, are necessary for use by said district for school buildings and grounds: *Provided,* That if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States. (41 Stat. 326; 43 U.S.C. § 570)

EXPLANATORY NOTES

Special Grants of Land for School Purposes. The Act of August 21, 1912, 37 Stat. 322, authorized the Secretary of the Interior to convey certain land in the town site of Powell, Shoshone project, for school purposes. The Act of February 28, 1919, 40 Stat. 1206, authorized the Secretary to convey lots in the Sun River project to certain school districts. The Act of April 17, 1926, 44 Stat. 299, authorized the Secretary to convey certain lands in Cascade County, Sun River project, for school purposes, the patent to contain a reservation of mineral deposits.

Legislative History. S. 794, Public Law 72 in the 66th Congress. S. Rept. No. 89. H.R. Rept. No. 259.

MINERAL LEASING ACT

[Extract from] An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain. (Act of February 25, 1920, ch. 85, 41 Stat. 437)

* * * * *

Sec. 35. [Disposition of receipts.]—All money received from sales, bonuses, royalties and rentals of public lands under the provisions of this Act shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury, as soon as practicable after December 31 and June 30 of each year, to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a 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 52½ 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 Act from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252, 34 U.S.C., sec. 524). All moneys received under the provisions of this Act not otherwise disposed of by this section shall be credited to miscellaneous receipts. (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, 351; 30 U.S.C. § 191)

Explanatory Notes

1958 Amendment. Subsection 28(b) of the Act of July 7, 1958, 72 Stat. 343, 351, the Alaska Statehood Act, amended section 35 by inserting ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof" preceding the proviso, and subsection 6(k) of the 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. Sec. 353, as amended)."

1957 Amendment. The Act of July 10, 1957, 71 Stat. 282, amended section 35 by inserting ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso.

1950 Amendment. The Act of August 3, 1950, 64 Stat. 402, amended section 35 to provide that payments to the States be made "as soon as practicable after December 31 and June 30 of each year" rather than, as formerly, "after the expiration of each fiscal year".

1947 Amendment. The Act of May 7, 1947, 61 Stat. 119, amended and reenacted section 35. The text of the 1947 Act as enacted, without the amendments of 1950, 1957 and 1958, appears herein in chronological order. The original text of section 35 as enacted February 25, 1920, read as follows:

"Ten per centum of all money received from sales, bonuses, royalties, and rentals under the provisions of this act, excepting those from Alaska, shall be paid into the Treasury of the United States and credited

to miscellaneous receipts; for past production 70 per centum, and for future production 52½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the act of Congress, known as the reclamation act, approved June 17, 1902, and for past production 20 per centum, and for future production 37½ per centum of the amounts derived from such bonuses, royalties, and rentals shall be paid by the Secretary of the Treasury after the expiration of each fiscal year to the State within the boundaries of which the leased lands or deposits are or were located, said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct: *Provided,* That all moneys which may accrue to the United States under the provisions of this act from lands within the naval petroleum reserves shall be deposited in the Treasury as 'Miscellaneous receipts'."

Reference in the Text. The Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252, 34 U.S.C., sec. 524), referred to in the text, deals with the operation and conservation of the Naval petroleum reserves. Title 34 of the United States Code was repealed generally by the Act of August 10, 1956, 70A Stat. 1, which revised and codified the statutory provisions that related to the Army, Navy, Air Force and Marine Corps, and enacted those provisions into law as Title 10, Armed Forces. Title 34 U.S.C., sec. 524, was omitted in the revision and codification.

Legislative History. S. 2775, Public Law 146 in the 66th Congress. H.R. Rept. No. 398. H.R. Rept. No. 600 (conference report).

SALE OF WATER FOR MISCELLANEOUS PURPOSES

An act for furnishing water supply for miscellaneous purposes in connection with reclamation projects. (Act of February 25, 1920, 41 Stat. 451)

[Sale of water for miscellaneous purposes other than for irrigation—Contract—Delivery not to be detrimental to water service—Moneys received to be covered into the reclamation fund.]—The Secretary of the Interior, in connection with the operations under the reclamation law, is hereby authorized to enter into contract to supply water from any project irrigation system for other purposes than irrigation, upon such conditions of delivery, use, and payment as he may deem proper: *Provided,* That the approval of such contract by the water users' association or associations shall have been first obtained: *Provided,* That no such contract shall be entered into except upon a showing that there is no other practicable source of water supply for the purpose: *Provided further,* That no water shall be furnished for the uses aforesaid if the delivery of such water shall be detrimental to the water service for such irrigation project or to the rights of any prior appropriator: *Provided further,* That the moneys derived from such contracts shall be covered into the reclamation fund and be placed to the credit of the project from which such water is supplied. (41 Stat. 451; 43 U.S.C. § 521)

EXPLANATORY NOTE

Legislative History. S. 796, Public Law 147 in the 66th Congress. S. Rept. No. 21. H.R. Rept. No. 279.

NOTES OF OPINIONS

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1. Construction with other laws

Section 4 of the Act of April 16, 1906, authorizes the furnishing of project water to a town in the immediate vicinity of the project which has a pre-existing water right in the same source of water as the project source. The authority to furnish water in such a case under the 1906 Act is neither repealed by, nor subject to the conditions of, the Act of February 25, 1920, 41 Stat. 451, or section 9(c) of the Reclamation Project Act of 1939. Memorandum of Acting Commissioner Lineweaver to Regional Director, Boise, September 26, 1950, in re contracts with cities of Culver and Metolius, Deschutes Project, Oregon.

2. Replacement of irrigation use

The Secretary of the Interior has authority under the Act of February 25, 1920, 41 Stat. 451, to enter into a contract to supply to the City of El Paso an amount of water from the Rio Grande reclamation project representing the water service for certain project lands acquired by the city and retired from irrigation farming, but not to exceed a maximum of 3½ acre-feet of water a year for each acre of such land acquired by the city. The city's ownership of some 1400 acres of such land does not violate the 160-acre limitation of reclamation law. *El Paso County Water Improvement District No. 1 v. City of El Paso,* 133 F. Supp. 894, 918–920 (W.D. Tex. 1955), *affirmed,* 243 F. 2d 927 (5th Cir. 1957), *cert. denied,* 355 U.S. 820 (1957).

3. Industrial use

A contract to permit the Public Service Company of Colorado to divert water from a canal of the Grand Valley project for cooling purposes may be entered into pursuant to the Act of February 25, 1920, or under section 9(c) or section 10 of the Reclamation Project Act of 1939. Revenues arising from the furnishing of water for this purpose should be credited as a tail end

reduction of the water users organizations repayment obligation for construction and rehabilitation and betterment costs. Memorandum of Associate Solicitor Fisher, October 26, 1956.

4. Approval of contract

The clause "water users' association or associations" is regarded as embracing irrigation districts organized under State laws. Instructions, 47 L.D. 404 (1920).

5. Penalties for delinquent payments

When payments become due and remain unpaid the same penalties shall be applied as are provided in the Reclamation Extension Act of 1914. Instructions, 47 L.D. 404 (1920).

STUDY OF IRRIGATION IN IMPERIAL VALLEY

An act to provide for an examination and report on the condition and possible irrigation development of the Imperial Valley in California. (Act of May 18, 1920, ch. 188, 41 Stat. 600)

[**Sec. 1. Study of irrigation in Imperial Valley authorized.**]—The Secretary of the Interior is hereby authorized and directed to have an examination made of the Imperial Valley in the State of California, with a view of determining the area, location, and general character of the public and privately owned unirrigated lands in said valley which can be irrigated at a reasonable cost, and the character, extent, and cost of an irrigation system, or of the modification, improvement, enlargement, and extension of the present system, adequate and dependable for the irrigation of the present irrigated area in the said valley, and of the public and privately owned lands in said valley and adjacent thereto not now under irrigation, which can be irrigated at a reasonable cost from known sources of water supply, by diversion of water from the Colorado River at Laguna Dam. (41 Stat. 600)

Sec. 2. [**Report.**]—The said Secretary shall report to Congress not later than the 6th day of December, 1920, the result of his examination, together with his recommendation as to the feasibility, necessity, and advisability of the undertaking, or the participation by the United States, in a plan of irrigation development with a view of placing under irrigation the remaining unirrigated public and privately owned lands in said valley and adjacent thereto, in connection with the modification, improvement, enlargement, and extension of the present irrigation systems of the said valley. (41 Stat. 600)

Sec. 3. [**Detailed costs—Storage.**]—The said Secretary shall report in detail as to the character and estimated cost of the plan or plans on which he may report, and if the said plan or plans shall include storage, the location, character, and cost of said storage, and the effect on the irrigation development of other sections or localities of the storage recommended and the use of the stored water in the Imperial Valley and adjacent lands. (41 Stat. 600)

Sec. 4. [**Financing.**]—The said Secretary shall also report as to the extent, if any, to which, in his opinion, the United States should contribute to the cost of carrying out the plan or plans which he may propose; the approximate proportion of the total cost that should be borne by the various irrigation districts or associations or other public or private agencies now organized or which may be organized; and the manner in which their contribution should be made; also to what extent and in what manner the United States should control, operate, or supervise the carrying out of the plan proposed, and what assurances he has been able to secure as to the approval of, participation in, and contribution to the plan or plans proposed by the various contributing agencies. (41 Stat. 600)

Sec. 5. [**Appropriation.**]—For the purpose of enabling the Secretary of the Interior to pay not to exceed one-half of the cost of the examination and report

herein provided for, there is hereby authorized to be appropriated the sum of $20,000: *Provided,* That no expenditure shall be made or obligation incurred hereunder by the Secretary of the Interior until provision shall have been made for the payment of at least one-half the cost of the examination and report herein provided for by associations and agencies interested in the irrigation of the lands of the Imperial Valley. (41 Stat. 601)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Project Authorized. The studies conducted under the direction of this Act led eventually to the construction of the Boulder Canyon project, including the All-American Canal serving the Imperial Valley. The Act of December 21, 1928, 45 Stat. 1057, which authorized the project, appears herein in chronological order.

Earlier Study Authorized. The Joint Resolution approved April 28, 1904, 33 Stat. 591, authorized the Secretary of the Interior to study the use of waters of the Lower Colorado River for irrigation in Arizona and California and the matter of rights to the use of said waters for irrigation.

Popular Name. This act is popularly known as the Kinkaid Act.

Legislative History. H.R. 12537, Public Law 208 in the 66th Congress. H.R. Rept. No. 717. S. Rept. No. 497.

NOTE OF OPINION

1. Reimbursement of costs

Investigation costs incurred by the United States under contracts of 1918, 1920, 1929 and 1933 in connection with the All-American Canal are reimbursable by the Imperial Irrigation District. Nothing in the Kinkaid Act of May 18, 1920, or its legislative history implies that the expenses under the 1920 contract paid by the United States were to be a gift to the District, and the fact that the District contributed two-thirds the cost of the study does not imply that the one-third paid by the United States was to be nonreimbursable. Nor does the fact that study funds advanced by the District under the 1929 and 1933 contracts were later refunded imply that U.S. costs to the amount of the refunds were to be nonreimbursable. Memorandum of Chief Counsel Fisher, November 18, 1953.

SALE OF SURPLUS IMPROVED PUBLIC LANDS

An act to provide for the disposition of public lands withdrawn and improved under the provisions of the reclamation laws, and which are no longer needed in connection with said laws. (Act of May 20, 1920, ch. 192, 41 Stat. 605)

[Sec. 1. Appraisal of land—Manner of sale—Payment of purchase price.]—Whenever in the opinion of the Secretary of the Interior any public lands which have been withdrawn for or in connection with construction or operation of reclamation projects under the provisions of the act of June 17, 1902, known as the reclamation act and acts amendatory thereof and supplemental thereto, which are not otherwise reserved and which have been improved by and at the expense of the reclamation fund for administration or other like purposes, are no longer needed for the purposes for which they were withdrawn and improved, the Secretary of the Interior may cause said lands, together with the improvements thereon, to be appraised by three disinterested persons to be appointed by him and thereafter sell the same, for not less than the appraised value, at public auction to the highest bidder, after giving public notice of the time and place of sale by posting upon the land and by publication for not less than thirty days in a newspaper of general circulation in the vicinity of the land; not less than one-fifth the purchase price shall be paid at the time of sale, and the remainder in not more than four annual payments with interest at 6 per centum per annum, payable annually, on deferred payments. (41 Stat. 605; 43 U.S.C. § 375)

NOTE OF OPINION

1. Publication of notice of sale

In the Acts of February 2, 1911, and May 20, 1920 relating to the sale of lands on Federal irrigation projects, the language "by publication for not less than 30 days" deals with the period during which notice is to be given, and is not a statutory requirement that publication be had for 30 consecutive days in a daily newspaper. Where a weekly newspaper of general circulation is the paper nearest the land, the purpose of the statutes will be fully subserved by publication in five consecutive issues of such newspaper. Departmental decision, June 21, 1920, printed at page 382, Reclamation Record, August 1920.

Sec. 2. [Patents to land sold—Amount sold to one person—Duties of purchasers—Citizenship.]—Upon payment of the purchase price the Secretary of the Interior is authorized, by appropriate patent, to convey all the right, title, and interest of the United States in and to said lands to the purchaser at said sale, subject, however, to such reservations, limitations, or conditions as said Secretary may deem proper: *Provided,* That not over one hundred and sixty acres shall be sold to any one person, and if said lands are irrigable under the project in which located they shall be sold subject to compliance by the purchaser with all the terms, conditions, and limitations of the reclamation act applicable to lands of that character: *Provided,* That the accepted bidder must, prior to issuance of patent, furnish satisfactory evidence that he or she is a citizen of the United States. (41 Stat. 606; 43 U.S.C. § 375)

NOTE OF OPINION

1. Form of patent

Patent under this act should not be executed by the Secretary of the Interior but should be issued from the General Land Office under section 458 of Revised Statutes. Departmental decision, January 10, 1921, re Vandalia Ditch & Development Co., Milk River project. Reclamation Record of March 1921, p. 126.

Sec. 3. [Disposition of proceeds of sales.]—The moneys derived from the sale of such lands shall be covered into the reclamation fund and be placed to the credit of the project for which such lands had been withdrawn. (41 Stat. 606; 43 U.S.C. § 375)

EXPLANATORY NOTES

Cross Reference, Sale of Land Not Needed for Irrigation Works. The Act of February 2, 1911, 36 Stat. 895, authorizes the sale of lands acquired under the Reclamation Act, together with the improvement thereon, whenever such lands are not needed for the purposes for which they were acquired. The 1911 Act appears herein in chronological order.

Cross Reference, Sale of Property Appraised at Less than $300. Section 11 of the Act of August 4, 1939, the Reclamation Project Act, provides that where property to be sold under this Act and the Act of February 2, 1911, is appraised at not to exceed $300, the property may be sold privately or publicly without compliance with the provisions of this Act and the 1911 Act as to notice, publication and mode of sale. Both the 1911 and 1939 Acts appear herein in chronological order.

Cross Reference, Federal Property and Administrative Services Act of 1949. Section 3(d)(1) of the Federal Property and Administrative Services Act of 1949 defines "property" as used therein to include lands withdrawn or reserved from the public domain which the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the public land laws because they are substantially changed in character by improvements or otherwise. This excerpt from the Act, which was approved June 30, 1949, appears herein in chronological order.

Legislative History. S. 795, Public Law 212 in the 66th Congress. S. Rept. No. 367. H.R. Rept. No. 903.

NOTE OF OPINION

1. Construction with other laws

The Act of August 27, 1935, 49 Stat. 885 (authorizing the Director of Procurement with the approval of the Secretary of the Treasury, to sell excess lands of the United States) is general legislation and does not repeal the special acts of February 2, 1911, and May 20, 1920. Solicitor's Opinion, M-28724 (September 24, 1936). *Accord* 38 Atty. Gen. 549 (1937).

RESTORATION OF PUBLIC LANDS AROUND LITTLE KLAMATH LAKE

An act to restore to the public domain certain lands heretofore reserved for a bird reservation in Siskiyou and Modoc Counties, California, and Klamath County, Oregon, and for other purposes. (Act of May 27, 1920, 41 Stat. 627)

Repealed.—

EXPLANATORY NOTES

Statute Repealed. Subsection 2(a) of the Act of June 17, 1944, 58 Stat. 279, which appears herein in chronological order, repealed this Act. Before repeal, the Act read as follows:

[**Sec. 1. Lands in Oregon and California uncovered and opened to agricultural development by change of levels of lakes—Public announcement—Entry upon land under homestead laws—Overflow for irrigation purposes—Reservations in patents.**]—The Secretary of the Interior be, and he hereby is, authorized and directed to determine and make public announcement of what lands in and around Little or Lower Klamath Lake, in Siskiyou County, California, and in Klamath County, Oregon, ceded to the United States by the State of California by the act entitled "An act authorizing the United States Government to lower the water levels of any or all of the following lakes: Lower or Little Klamath Lake, Tule or Rhett Lake, Goose Lake, and Clear Lake, situated in Siskiyou and Modoc Counties, and to use any part or all of the beds of said lakes for the storage of water in connection with the irrigation and reclamation operations conducted by the Reclamation Service of the United States; also ceding to the United States all right, title, interest, or claim of the State of California to any lands uncovered by the lowering of the water levels of any or all of said lakes not already disposed of by the State," and ceded to the United States by the State of Oregon by an act entitled "An act to authorize the utilization of Upper Klamath Lake, Lower or Little Klamath Lake, and Tule or Rhett Lake, situate in Klamath County, Oregon, and Goose Lake, situate in Lake County, Oregon, in connection with the irrigation and reclamation operations of the Reclamation Service of the United States, and to cede to the United States all the right, title, interest and claim of the State of Oregon to any and all lands recovered by the lowering of the water levels or by the drainage of any or all of said lakes," will eventually be uncovered and opened to agricultural development by the lowering of the water level of said lake. Title to all said lands can be acquired by homestead entry under the general homestead laws and the provisions of this act and not otherwise: *Provided,* That all said lands shall forever be and remain subject to the right of the United States (a) to overflow the same or any part thereof for the purposes of irrigation by such systems of reservoirs and drainage and diking as now actually exist or may be hereafter constructed in Siskiyou County, California, and Klamath County, Oregon, and (b) to drain the water therefrom. All patents issued for the said lands shall expressly reserve to the United States such right of overflow and drainage, and the title and ownership of all minerals and mineral interests in such lands, including oil, are expressly reserved to the United States. (41 Stat. 627)

Sec. 2. [**Proportionate assessment of land for benefit of reclamation fund.**]—The Secretary of the Interior shall also determine and make public announcement of the proportionate part of the sum of $283,225, heretofore expended from the reclamation fund in connection with the Klamath project, Oregon-California, that in the opinion of the Secretary of the Interior each acre of the said land should be assessed, and the proportionate part that each acre of privately owned land, similarly situated to the said lands hereby affected, should be assessed, to return to said reclamation fund in all the said sum of $283,225. (41 Stat. 628)

Sec. 3. [**Survey and opening of lands to entry.**]—The Secretary of the Interior be, and he is hereby, authorized and directed to cause said lands to be surveyed and opened to entry under the general homestead laws and the provisions of this act: *Provided,* That none of said lands shall be opened to entry until the Secretary of the Interior shall have first made arrangement with the owners of lands in private ownership, similarly situated to the lands hereby affected, for the payment into the reclamation fund of the proportionate part of the sum of $283,225, determined and apportioned by the Secretary of the Interior against said privately owned lands as provided in section 2. (41 Stat. 628)

Sec. 4. [Additional amounts payable by entrymen.]—In addition to all payments required by the general homestead laws there shall be paid by homestead entrymen the amount per acre assessed as provided in section 2 of this act. Said payment shall be made in annual installments of $1 per acre, except the last installment, which may be a fraction of a dollar: *Provided,* That the whole or any part of the amount so assessed may be paid by the entryman in shorter period if he so elects. The first installment shall be paid at the time homestead application is filed and subsequent installments shall be due and payable on December 1 of each calendar year thereafter until the entire sum so assessed and apportioned against the lands is paid, and patent shall not issue for any of said lands until the sum so apportioned against said lands shall have been fully paid. Failure to pay any installment when due shall render the entry subject to cancellation, with a forfeiture of all moneys paid. All assessments shall draw interest at the rate of 6 per centum per annum from their due date until paid. All moneys paid on account of such assessments shall, without diminution of any kind whatsoever, be covered into the reclamation fund. (41 Stat. 628)

Sec. 5. [Preference rights of those serving in military or naval forces during World War.]—Those who served in the military or naval forces of the United States during the war between the United States and Germany and have been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve shall have preference and prior right to file upon and enter said lands under the homestead laws and the provisions of this act for a period of six months following the time said lands are opened to entry. That in opening said lands for homestead entry the Secretary of the Interior shall provide for the disposition thereof to the said soldiers, sailors, and marines, by drawing, under general rules and regulations to be promulgated by him: *Provided,* That the rights and benefits conferred by this act shall not extend to any person who, having been drafted for service under the provisions of the selective service act, shall have refused to render such service or to wear the uniform of such service of the United States. (41 Stat. 628)

Sec. 6. [No squatters' rights—Time for entry upon land.]—No rights to make entry shall attach by reason of settlement or squatting upon any of the lands hereby restored before the hour on which such lands shall be subject to homestead entry at the land office, and until said lands are opened for settlement and entry as herein provided no person shall enter upon and occupy the same, and any person violating this provision shall never be permitted to enter any of said lands. (41 Stat. 629)

Sec. 7. [Determination of land to be opened within boundaries of Klamath Lake Bird Reservation.]—The Secretary of the Interior shall determine which of the lands now within the boundaries of the Klamath Lake Bird Reserve are chiefly valuable for agricultural purposes and which for the purpose of said reservation, and shall open to homestead those lands which are chiefly valuable for agricultural purposes: *Provided,* That the shore line of the lake, including the smallest legal subdivision of land adjoining the flow line, shall remain in the possession of the United States, but access may be provided to the lake for such canals as may be necessary for irrigation, drainage, and domestic water supply. (41 Stat. 629)

Sec. 8. [Powers of Secretary of Interior.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect. (41 Stat. 629)

Legislative History. H.R. 8440, Public Law 226 in the 66th Congress. H.R. Rept. No. 402.

NOTE OF OPINION

1. Use of waters

Under the Act of February 9, 1905, and the cession statutes of the States of Oregon and California relating thereto; the Act of May 27, 1920; appropriations of water made by the United States for agricultural and power development under section 47–1201 of the Oregon Code, 1930; and the contracts with the California-Oregon Power Company relating to a dam in Upper Klamath Lake to control the flow in the Klamath River, the United States may use waters of the Klamath River and lands of Lower Klamath Lake for agricultural purposes, whether such lands are used for flowage purposes or uncovered and used for agricultural purposes, but is not authorized to use such waters or lands for establishment of a bird refuge. Solicitor Finney Opinion, 53 I.D. 693 (1932).

SUNDRY CIVIL EXPENSES APPROPRIATIONS ACT FOR 1921

[**Extracts from**] An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1921, and for other purposes. (Act of June 5, 1920, ch. 235, 41 Stat. 874)

* * * * *

RECLAMATION SERVICE

The following sums are appropriated out of the special fund in the Treasury of the United States created by the act of June 17, 1902, and therein designated "the Reclamation Fund":

For * * * refunds for overcollections heretofore or hereafter received on account of water-right charges, rentals, and deposits for other purposes * * * (41 Stat. 913)

EXPLANATORY NOTE

Provision Repeated. A similar provision relating to refunds is contained in the Sundry Civil Appropriation Act of 1922, in the Interior Department Appropriation Act for 1923, and in each annual Interior Department Appropriation Act thereafter through the Act of October 12, 1949, 63 Stat. 778, with the modification that the Act of January 12, 1927, 44 Stat. 957, and subsequent acts simplify the provisions to read, "For * * * refunds of over-collections and deposits for other purposes". The Interior Department Appropriation Act, 1951 (General Appropriation Act, 1951), 64 Stat. 689, made a permanent appropriation for refunds and returns.

* * * * *

[**Boise project—Drainage expense repayment.**]—Boise project, Idaho: For operation and maintenance, continuation of construction, and incidental operations, $774,000: *Provided,* That no part of this appropriation shall be expended for drainage except in irrigation districts formed under State laws and upon the execution of agreements for the repayment to the United States of the costs thereof: *Provided further,* That the foregoing proviso shall not be construed as an expression of opinion by the Congress upon the litigation pending between the Government and the settlers on such project or in any manner prejudice such litigation. (41 Stat. 914)

EXPLANATORY NOTE

Cross Reference, Other Provisions. Further provisions relating to expenditures for drainage are contained in the Interior Department Appropriation Act for 1923, Act of May 24, 1922, 42 Stat. 584, and four subsequent appropriation acts.

* * * * *

[**Okanogan project—Relief from liability for obligations of Methow-Okanogan irrigation district.**]—Okanogan project, Washington: For operation and maintenance, continuation of construction, and incidental operation, $666,000: *Provided,* That no part of the money hereby appropriated shall become available for the construction of a permanent pumping plant until such action has been taken as may be satisfactory to the Secretary of the Interior to relieve the lands of the Okanogan project from liability for the obligations of the Me-

thow-Okanogan irrigation district to the extent deemed necessary by the said Secretary to fully safeguard the security of the United States for the funds invested in the project. (41 Stat. 915)

* * * * *

[**Approval of Riverton project—Provision for fixing charges for reimbursement.**]—Riverton project, Wyoming: For the reclamation of lands within and in the vicinity of the ceded portion of the Wind River or Shoshone Reservation, including operation and maintenance, continuation of construction, and incidental operations, $100,000: *Provided,* That said land shall be subject to all the charges, terms, conditions, provisions, and limitations of the reclamation act and acts amendatory thereof or supplementary thereto and suitable provision shall be made by the Secretary of the Interior in fixing the charges to provide for reimbursement of the entire expenditure in accordance with the reclamation law and other laws applicable to said lands. (41 Stat. 915; 43 U.S.C. § 597)

EXPLANATORY NOTES

Codification. The substance of this provision is codified as the first paragraph of section 597, title 43, United States Code. The second paragraph of said section 597 is taken from the Act of March 4, 1921, 41 Stat. 1404.

Background. The Riverton project was started as an Indian project pursuant to the Indian Appropriation Act of March 2, 1917, 39 Stat. 969, and by the above act was placed under the jurisdiction of the Reclamation Service (Bureau of Reclamation).

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts of this act shown here are not codified in the U.S. Code, except for the last provision.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 13870, Public Law 246 in the 66th Congress. H.R. Rept. No. 905. S. Rept. No. 617. H.R. Rept. No. 1084 (conference report).

CANCELLATION OF WATER SUPPLY CONTRACTS, GARDEN CITY PROJECT

An act for the relief of the Garden City (Kansas) Water Users' Association, and for other purposes. (Act of June 5, 1920, ch. 257, 41 Stat. 1054)

[**Contracts for water canceled—Liens released.**]—The contracts affecting lands in the Garden City project of the Reclamation Service in Finney County, Kansas, heretofore entered into between the Finney County Water Users' Association of Finney County, Kansas, or with individual landowners, and the Secretary of the Interior for the supply and use of water from the irrigation plant of the United States be, and the same are hereby, canceled and relieved; and the liens upon the lands in said county created by such contracts are hereby released and discharged. (41 Stat. 1054)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3852, Public Law 268 in the 66th Congress. S. Rept. No. 613.

FEDERAL WATER POWER ACT

Editor's note. The Federal Water Power Act is the Act of June 10, 1920, ch. 285, 41 Stat. 1063, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the Rivers and Harbor Appropriation Act, approved August 8, 1917, and for other purposes." Section 212 of the Act of August 26, 1935, 49 Stat. 847, provides that the Federal Water Power Act, as amended, shall constitute Part I of an expanded act; and section 213 of the 1935 Act, 49 Stat. 847–63, adds Part II, relating to the regulation of electrical utility companies engaged in interstate commerce, and Part III, dealing with licenses and administrative matters. This expanded act is given the short title of Federal Power Act, 49 Stat. 863. Extracts from Parts II and III appear herein in chronological order under the Act of August 26, 1935.

FEDERAL POWER ACT

PART I

[**Sec. 1. Federal Power Commission—Creation—Composition—Terms of office—Organization.**]—A commission is hereby created and established, to be known as the Federal Power Commission (hereinafter referred to as the "Commission") which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall be the principal executive officer of the Commission: *Provided,* That after the expiration of the original term of the commissioner so designated as chairman by the President chairmen shall be elected by the Commission itself, each chairman when so elected to act as such until the expiration of his term of office.

The commissioners first appointed under this section, as amended, shall continue in office for terms of one, two, three, four, and five years, respectively, from the date this section, as amended, takes effect, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold the office of commissioner. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining commissioners to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum for the transaction of business, and

the Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a vice chairman to act in case of the absence or disability of the chairman or in case of a vacancy in the office of chairman.

Each commissioner shall receive an annual salary of $ * * *, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from the seat of government upon official business.

The principal office of the Commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special session in any part of the United States. (41 Stat. 1063; Act of June 23, 1930, 46 Stat. 797; 16 U.S.C. § 792)

EXPLANATORY NOTES

1930 Amendment. The Act of June 23, 1930, 46 Stat. 797, amended section 1 to establish the present independent Commission. Previously, the Commission was composed of the Secretaries of War, Interior and Agriculture.

Commissioners' Salaries. The annual salary of each commissioner was set at $10,000 by this Act. The Act of October 15, 1949, 63 Stat. 880, 881, increased the rate for all members to $15,000, and the Act of July 31, 1956, 70 Stat. 737, 738, fixed the Chairman's annual salary at $20,500 and that of the members at $20,000. The Federal Executive Salary Act of 1964, approved August 14, 1964, 78 Stat. 400, 417, 419, placed the Chairman in Level III and the Members in Level IV of the Federal Executive Salary Schedule. At this writing, the annual salaries of executives in Level III is $28,500, and in Level IV, $27,000.

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

Sec. 2. [Powers and duties of Commissioners—Administrative provisions.]—The Commission shall have authority to appoint, prescribe the duties, and fix the salaries of, a secretary, a chief engineer, a general counsel, a solicitor, and a chief accountant; and may, subject to the civil service laws, appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with the Classification Act of 1949. The Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the Commission as engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the Commission; and such detail is hereby authorized. The President may also, at the request of the Commission, detail, assign, or transfer to the Commission engineers in or under the Departments of the Interior or Agriculture for field work outside the seat of government under the direction of the Commission.

The Commission may make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding) as are necessary to execute its functions. Expenditures by the Commission shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the Commission or by such other member or officer as may be authorized by the Commission for that purpose subject to applicable regula-

tions under the Federal Property and Administrative Services Act of 1949, as amended. (41 Stat. 1063; § 1, Act of June 23, 1930, 46 Stat. 797; Act of October 31, 1951, 65 Stat. 707; 16 U.S.C. § 793)

EXPLANATORY NOTES

1951 Amendment. Section 2(14) of the Act of October 31, 1951, 65 Stat. 707, amended section 2 by inserting the reference to applicable regulations of the Federal Property and Administrative Services Act of 1949, as amended, at the end of the section.

1930 Amendment. The Act of June 23, 1930, 46 Stat. 797, 798, placed personnel and administrative matters under the newly constructed Commission created by the same Act. Previously, the work of the Commission was performed through the Departments of War, Interior and Agriculture.

Sec. 3. [Definitions.]—The words defined in this section shall have the following meanings for purposes of this Act, to wit:

(1) "public lands" means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public land laws. It shall not include "reservations", as hereinafter defined;

(2) "reservations" means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but shall not include national monuments or national parks;

(3) "corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include "municipalities" as hereinafter defined;

(4) "person" means an individual or a corporation;

(5) "licensee" means any person, State, or municipality licensed under the provisions of section 4 of this Act, and any assignee or successor in interest thereof;

(6) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

(8) "navigable waters" means those parts of 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, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress

for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

(9) "municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

(10) "Government dam" means a dam or other work constructed or owned by the United States for Government purposes with or without contribution from others;

(11) "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

(12) "project works" means the physical structures of a project;

(13) "net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission," plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

(14) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively;

(15) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality;

(16) "security" means any note, stock, treasury stock, bond, debenture, or other evidence of interest in or indebtedness of a corporation subject to the provisions of this Act. (41 Stat. 1063; § 201, Act of August 26, 1935, 49 Stat. 838; 16 U.S.C. § 796)

EXPLANATORY NOTE

1935 Amendment. Section 201 of the Act of August 26, 1935, revised the definition of "reservations" in subdivision (2) to exclude national parks and national monuments. This has the effect of confirming the prohibition in the Act of March 3, 1921, 41 Stat. 1353, against granting licenses for projects in national parks and monuments without specific authority of Congress.

Sec. 4. [General powers of Commission.]—The Commission is hereby authorized and empowered—

(a) **[Investigations and data.]**—To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this Act.

(b) **[Statement of costs of construction, etc., to be filed by licensees—Commission to have free access to project, records, etc.]**—To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

(c) **[Cooperation with Federal and State agencies.]**—To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission, to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

(d) **[Public information and use of Commissions reports and investigations—Report to Congress.]**—To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The Commission, on or before the 3d day of January of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Part, and in each case the

parties thereto, the terms prescribed, and the moneys received if any, on account thereof. Such report shall contain the names and show the compensation of the persons employed by the Commission.

(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.

(f) **[Preliminary permits.]**—To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however,* That upon the filing of any application for a preliminary permit by any person, association, or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the

county or counties in which the project or any part thereof or the lands affected thereby are situated.

(g) **[Investigation of occupancy for developing power—Orders.]**—Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or 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 by any person, corporation, State, or municipality and to issue such order as it may find appropriate, expedient, and in the public interest to conserve and utilize the navigation and water-power resources of the region. (41 Stat. 1065; § 202, Act of August 26, 1935, 49 Stat. 839; 16 U.S.C. § 797)

EXPLANATORY NOTES

1953 Modification. Section 3 of the Act of August 15, 1953, as amended, 67 Stat. 587, provides that subsection 4(b) shall not apply to any project owned by a State or a municipality. The text of the 1953 Act appears herein as a note following section 14 of this Act.

1935 Amendment. Section 202 of the Act of August 26, 1935, (1) changed the designation of the subsections; (2) in subsection (e) substituted "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" for "navigable waters of the United States"; (3) added subsection (g); (4) eliminated material dealing with subjects covered in Parts II and III; and (5) made several additional technical changes.

1921 Limitation on Projects in National Parks. The Act of March 3, 1921, repealed so much of the original Federal Water Power Act as authorized the granting of licenses by the Federal Power Commission for facilities in existing national parks and monuments. The text of the 1921 Act appears herein in chronological order. Section 212 of the Act of August 26, 1935, 49 Stat. 847, provides specifically that the 1921 Act and any other act relating to national parks and monuments are not affected.

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

NOTES OF OPINIONS

Licenses 1–4
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1. Licenses—Relation to State laws

It was the intention of Congress in enacting the Federal Power Act to secure comprehensive development of national resources and not merely to prevent obstructions to navigation. The detailed provisions of the Act providing for the Federal plan of regulation leave no room or need for conflicting state controls. Where the Federal Government supersedes the state government, there is no suggestion that the two agencies both shall have final authority. Therefore, since a state permit is not required, there is no justification for the Federal Power Commission, as a condition precedent to considering an application for a license for a water power project on navigable waters, to require that the applicant first obtain a permit for the project under state law. The securing of a state permit is not in any sense a condition precedent or an administrative procedure that must be exhausted before securing a Federal license. *First Iowa Cooperative v. Federal Power Commission,* 328 U.S. 152 (1946).

The Congress has the same power under the Property Clause of the Constitution to grant exclusive regulatory authority to the Federal Power Commission to issue licenses for water power projects on a non-navigable stream on lands in the ownership or control of the United States, as it does under the Commerce Clause with respect to navigable waters. *Federal Power Commission v. Oregon,* 349 U.S. 435, 441–46 (1955).

In reviewing a license issued by the Federal Power Commission for a water power project on a non-navigable stream on reserved lands of the United States, it is not necessary for the court to pass upon the contention of the State of Oregon that the Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877 constitute an

express Congressional delegation or conveyance to the State of the power to regulate the use of such waters because those Acts do not apply to reserved lands. *Federal Power Commission v. Oregon,* 349 U.S. 435, 446–48 (1955).

2. —National parks and monuments

The Federal Power Commission does not have authority to grant licenses for power works within national parks or national monuments, whether or not there are navigable waters within such reservations. Acting Solicitor Kirgis Opinion, 56 I.D. 372 (1938).

3. —Transmission lines

The Act of March 4, 1911, 36 Stat. 1253, regarding transmission line easements over public lands, national forests, and reservations, has not been superseded, so far as Federal reclamation project transmission lines are concerned, by the Federal Water Power Act of June 10, 1920, 41 Stat. 1063. Decision of Assistant Secretary, A–17072 (April 25, 1933).

The applicability of the Acts of February 15, 1901, and March 4, 1911, to rights of way for power purposes over public lands, was superseded by the Federal Water Power Act, as amended. Therefore, applications to the United States for hydroelectric power plant sites on public lands or rights of way for main or primary hydroelectric power transmission lines must be made to the Federal Power Commission. On the other hand, rights of way for transmission lines which are not primary lines must be secured under the 1901 or 1911 Acts. 43 C.F.R. § 2234.4–1(3) (1965).

In the exercise of its responsibility as guardian of the public domain—waterways and public lands—under sections 4(e), 4(g) and 10(a) of the Federal Power Act, the Commission might well determine that a license should be granted to a public utility only on condition that it make available its excess transmission capacity to transmit energy generated in power plants of the United States. *Federal Power Commission v. Idaho Power Co.,* 344 U.S. 17 (1952).

4. —Standing to sue

The Secretary of the Interior and an association of power cooperatives have standing to petition for judicial review of an order of the Federal Power Commission granting a license to a private power company to construct a hydroelectric generating plant on a site (Roanoke Rapids) allegedly approved by Congress for Federal development. *United States ex rel Chapman v. Federal Power Commission,* 345 U.S. 153 (1953), *reversing on this ground* 191 F. 2d 796 (4th Cir. 1951).

Sec. 5. [Preliminary permit—Conditions—Cancellation for cause.]—Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority shall be maintained. Such permits shall not be transferable, and may be canceled by order of the Commission upon failure of permittees to comply with the conditions thereof or for other good cause shown after notice and opportunity for hearing. (41 Stat. 1067; § 203, Act of August 26, 1935, 49 Stat. 841; 16 U.S.C. § 798)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 841, amended section 5 by eliminating the words "and a license issued" which appeared at the end of the second sentence and by adding at the end of the last sentence the words "or for other good cause shown after notice and opportunity for hearing."

Sec. 6. [Term of license—Acceptance of conditions by licensee—Revocation or surrender of license.]—Licenses under this Part shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this Act and such further conditions, if any, as the Commission shall prescribe in conformity with this

Act, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days' public notice. Copies of all licenses issued under the provisions of this Part and calling for the payment of annual charges shall be deposited with the General Accounting Office, in compliance with section 3743, Revised Statutes, as amended (U.S.C., title 41, sec. 20). (41 Stat. 1067; § 204, Act of August 26, 1935, 49 Stat. 841; 16 U.S.C. § 799)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 841, amended section 6 by substituting the words "thirty days" for "ninety days" in the third sentence and by adding the last sentence to the section.

Sec. 7. (a) **[Preference to States and municipalities.]**—In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof, 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.

(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 Act of August 26, 1935, eliminated the words "navigation and" before the words "water resources" wherever they appeared in subsection (a) and lettered the paragraphs (a) and (b).

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)

Sec. 9. Each applicant for a license hereunder shall submit to the Commission—

(a) **[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.

(b) **[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.

(c) **[Additional information.]**—Such additional information as the Commission may require. (41 Stat. 1068; 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).

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

(a) **[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 water-power development, and for other beneficial public uses, including recreational purposes; 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.

(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.**]—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; 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 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 municipalitie

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. In the event an overpayment 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.

(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.]**—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.

(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. (41 Stat. 1068; § 206, Act of August 26, 1935, 49 Stat. 842; Act of September 7, 1962, 76 Stat. 447; 16 U.S.C. § 803)

EXPLANATORY NOTES

1962 Amendment. The Act of September 7, 1962, substituted "two thousand horsepower" for "one hundred horsepower" wherever the latter appeared. For legislative history of the 1962 Act see S. 1606, Public Law 87-647 in the 87th Congress; S. Rept. No. 664; H.R. Rept. No. 2241.

1935 Amendment. Section 206 of the Act of August 26, 1935, (1) elaborated the description of the comprehensive plan in subsection (a); (2) amended subsection (e) by inserting the requirement for approval by the Secretary of the Interior or the Indian tribe in the case of reclamation projects or projects on Indian lands, respectively, and by adding the last sentence relating to overpayment of charges; (3) amended subsection (f) by adding the last sentence of the first paragraph; and (4) made other technical changes.

Reference in the Text. The Act of June 18, 1934, referred to in subsection (e) is the so-called Wheeler-Howard Act. Section 16, 48 Stat. 987, 25 U.S.C. § 476, relates to the constitution and bylaws of a tribe and to the powers of the tribal council.

NOTES OF OPINIONS

Comprehensive plan 1
Headwater benefits 2

1. Comprehensive plan

In the exercise of its responsibility as guardian of the public domain—waterways and public lands—under sections 4(e), 4 (g) and 10(a) of the Federal Power Act, the Commission might well determine that a license should be granted to a public utility only on condition that it make available its excess transmission capacity to transmit energy generated in power plants of the United States. *Federal Power Commission v. Idaho Power Co.,* 344 U.S. 17 (1952).

2. Headwater benefits

Moneys received from power licenses, under assessments made by the Federal Power Commission pursuant to section 10(f) of the Federal Power Act, for headwater benefits attributable to Reclamation reservoirs, shall be paid into the Reclamation Fund in accordance with the Hayden-O'Mahoney Amendment of 1938. Dec. Comp. Gen. B-156498 (May 24, 1966).

Sec. 11. [Dams on navigable waters.]—If the dam or other project works are to be constructed across, along, or in any of the navigable waters of the United States, the Commission may, insofar as it deems the same reasonably necessary to promote the present and future needs of navigation and consistent with a reasonable investment cost to the licensee, include in the license any one or more of the following provisions or requirements:

(a) **[Construction of locks, etc., by licensee.]**—Such licensee shall, to the extent necessary to preserve and improve navigation facilities, construct, in whole or in part, without expense to the United States, in connection with such dam, a lock or locks, booms, sluices, or other structures for navigation purposes, in accordance with plans and specifications approved by the Chief of Engineers and the Secretary of the Army and made part of such license.

(b) **[Conveyance by the licensee to the United States of lands, etc., required for navigation facilities.]**—In case such structures for navigation purposes are not made a part of the original construction at the expense of the licensee, then whenever the United States shall desire to complete such navigation facilities the licensee shall convey to the United States, free of cost, such of its land and its rights of way and such right of passage through its dams or other struc-

tures, and permit such control of pools as may be required to complete such navigation facilities.

(c) **[Free power to be furnished by licensee for operation of navigation facilities.]**—Such licensee shall furnish free of cost to the United States power for the operation of such navigation facilities, whether constructed by the licensee or by the United States. (41 Stat. 1070; 16 U.S.C. § 804)

Sec. 12. [Licensee to install locks, etc., on navigable waters if Government fails to do so—Report to Congress concerning United States share of construction costs.]—Whenever application is filed for a project hereunder involving navigable waters of the United States, and the Commission shall find upon investigation that the needs of navigation require the construction of a lock or locks or other navigation structures, and that such structures cannot, consistent with a reasonable investment cost to the applicant, be provided in the manner specified in section 11, subsection (a) hereof, the Commission may grant the application with the provision to be expressed in the license that the licensee will install the necessary navigation structures if the Government fails to make provision therefor within a time to be fixed in the license and cause a report upon such project to be prepared, with estimates of cost of the power development and of the navigation structures, and shall submit such report to Congress with such recommendations as it deems appropriate concerning the participation of the United States in the cost of construction of such navigation structures. (41 Stat. 1070; 16 U.S.C. § 805)

Sec. 13. **[Time limit for construction and operation—Extensions—Termination of license on failure to construct—Proceedings if project is only partially completed in time prescribed.]**—The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall within the time fixed in the license complete and put into operation such part of the ultimate development as the Commission shall deem necessary to supply the reasonable needs of the then available market, and shall from time to time thereafter construct such portion of the balance of such development as the Commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed. The periods for the commencement of construction may be extended once but not longer than two additional years and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the Commission when not incompatible with the public interests. In case the licensee shall not commence actual construction of the project works, or of any specified part thereof, within the time prescribed in the license or as extended by the Commission, then, after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the Commission. In case the construction of the project works, or of any specified part thereof, have been begun but not completed within the time prescribed in the license, or as extended by the Commission, then the Attorney General, upon the request of the Commission, shall institute proceedings in equity in the district court of the United States for the district in which any part of the

project is situated for the revocation of said license, the sale of the works constructed, and such other equitable relief as the case may demand, as provided for in section 26 hereof. (41 Stat. 1071; 16 U.S.C. § 806)

Sec. 14. [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.]—Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided,* That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved. (41 Stat. 1071; § 207, Act of August 26, 1935, 49 Stat. 844; 16 U.S.C. § 807)

EXPLANATORY NOTES

1953 Modification. The Act of August 15, 1953, 67 Stat. 587, as amended by the Act of July 31, 1959, 73 Stat. 271, provides that section 14 shall not apply to any project owned by a State or a municipality. The 1953 Act reads as follows:

"In order to facilitate the development and construction by States and municipalities of water conservation facilities, certain requirements in the Federal Power Act are made inapplicable to States and municipalities as provided in this Act.

"Sec. 2. The words used in this Act shall have the same meanings ascribed to them in the Federal Power Act.

"Sec. 3. Section 14 of the Federal Power Act pertaining to the taking over by the United States of any project upon or after the expiration of a license, and sections 301 and 302 of said Act requiring certain records and accounting procedures and section 4(b) requiring the preparation and filing of the statement of actual legitimate original cost of a project, shall not be applicable to any project owned by a State or municipality, and such rights and requirements shall not exist under any license heretofore or hereafter granted to any State or municipality. The Federal Power Commission in determining the amount of annual charges applicable to any such project may determine the annual charges with

reference to the actual cost of services incurred by the Commission with respect to the project.

"Sec. 4. Except as herein provided, the provisions of this Act shall not be construed as repealing or affecting any of the provisions of the Federal Power Act."

1935 Amendment. The Act of August 26, 1935, 49 Stat. 844, amended section 14 by substituting "by the Commission after notice and opportunity for hearing" in the second sentence of the section, for "by agreement between the Commission and the licensee, and in case they cannot agree, by proceedings in equity instituted by the United States in the District Court of the United States in the district within which any such property may be located."

Sec. 15. [Reissuance of license to original 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 original 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 original 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 original 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 original 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 original license until the property is taken over or a new license is issued as aforesaid. (41 Stat. 1072; 16 U.S.C. § 808)

Sec. 16. [Temporary possession of project by Government if safety of the United States demands it.]—When in the opinion of the President of the United States, evidenced by a written order addressed to the holder of any license hereunder, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any project, or part thereof, constructed, maintained, or operated under said license, for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes and then to restore possession and control to the party or parties entitled thereto; and in the event that the United States shall exercise such right it shall pay to the party or parties entitled thereto just and fair compensation for the use of said property as may be fixed by the Commission upon the basis of a reasonable profit in time of peace, and the cost of restoring said property to as good condition as existed at the time of the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the licensee. (41 Stat. 1072; 16 U.S.C. § 809)

Sec. 17. [Disposition of proceeds—Reclamation fund.]—(a) All proceeds from any Indian reservation shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder, except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this Part shall be paid into the Treasury of the United States, subject to the following distribution: 12½ per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to "Miscellaneous receipts"; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests and public lands from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of the Army in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the United States. The proceeds of charges made by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

(b) In case of delinquency on the part of any licensee in the payment of annual charges a penalty of 5 per centum of the total amount so delinquent may be added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 per centum for each subsequent month until the total of the charges and penalties are paid or until the license is canceled and the charges and penalties satisfied in accordance with law. (41 Stat. 1072; § 208, Act of August 26, 1935, 49 Stat. 845; 16 U.S.C. § 810)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 845, amended section 17 by designating the existing provisions of the section as subsection (a) and adding the words "except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this Part," in the second sentence of the subsection; by substituting "national forests" for "national monuments, national forests, and national parks" wherever appearing; and by adding the last sentence of the subsection relating to payment of proceeds of charges into the Treasury; and by adding subsection (b).

NOTE OF OPINION

1. Charges

The charges arising from occupancy and use of public lands and national forests, which are subject to distribution under this section, include administrative charges as well as occupancy charges. Dec. Comp. Gen., A–29747 (February 3, 1930); also supplemental A–29747 (May 7, 1930).

Sec. 18. [Licensee to maintain navigational lights and signals and fishways—Navigational aids and reservoir level to be controlled by regulations of the Secretary of the Army—Penalty for non-compliance.]—The Commission shall

require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of the Department in which the Coast Guard is operating, and such fishways as may be prescribed by the Secretary of the Interior. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 316 hereof. (41 Stat. 1073; § 209, Act of August 26, 1935, 49 Stat. 845; § 2, Act of June 4, 1956, 70 Stat. 226; 16 U.S.C. § 811)

EXPLANATORY NOTES

1956 Amendment. The Act of June 4, 1956, 70 Stat. 226, amended section 18 by substituting the words "Secretary of the Department in which the Coast Guard is operating" for the words "Secretary of War" in the first sentence of the section.

1935 Amendment. The Act of August 26, 1935, 49 Stat. 845, amended section 18 by adding the first sentence of the section, and by eliminating the clause which read: "Such rules and regulations may include the maintenance and operation by such licensee at its own expense of such lights and signals as may be directed by the Secretary of the Army and such fishways as may be prescribed by the Secretary of the Interior.", and by substituting "section 316" for "section 25" in the last sentence of the section.

Sec. 19. [Public service licensees—State regulation to control—Regulation by the Commission if no State provision therefor—Commission's jurisdiction to cease when State provides means of regulation and control.]—As a condition of the license, every licensee hereunder which is a public-service corporation, or a person, association, or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public service, shall abide by such reasonable regulation of the services to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in case of the development, transmission, or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefor, or the amount or character of securities to be issued by any of said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control: *Provided,* That the jurisdiction of the Commission shall cease and determine as to each specific matter of regulation and control prescribed in this section as soon as the State shall have provided a commission

or other authority for the regulation and control of that specific matter. (41 Stat. 1073; 16 U.S.C. § 812)

Sec. 20. [Reasonable rates for power use in interstate commerce—Discriminatory rates unlawful—Commission to enforce rate provisions if no enforcement authority provided by State—Section to be administered according to procedure and practice in fixing and regulating rates, etc., of railroad companies—Valuation of property for rate making limited.]—When said power or any part thereof shall enter into interstate or foreign commerce the rates charged and the service rendered by any such licensee, or by any subsidiary corporation, the stock of which is owned or controlled directly or indirectly by such licensee, or by any person, corporation, or association purchasing power from such licensee for sale and distribution or use in public service shall be reasonable nondiscriminatory, and just to the customer and all unreasonable discriminatory and unjust rates or services are hereby prohibited and declared to be unlawful and whenever any of the States directly concerned has not provided a commission or other authority to enforce the requirements of this section within such State or to regulate and control the amount and character of securities to be issued by any of such parties or such States are unable to agree through their properly constituted authorities on the services to be rendered or on the rates or charges or payment therefor, or on the amount or character of securities to be issued by any of said parties, jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved, upon the request of any State concerned, or upon its own initiative to enforce the provisions of this section, to regulate and control so much of the services rendered, and of the rates and charges of payment therefor as constitute interstate or foreign commerce and to regulate the issuance of securities by the parties included within this section, and securities issued by the licensee subject to such regulations shall be allowed only for the bona fide purposes of financing and conducting the business of such licensee.

The administration of the provisions of this section, so far as applicable, shall be according to the procedure and practice in fixing and regulating the rates, charges, and practices of railroad companies as provided in the Act to regulate commerce, approved February 4, 1887, as amended, and that the parties subject to such regulation shall have the same rights of hearing, defense, and review as said companies in such cases.

In any valuation of the property of any licensee hereunder for purposes of rate making, no value shall be claimed by the licensee or allowed by the Commission for any project or projects under license in excess of the value or values prescribed in section 14 hereof for the purposes of purchase by the United States, but there shall be included the cost to such licensee of the construction of the lock or locks or other aids of navigation and all other capital expenditures required by the United States, and no value shall be claimed or allowed for the rights granted by the Commission or by this Act. (41 Stat. 1073; 16 U.S.C. § 813)

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. (41 Stat. 1074; 16 U.S.C. § 814)

Sec. 22. [Contracts for service beyond term of license permitted—Joint approval of Commission and State authority required.]—Whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the Commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the Commission, and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts. (41 Stat. 1074; 16 U.S.C. § 815)

Sec. 23. (a) **[Existing rights, etc., protected—Holders of existing rights, etc., may apply for license under this part—Valuation of existing projects.**]—The provisions of this Part shall not be construed as affecting any permit or valid existing right-of-way heretofore granted or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality holding or possessing such permit, right-of-way, or authority may apply for a license hereunder, and upon such application the Commission may issue to any such applicant a license in accordance with the provisions of this Part and in such case the provisions of this Act shall apply to such applicant as a licensee hereunder: *Provided,* That when application is made for a license under this section for a project or projects already constructed the fair value of said project or projects determined as provided in this section, shall for the purposes of this Part and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value

shall be determined by the Commission after notice and opportunity for hearing. (41 Stat. 1075; § 210, Act of August 26, 1935, 49 Stat. 846; 16 U.S.C. § 816)

(b) **[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. (41 Stat. 1075; § 210, Act of August 26, 1935, 49 Stat. 846; 16 U.S.C. § 817)

EXPLANATORY NOTE

1935 Amendment. The Act of August 26, 1935, 49 Stat. 846, amended the section 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."

Sec. 24. [Power sites.]—Any lands of the United States included in any proposed project under the provisions of this Part, shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by

Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided,* That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained: *Provided further,* That before any lands applied for, or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to the Governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways, and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application. (14 Stat. 1075; § 211, Act of August 26, 1935, 49 Stat. 846; Act of May 28, 1948, 62 Stat. 275; 16 U.S.C. § 818)

EXPLANATORY NOTES

1948 Amendment. The Act of May 28, 1948, amended the section by adding the second proviso to the last sentence which permits States to reserve for highway purposes power sites that are to be released. For legislative history of the 1948 Act see S. 1305, Public Law 559 in the 80th Congress; S. Rept. No. 686; H.R. Rept. No. 1922.

1935 Amendment. Section 211 of the Act of August 26, 1935, amended the third sentence by adding the words "for such purpose or purposes and under such restrictions as the Commission may determine."

Sec. 25. [Penalty for violations by licensee, etc.]—*Repealed.*

EXPLANATORY NOTE

Section Repealed, Covered in Title II. Title II, Section 212 of the Public Utility Act of August 26, 1935, 49 Stat. 847, repealed section 25. Offenses and punishment under the Act are covered in Title II, section 213 of the 1935 Act, as amended, 16 U.S.C. § 825m, *et seq.*

Sec. 26. [Equity proceedings for revoking licenses, etc.—U.S. District Courts have jurisdiction—Power of courts to sell projects, etc.—Vendee to take rights and assume obligations of licensee—United States may become purchaser.]—The Attorney General may, on request of the Commission or of the Secretary of the Army, institute proceedings in equity in the district court of the United States in the district in which any project or part thereof is situated for the purpose of revoking for violation of its terms any permit or license issued hereunder, or for the purpose of remedying or correcting by injunction, mandamus, or other process any act of commission or omission in violation of the provisions of this Act or of any lawful regulation or order promulgated hereunder. The district courts shall have jurisdiction over all of the above-mentioned proceedings and shall have power to issue and execute all necessary process and to make and enforce all writs, orders, and decrees to compel compliance with the lawful orders and regulations of the Commission and of the Secretary of the Army, and to compel the performance of any condition imposed under the provisions of this Act. In the event a decree revoking a license is entered, the court is empowered to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and assume all outstanding obligations and liabilities of the license which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of section 14 hereof at the termination of the license. (41 Stat. 1076; 16 U.S.C. § 820)

Sec. 27. [State laws not affected.]—Nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein. (41 Stat. 1077; 16 U.S.C. § 821)

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 stream and to divert or use water, and over lega rights to engage locally in the business o developing, transmitting and distributin power, to the extent not superseded by su perior Federal powers. Section 27 of the Ac

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).

Sec. 28. [Reservation clause—Licensees' rights unaffected by change in Act.]—The right to alter, amend, or repeal this Act is hereby expressly reserved; but no such alteration, amendment, or repeal shall affect any license theretofore issued under the provisions of this Act, or the rights of any licensee thereunder. (41 Stat. 1077; 16 U.S.C. § 822)

Sec. 29. [Acts repealed—Act granting rights to the city and county of San Francisco unaffected.]—All Acts or parts of Acts inconsistent with this Act are hereby repealed: *Provided,* That nothing herein contained shall be held or construed to modify or repeal any of the provisions of the Act of Congress approved December 19, 1913, granting certain rights-of-way to the city and county of San Francisco, in the State of California: *Provided further,* That section 18 of an Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, approved August 8, 1917, is hereby repealed. (41 Stat. 1077; 16 U.S.C. § 823)

Sec. 30. [Short title.]—*Repealed.*

EXPLANATORY NOTES

Section Repealed. Section 212 of the Public Utility Act of August 26, 1935, 49 Stat. 847, repealed section 30, and provided that the "Federal Water Power Act", as amended, shall constitute Part I of the "Federal Power Act."

Legislative History. H.R. 3184, Public Law 280 in the 66th Congress. H.R. Rept. No. 61. S. Rept. No. 180. S. Doc. No. 269 and H.R. Rept. No. 910 (conference reports).

PATENTS TO DISABLED SOLDIER ENTRYMEN

An act to authorize certain homestead settlers or entrymen who entered the military or naval service of the United States during the war with Germany to make final proof of their entries. (Act of March 1, 1921, ch. 102, 41 Stat. 1202)

[**Sec. 1. Homestead and desert-land entrymen, incapacitated in World War, may make final proof and receive patent without further reclamation.**]—Any bona fide settler, applicant, or entryman under the homestead laws of the United States, or any desert-land entryman whose entry is subject to the provisions of the act of June 17, 1902 (Thirty-second Statutes, page 388), who, after settlement, application, or entry, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to the service is unable to return to the land, may make final proof, without further residence, improvement, cultivation, or reclamation, at such time and place as may be authorized by the Secretary of the Interior, and receive patent to the land by him so entered or settled upon, subject to the provisions of the act or acts under which such settlement or entry was made: *Provided,* That no such patent shall issue prior to the conformation of the entry to a single farm unit, as required by the act of August 13, 1914 (Thirty-eighth Statutes, page 686) : *And provided further,* That this act shall not be construed to exempt or relieve such applicant or entryman from payment of any lawful fees, commissions, purchase moneys, water charges, or other sums due to the United States, or its successors in control of the reclamation project, in connection with such lands. (41 Stat. 1202; Act of April 7, 1922, 42 Stat. 492; 43 U.S.C. § 238)

Explanatory Notes

1922 Amendment. The Act of April 7, 1922, 42 Stat. 492, which appears herein in chronological order, amended section 1 of the Act to read as it appears above. Before amendment, the section read as follows:

"Any settler or entryman under the homestead laws of the United States, who, after settlement, application, or entry and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to service is unable to return to the land, may make proof, without further residence, improvement, or cultivation, at such time and place as may be authorized by the Secretary of the Interior, and receive patent to the land by him so entered or settled upon: *Provided,* That no such patent shall issue prior to the survey of the land."

Reference in the Text. The Act of August 13, 1914 (Thirty-eighth Statutes, page 686), referred to in the text, is the Reclamation Extension Act. The Act appears herein in chronological order.

Cross Reference, Homestead Laws. This and other selected provisions from the homestead laws appear in the Appendix herein, under 43 U.S.C. §§ 161–284.

Legislative History. H.R. 13592, Public Law 351 in the 66th Congress. H.R. Rept. No. 837.

NOTE OF OPINION

1. Reclamation laws

The above act is an amendment of the homestead law but does not abrogate the provisions of the reclamation law regarding reclamation of one-half of the irrigable area and payment of water charges. These two laws are separate and distinct. The act of March 1, 1921, does not require patent to issue for lands under irrigation projects before submission of final affidavit approved by the project manager, showing reclamation of one-half the irrigable area of the entry and payment of all fees, commissions, and water charges to date of such approval. Departmental decision re Claude E. Barker, Belle Fourche project, August 3, 1921.

WATER AND POWER WORKS IN NATIONAL PARKS

An act to amend an act entitled "An act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes," approved June 10, 1920. (Act of March 3, 1921, ch. 129, 41 Stat. 1353)

[**Consent of Congress required to construct works within limits of any national park or national monument.**]—Hereafter no permit, license, lease, or authorization for dams, conduits, reservoirs, power houses, transmission lines, or other works for storage or carriage of water, or for the development, transmission, or utilization of power, within the limits as now constituted of any national park or national monument shall be granted or made without specific authority of Congress, and so much of the Act of Congress approved June 10, 1920, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes," approved June 10, 1920, as authorizes licensing for such uses of existing national parks and national monuments by the Federal Power Commission is hereby repealed. (41 Stat. 1353)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. Extracts from the Act approved June 10, 1920, creating a Federal Power Commission, etc., referred to in the title and text, appear herein in chronological order.

Cross Reference, Statutes Authorizing the Use of National Parks for Reclamation Purposes. The Act of May 11, 1910, 36 Stat. 354, establishing the Glacier National Park; the Act of January 26, 1915, 38 Stat. 798, establishing the Rocky Mountain National Park; the Act of August 9, 1916, 39 Stat. 442, establishing the Lassen Volcanic National Park; and the Act of February 26, 1919, 40 Stat. 1178, establishing the Grand Canyon National Park, each contain authority for certain reclamation activities within the parks. Extracts from each of these acts appear herein in chronological order.

Cross Reference, Federal Power Act. Section 212 of the Act of August 26, 1935, 49 Stat. 847, which provided that the Federal Water Power Act of 1920, as amended, would constitute Part I of the Federal Power Act, specifically provides that the above Act and any other Act relating to national parks and monuments are neither repealed nor amended by the 1935 Act.

Legislative History. S. 4554, Public Law 369 in the 66th Congress.

Notes of Opinions

1. Construction with other laws

The Act of March 3, 1921 (41 Stat. 1353), prohibiting the construction of reservoirs or other works for the storage or carriage of water within the limits of any national park or national monument without specific authority of Congress, necessitates the consent of Congress whether such works are constructed by the Government or by a private company. The fact that the Department considers the works to be constructed not detrimental to the purposes of the reservation is not sufficient to justify the construction without the consent of Congress. Solicitor's Opinion, M–12896 (November 8, 1924), in re Indian irrigation project canal across Casa Grande National Monument.

The Act of March 3, 1921, 41 Stat. 1353, repealing the authority of the Federal Power Commission to grant licenses for works in national parks and monuments applies only

to power projects, and does not apply to reclamation projects. Consequently, the 1921 Act does not repeal the specific authority granted by the Act of January 26, 1915, 38 Stat. 800, for the utilization of Rocky Mountain National Park for a "Government reclamation project." 38 Op. Atty. Gen. 310 (1935).

The tunnel under the Rocky Mountain National Park, proposed as part of the Grand Lake-Big Thompson transmountain diversion project [later renamed the Colorado-Big Thompson project], is authorized by the proviso in section 1 of the Act of January 26, 1915, 38 Stat. 800, establishing the park; and this authority was not repealed by the Act of March 3, 1921, 41 Stat. 1353, requiring Congressional authorization for water and power facilities in national parks and monuments. Solicitor Margold Opinion, M-28081 (July 19, 1935).

The Federal Power Commission does not have authority to grant licenses for power works within national parks or national monuments, whether or not there are navigable waters within such reservations. Acting Solicitor Kirgis Opinion, 56 I.D. 372 (1938).

SUNDRY CIVIL EXPENSES APPROPRIATIONS ACT FOR 1922

[Extracts from] An act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30, 1922, and for other purposes. (Act of March 4, 1921, ch. 161, 41 Stat. 1367)

* * * * *

RECLAMATION SERVICE

* * * * *

[New town site to replace American Falls.]—Minidoka project, Idaho: For operation and maintenance, continuation of construction, and incidental operations, with authority in connection with the construction of American Falls Reservoir, to purchase or condemn and to improve suitable land for a new town site to replace the portion of the town of American Falls which will be flooded by the reservoir, and to provide for the removal of buildings to such new site and to plat and to provide for appraisal of lots in such new town site and to exchange and convey such lots in full or part payment for property to be flooded by the reservoir and to sell for not less than the appraised valuation any lots not used for such exchange, $1,735,000, together with the unexpended balance of the appropriation for this project for the fiscal year 1921. (41 Stat. 1403.)

Explanatory Notes

Provision Repeated. Similar provisions are carried in the Interior Department Appropriation Acts for 1923, Act of May 22, 1922, 42 Stat. 585, and for 1924, Act of January 24, 1923, 42 Stat. 1206.

Cross Reference. Additional provisions relating to the American Falls Reservoir are carried in the Interior Department Appropriation Act for 1925, Act of June 5, 1924, 43 Stat. 417.

Notes of Opinions

Condemnation of land for town site 2
Manner of payment of judgment 1

1. Manner of payment of judgment

The Act of March 3, 1925, 43 Stat. 1165, 1166, made appropriations from the reclamation fund and for expenses of the Minidoka project, and as the judgment is not one for damages as considered by a former Comptroller of the Treasury in decision of January 31, 1913, same is not required to be specifically reported to the Congress pursuant to the Act of April 27, 1904, 33 Stat. 422, for a specific appropriation for its payment, but may be charged to the "Reclamation fund, special fund (American Falls)". 5 Comp. Gen. 737, 738 (1926).

2. Condemnation of land for town site

For the purpose of providing for a new town site the United States brought suit in eminent domain to acquire title in fee of 130 acres of land, the property of DeWitt G. Brown, under authority of a special provision in the appropriation Act of March 4, 1921, 41 Stat. 1403. The defendant having contested the suit, United States District Judge Dietrich held that the necessity of taking land by condemnation for public purposes is a legislative question, and when the taking is to be by the Government itself, an act authorizing it is presumed to be within the constitutional power of Congress, and that the said act of March 4, 1921, is valid and authorizes such condemnation. *United States v. Brown, et al.,* 279 Fed. 168 (1922). Decree affirmed in *Brown v. United States,* 263 U.S. 78 (1923).

* * * * *

[**Riverton project, Wyoming—Payments for homestead entries.**]—When any land on the project is opened to homestead entry under the terms of the "reclamation law," the entryman shall pay to the United States for the lands the sum of $1.50 per acre as provided in section 2 of the act approved March 3, 1905 (volume 33, Statutes at Large, page 1016), to be credited to the fund established by said act of 1905, together with the proceeds from the sale of town sites established in said project under the "reclamation law." (41 Stat. 1404; 43 U.S.C. § 597)

EXPLANATORY NOTE

Reference in the Text. The Act approved March 3, 1905 (Volume 33, Statutes at Large, page 1016), referred to in the text, is an act to ratify and amend an agreement with the Indians residing on the Shoshone or Wind River Indian Reservation in the State of Wyoming and to make appropriations for carrying the same into effect.

* * * * *

[**Contributed funds—Expenditures.**]—All moneys hereafter received from any State, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the reclamation law shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes. (41 Stat. 1404; 43 U.S.C. § 395)

EXPLANATORY NOTE

Popular Name. The above paragraph is popularly referred to as the Contributed Funds Act.

NOTES OF OPINIONS

1. Reimbursement

Under the authority of the Act of March 4, 1921, 41 Stat. 1404, to accept and expend advances as if appropriated, and the broad authority of Section 9(c) of the Reclamation Project Act of 1939 to fix the rates at which electric power is sold, the Secretary of the Interior is authorized to enter into a contract with a commercial customer of the Kendrick project whereby the customer advances the cost of constructing the necessary feeder transmission facilities, the Bureau constructs the facilities, and power is sold to the customer at a discount rate until the customer has paid the United States, in the form of the reduced rate plus the advanced funds, the same amount for the power received as it would have paid at standard rates if the Bureau had constructed the facilities with appropriated funds. Dec. Comp. Gen. B-62789 (January 9, 1947).

Although there is no authority under the San Luis Act to accept contributed funds from the State of California to expand the capacity of the San Luis Drain from 250 c.f.s. to 1,400 c.f.s., such authority may be found under the Contributed Funds Act, 41 Stat. 1404. The enlargement of the drain to such an extent does not so alter the facility that it would be deemed to be beyond the authority granted to build the drain by the Federal Government. Such contributed funds would have to be furnished in advance of construction. Memorandum of Solicitor Barry, April 10, 1964, to Commissioner of Reclamation in re legal issues with respect to the construction of the San Luis Drain, Central Valley Project.

* * * * *

EXPLANATORY NOTES

Not Codified. The extract shown here regarding American Falls is not codified in the U.S. Code.

Legislative History. H.R. 15422, Public Law 389 in the 66th Congress. H.R. Rept. No. 1153. S. Rept. No. 755. H.R. Rept. No. 1355 and H.R. Rept. No. 1418 (conference reports).

WATER FOR DELINQUENT APPLICANTS

Joint resolution to authorize the Secretary of the Interior, in his discretion, to furnish water to applicants and entrymen in arrears for more than one calendar year of payment for maintenance or construction charges notwithstanding the provisions of section 6 of the act of August 13, 1914. (Pub. Res. 3, May 17, 1921, ch. 7, 42 Stat. 4)

[Secretary authorized to furnish water during season of 1921 to applicants or entrymen in arrears more than one calendar year.]—In view of the financial stringency and the low price of agricultural products, the Secretary of the Interior is hereby authorized, in his discretion, after due investigation, to furnish irrigation water on the Federal irrigation projects during the irrigation season of 1921 to water-right applicants or entrymen who are in arrears for more than one calendar year for the payment of any charge for operation and maintenance, or any construction charges and penalties, notwithstanding the provisions of section 6 of the act of August 13, 1914 (Thirty-eighth Statutes, page 686): *Provided,* That nothing herein shall be construed to relieve any beneficiary hereunder from payments due or penalties thereon required by said act. (42 Stat. 4)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of August 13, 1914 (Thirty-eighth Statutes, page 686), referred to in the text, is the Reclamation Extension Act. The Act appears herein in chronological order.

Cross References, Relief to Water Users. The Acts of March 31, 1922, 42 Stat. 489, and of February 28, 1923, 42 Stat. 1324, are Acts which provide relief for water users, also. Both acts appear herein in chronological order.

Legislative History. H.J. Res. 52, Public Resolution 3 in the 67th Congress. H.R. Rept. No. 26.

RELIEF TO WATER USERS

An act to authorize the Secretary of the Interior to extend the time for payment of charges due on reclamation projects, and for other purposes. (Act of March 31, 1922, ch. 119, 42 Stat. 489)

[**Sec. 1. Extension of time for payment of construction charges—Interest on extended charges.**]—Where an individual water user or individual applicant for a water right under a Federal irrigation project constructed or being constructed under the act of June 17, 1902 (Thirty-second Statutes, page 388), or any act amendatory thereof or supplementary thereto, is unable to pay any construction charge due and payable in the year 1922 or prior thereto, the Secretary of the Interior is hereby authorized, in his discretion, to extend the date of payment of any such charge for a period not to exceed two years from December 31, 1922: *Provided,* That the applicant for the extension shall first show to the satisfaction of the Secretary of the Interior, a detailed, verified statement of his assets and liabilities, an actual inability to make payment at the time the application is made and an apparent ability to meet the deferred charge when the extension expires; also in cases where water for irrigation is available, that the applicant is a landowner or entryman whose land against which the charge has accrued is being actually cultivated: *Provided further,* That similar relief in whole or in part may be extended by the Secretary of the Interior to a legally organized group of water users of a project, upon presentation of a sufficient number of individual showings made in accordance with the foregoing proviso to satisfy the Secretary of the Interior that such extension is necessary: *And provided further,* That each charge so extended shall draw interest at the rate of 6 per centum per annum from its due date in lieu of any penalty that may now be provided by law, but in case such charge is not paid at the end of such extension period, any penalty that would have been applicable save for such extension, shall attach from the date the charge was originally due the same as if no extension had been granted. (42 Stat. 489)

Explanatory Note

1923 Amendment. Section 1 of the Act of February 28, 1923, 42 Stat. 1324, amended section 1 by striking out the words "one year" where they appeared in the section and inserting in lieu thereof the words "two years". The 1923 Act appears herein in chronological order.

Notes of Opinions

Irrigation districts 2
Payments already due 1

1. Payments already due

The Act of March 31, 1922, 42 Stat. 489, as amended and enlarged by the Act of February 28, 1923, 42 Stat. 1324, authorizes extension of time to individual water users or a legally organized group of water users, and the terms of that legislation should be applied in all cases of extension of time for payments already due. Solicitor Edwards Opinion, 50 L.D. 142, 145 (1923).

2. Irrigation districts

The Act of May 15, 1922, applies only to contracts with irrigation districts and not to contracts with water users' associations. Therefore, a substantial extension of time for the payment of water charges may be given

to irrigation districts in amended contracts under the Act of May 15, 1922; but extensions of time to water users' associations may be granted only under the terms of the Act of March 31, 1922, as amended. Solicitor Edwards Opinions, M–11120 and M–12181 (April 17, 1924).

Sec. 2. [Secretary authorized to furnish water to landowners or entrymen in arrears in payment of operation and maintenance or construction charges.]—The Secretary of the Interior is hereby authorized, in his discretion, after due investigation, to furnish irrigation water on Federal irrigation projects during the irrigation seasons of 1922 and 1923 to landowners or entrymen who are in arrears for more than one calendar year in the payment of any operation and maintenance or construction charges, notwithstanding the provisions of section 6 of the act of August 13, 1914 (Thirty-eighth Statutes, page 686): *Provided,* That nothing in this section shall be construed to relieve any beneficiary hereunder from payments due or penalties thereon required by said act: *Provided further,* That the relief provided by this section shall be extended only to a landowner or entryman whose land against which the charges have accrued is actually being cultivated. (42 Stat. 490)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

1923 Amendment. Section 4 of the Act of February 28, 1923, 42 Stat. 1325, amended section 2 by striking the words "season of 1922" where they appeared in the section and inserting in lieu thereof the words "seasons of 1922 and 1923". The 1923 Act appears herein in chronological order.

1923 Modification. Sections 2 and 3 of the Act of February 28, 1923, 42 Stat. 1324, 1325, which appears herein in chronological order, modified this Act. These sections read as follows:

"Sec. 2. That the Secretary of the Interior is authorized, in the manner and subject to the conditions imposed by such act of March 31, 1922, to extend for a period not exceeding two years from December 31, 1922, the date of any payment of any charge the date of payment of which has been extended under the provisions of section 1 of such act.

"Sec. 3. That every charge, the date of payment of which is extended under the provisions of section 2 of this act, shall draw interest at the rate of 6 per centum per annum from the date from which it was so extended in lieu of any penalty that may now be provided by law, but in case such charge is not paid at the end of the period for which it is so extended any such penalty shall attach from the date the charge was originally due, as if no extension had been granted."

Reference in the Text. The Act of August 13, 1914 (Thirty-eighth Statutes, page 686), referred to in section 2, is the Reclamation Extension Act. The Act appears herein in chronological order.

Cross Reference, Water for Delinquent Applicants. The Act of May 17, 1921, 42 Stat. 4, authorized the Secretary of the Interior to furnish irrigation water during the 1921 season to water-right applicants or entrymen who were in arrears for more than one calendar year for the payment of operation and maintenance or construction charges. The Act appears herein in chronological order.

Legislative History. H.R. 9606, Public Law 185 in the 67th Congress. H.R. Rept. No. 709. H.R. Rept. No. 814 (conference report).

NOTE OF OPINION

1. Payment of charges

The provisions of this act, which affords relief to settlers on reclamation projects with reference to operation and maintenance charges, simply relax the requirements of section 6 of the Act of August 13, 1914, by permitting the Secretary of the Interior, in his discretion, to furnish irrigation water, during the time specified therein, to landowners or entrymen who are in arrears for more than one calendar year, and nothing contained therein authorizes the extension of time for the payment of such charges. *Lower Yellowstone Irrigation Districts Nos. 1 and 2,* 49 L.D. 301 (1922).

AMEND PATENTS TO DISABLED SOLDIER ENTRYMEN ACT

An act to amend the act of March 1, 1921 (Forty-first Statutes, page 1202), entitled "An act to authorize certain homestead settlers or entrymen who entered the military or naval service of the United States during the war with Germany to make final proof of their entries." (Act of April 7, 1922, ch. 125, 42 Stat. 492)

[Homestead and desert-land entrymen, incapacitated in World War, may make final proof and receive patent without further reclamation.]—The act approved March 1, 1921 (Forty-first Statutes, page 1202), [is] amended to read as follows: "That any bona fide settler, applicant, or entryman under the homestead laws of the United States, or any desert-land entryman whose entry is subject to the provisions of the act of June 17, 1902 (Thirty-second Statutes, page 388), who, after settlement, application, or entry, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to the service is unable to return to the land, may make final proof, without further residence, improvement, cultivation, or reclamation, at such time and place as may be authorized by the Secretary of the Interior, and receive patent to the land by him so entered or settled upon, subject to the provisions of the act or acts under which such settlement or entry was made: *Provided,* That no such patent shall issue prior to the conformation of the entry to a single farm unit, as required by the act of August 13, 1914 (Thirty-eighth Statutes, page 686): *And provided further,* That this act shall not be construed to exempt or relieve such applicant or entryman from payment of any lawful fees, commissions, purchase moneys, water charges, or other sums due to the United States, or its successors in control of the reclamation project, in connection with such lands." (42 Stat. 492; 43 U.S.C. § 238)

Explanatory Notes

Reference in the Text. The Act of August 13, 1914 (Thirty-eighth Statutes, page 686), referred to in the text, is the Reclamation Extension Act. The Act appears herein in chronological order.

Editor's Note, Annotations. Annotations of opinions, if any, are found under the act of March 1, 1921.

Legislative History. H.R. 8815, Public Law 188 in the 67th Congress. H.R. Rept. No. 500. S. Rept. No. 519.

IRRIGATION DISTRICTS AND FARM LOANS

An act to provide for the application of the reclamation law to irrigation districts. (Act of May 15, 1922, ch. 190, 42 Stat. 541)

[**Sec. 1. Application of reclamation law to irrigation districts—Individual water-right applications dispensed with.**]—In carrying out the purposes of the act of June 17, 1902 (Thirty-second Statutes, page 388), and acts amendatory thereof and supplementary thereto, and known as and called the reclamation law, the Secretary of the Interior may enter into contract with any legally organized irrigation district whereby such irrigation district shall agree to pay the moneys required to be paid to the United States, and in such event water-right applications on the part of landowners and entrymen, in the discretion of the Secretary of the Interior, may be dispensed with. In the event of such contract being made with an irrigation district, the Secretary of the Interior, in his discretion, may contract that the payments, both for the construction of irrigation works and for operation and maintenance, on the part of the district shall be made upon such dates as will best conform to the district and taxation laws of the respective States under which such irrigation district shall be formed; and if he deem it advisable, he may contract for such penalties or interest charges in case of delinquency in payment as he may deem proper and consistent with such State laws, notwithstanding the provisions of sections 1, 2, 3, 5, and 6 of the reclamation extension act approved August 13, 1914 (Thirty-eighth Statutes, page 686). The Secretary of the Interior may accept a partial payment of the amount due from any district to the United States, providing such acceptance shall not constitute a waiver of the balance remaining due nor the interest or penalties, if any, accruing upon said balance: *Provided,* That no contract with an irrigation district under this act shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid. (42 Stat. 541; 43 U.S.C. § 511)

Explanatory Note

Reference in the Text. Sections 1, 2, 3, 5, and 6 of the Reclamation Extension Act, approved August 13, 1914 (Thirty-eighth Statutes, page 686), referred to in the text, deal with payments of various charges. The Act appears herein in chronological order.

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1. Prior contracts, effect on

This act has no retroactive effect upon contracts theretofore made under proper authority, and such contracts are not, therefore, dependent for their validity upon the court confirmation specified in the proviso.

Solicitor Edwards Opinion, 50 L.D. 142 (1923).

2. Warren Act contracts

This act does not modify the Act of February 21, 1911, 36 Stat. 925, and existing contracts entered into under the Act of February 21, 1911, may stand as made or be modified under the same authority which authorized their execution; likewise, new contracts may be made thereunder without resort to the court proceedings specified for contracts under the Act of May 15, 1922. Solicitor Edwards Opinion, 50 L.D. 142 (1923)

3. Construction charges

The Act of August 13, 1914, provided for the payment of irrigation construction charges upon a specified date, the only authority for change of which is contained in the Act of May 15, 1922, and where the latter act is invoked to change the date of payment under a prior contract, the procedure described therein must be followed in order to give validity to the amended contract. Solicitor Edwards Opinion, 50 L.D. 142 (1923).

4. Operation and maintenance charges

The Secretary of the Interior, in whom the Extension Act of August 13, 1914, 38 Stat. 686, imposed the authority to fix the date for payment of operation and maintenance charges in connection with irrigation projects as of the date fixed for each project, may for sufficient reason change the due date for future payments and modify the contract without violation of either the letter or the spirit of the Act of May 15, 1922, and without invoking the procedure therein provided for confirmation of contracts under the latter act. Solicitor Edwards Opinion, 50 L.D. 142 (1923).

5. Public notice of charges

The time of giving public notice of charges under section 4 of the Reclamation Act after the letting of the contracts is left to the discretion of the Secretary of the Interior, and notice might reasonably be delayed until the completion of the project. Moreover, when a contract fixing the amount and terms of payment of construction costs is entered into with an irrigation district pursuant to the Act of May 15, 1922, there was no purpose to be served by issuing the public notice. *Lincoln Land Co. v. Goshen Irr. Dist.*, 42 Wyo. 229, 293 Pac. 373, 376, 378–79 (1930).

6. Removal of lands from projects

When the War Department acquires for military purposes lands covered by a repayment contract with an irrigation district, War Department funds may be transferred to the Department of the Interior in such amount as may be agreed upon by the Secretaries of War and Interior as representing the proportionate share of construction and other charges applicable to the irrigable lands to be removed from the reclamation project. Dec. Comp. Gen. B–31310 (January 14, 1943), in re Kendrick project.

7. Penalties

Under contracts with irrigation districts under the Act of May 15, 1922, 42 Stat. 541, and also under the Warren Act of February 21, 1911, 36 Stat. 925, penalties on account of all classes of charges shall be credited to the reclamation fund generally and not to the project in connection with which they arise. C.L. 1186, January 3, 1923.

8. Assessments

Where the United States has, in acquiring property of a landowner for a reclamation project, agreed to furnish water perpetually to certain acreage of the landowner free of charge except an annual charge of 50 cents per acre for maintenance, an irrigation district subsequently organized may not assess such lands for payment of construction charges of the Federal project. *Fort Shaw Irr. Dist. v. Ward*, 81 Mont. 170, 261 Pac. 962 (1927).

9. Waters, substitution of

In order to supplement the water supply of District lands on the Boise Project, the Wilder Irrigation District entered into a contract with the United States for a supplemental water supply from Anderson Ranch Dam and Reservoir. In affirming the validity of the contract, the Supreme Court of Idaho, on February 24, 1943, held: (1) The contract was not invalid because it provided for the exercise of certain powers by a Board of Control since it, in the exercise of the powers granted, is merely acting as the common agent of the several districts on the project; and (2) the provision for the substitution at some future time, at the option of the Secretary of the Interior, of an equal amount of water from the Payette or Salmon Rivers for waters of the Boise River to which the District had a water right, where such substitution would not work an injury to the rights of the water users, was not illegal. *Board of Directors of Wilder Irrigation District* v. *Jorgensen*, 64 Idaho 538, 136 P.2d 461 (1943).

10. Extension of time

The Act of May 15, 1922, applies only to contracts with irrigation districts and not to contracts with water users associations. Therefore, a substantial extension of time

for the payment of water charges may be given to irrigation districts in amended contracts under the Act of May 15, 1922; but extensions of time to water users associations may be granted only under the terms of the Act of March 31, 1922, as amended. Solicitor Edwards Opinions, M–11120 and M–12181 (April 17, 1924).

11. Water users, effect on

The relationship of creditor and debtor between the United States and individual water users continues to exist after the care, operation and maintenance of a project has been transferred to a water users association or an irrigation district under the authority of section 5 of the Reclamation Extension Act of 1914, but is terminated where contracts or amended contracts have been entered into with an irrigation district pursuant to the Act of May 15, 1922. Solicitor Edwards Opinions, M–11120 and M–12181 (April 17, 1924).

Sec. 2. [Patents and water-right certificates for lands in irrigation districts—Liens—Release.]—Patents and water-right certificates which shall hereafter be issued under the terms of the act entitled "An act providing for patents on reclamation entries, and for other purposes", approved August 9, 1912 (Thirty-seventh Statutes at Large, page 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lien for the payment of such charges; and where such a lien shall have been reserved in any patent or water-right certificate issued under the said act of Congress, the Secretary of the Interior is hereby empowered to release such lien in such manner and form as may be deemed effective; and the Secretary of the Interior is further empowered to release liens in favor of the United States contained in water-right applications and to assent to the release of liens to secure reimbursement of moneys due to the United States pursuant to water-right applications running in favor of the water users' association and contained in stock subscription contracts to such associations, when the lands covered by such liens shall be subject to assessment and levy for the collection of all moneys due and to become due to the United States by irrigation districts formed pursuant to State law and with which the United States shall have entered into contract therefor: *Provided*, That no such lien so reserved to the United States in any patent or water-right certificate shall be released until the owner of the land covered by the lien shall consent in writing to the assessment, levy, and collection by such irrigation district of taxes against said land for the payment to the United States of the contract obligation: *Provided further*, That before any lien is released under this act the Secretary of the Interior shall file a written report finding that the contracting irrigation district is legally organized under the laws of the State in which its lands are located, with full power to enter into the contract and to collect by assessment and levy against the lands of the district the amount of the contract obligation. (42 Stat. 542; 43 U.S.C. § 512)

EXPLANATORY NOTE

Reference in the Text. The Act entitled "An act providing for patents on reclamation entries, and for other purposes", approved August 9, 1912 (Thirty-seventh Statutes at Large, page 265), referred to in the text, appears herein in chronological order.

NOTE OF OPINION

1. Tax sales

An irrigation district may bid in lands within reclamation entries sold for charges assessed by the district under the authority conferred upon it by the Acts of August 11, 1916, and May 15, 1922, without limit as to acreage and assign them to persons qualified to acquire them under the Act of June 23, 1910, as amended, but patents cannot be issued to the district pursuant to such sales. *Glen L. Kimmel and Goshen Irrigation District,* 53 I.D. 658 (1932).

Sec. 3. [Contracts with irrigation districts subject to act of August 11, 1916.]—Upon the execution of any contract between the United States and any irrigation district pursuant to this act the public lands included within such irrigation district, when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the act entitled "An act to promote the reclamation of arid lands," approved August 11, 1916: *Provided,* That no map or plan as required by section 3 of the said act need be filed by the irrigation district for approval by the Secretary of the Interior. (42 Stat. 542; 43 U.S.C. § 513)

[Mortgages for farm loans.]—The term "first mortgage" as used in section 12 of the Federal Farm Loan Act, approved July 17, 1916, shall be construed to include mortgages on farm lands under United States reclamation projects, notwithstanding there may be against such lands a reserved or created lien in favor of the United States for construction or other charges as provided in the act of June 17, 1902, and acts amendatory thereof and supplementary thereto, known as the reclamation law: *Provided,* That such lands are otherwise eligible for loans under the Federal Farm Loan Act: *And provided further,* That the amount and date of maturity of such liens shall be given due consideration in fixing the value of such lands for loan purposes. (42 Stat. 542; 12 U.S.C. § 773)

EXPLANATORY NOTES

Reference in the Text. The Act entitled "An act to promote the reclamation of arid lands," approved August 11, 1916, referred to in section 3, popularly known as the Smith Act, appears herein in chronological order.

Reference in the Text. Section 12 of the Federal Farm Loan Act, approved July 17, 1916, referred to in section 3, is found at 39 Stat. 370, 12 U.S.C. § 771. The term "first-mortgage" is defined in section 2 of the Act, 39 Stat. 360, 12 U.S.C. § 642, as to include such classes of first liens on farm lands as shall be approved by the Farm Credit Administration (formerly the Federal Farm Loan Board), and the credit instruments secured thereby.

Legislative History. H.R. 4382, Public Law 219 in the 67th Congress. H.R. Rept. No. 662. S. Doc. 198 and H.R. Rept. No. 978 (conference reports).

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1923

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1923, and for other purposes. (Act of May 24, 1922, ch. 199, 42 Stat. 552)

* * * * *

[**Boise project—Drainage expenditures.**]—Boise project, Idaho: * * * *Provided,* That the expenditure for drainage shall not exceed the amount paid by the water users pursuant to the provisions of the Boise public notice dated February 15, 1921, * * * (42 Stat. 584).

EXPLANATORY NOTES

Provision Repeated. This proviso is carried in each subsequent annual Interior Department Appropriation Act through the Act of May 10, 1926, 44 Stat. 480, with the addition of the following:

"except for drainage in irrigation districts formed under State laws and upon the execution of agreements for the repayment to the United States of the costs thereof."

Cross Reference, Similar Provision. A similar provision relating to the Boise project drainage is contained in the Sundry Civil Appropriation Act for 1921, Act of June 5, 1920, 41 Stat. 914.

* * * * *

[**Appropriation for Baker project.**]—Baker project, Oregon: For investigation, commencement of construction, and incidental operations, $400,000. (42 Stat. 585)

EXPLANATORY NOTES

Reappropriations. For a number of years the Secretary of the Interior refused to construct the Baker project because of doubts as to its feasibility, and Congress continued to reappropriate funds therefor.

Finding of Feasibility Approved. Under date of March 18, 1931, the President approved the findings of feasibility for the Baker project under section 1 of the Act of June 25, 1910, 36 Stat. 835.

NOTES OF OPINIONS

1. Construction not mandatory

The Secretary of the Interior is not required to proceed with the construction of the Baker project, Oregon, even though Congress has appropriated funds therefor, if he is unable to find that the project is feasible and that the costs will be repaid to the United States, as required by subsection B, section 4, of the Act of December 5, 1924, 43 Stat. 702, and section 4 of the Act of June 17, 1902, 32 Stat. 389, and unless a contract has been executed and confirmed as required by the Act of May 10, 1926, 44 Stat. 479. Letter from the Attorney General to Representative Sinnott and Senators McNary and Stanfield, reprinted in the *New Reclamation Era,* September 1926, at 152; 35 Op. Atty. Gen. 125 (1926); 34 Op. Atty. Gen. 545 (1925). See also Solicitor's Opinions dated June 11, 1926, and July 20, 1925.

* * * * *

[**Emergency repairs.**]—Ten per centum of the foregoing amounts shall be available interchangeably for expenditures on the reclamation projects named; but not more than 10 per centum shall be added to the amount appropriated for any one of said projects, except that should existing works or the water supply for lands under cultivation be endangered by floods or other unusual conditions, an amount sufficient to make necessary emergency repairs shall become available

for expenditure by further transfer of appropriation from any of said projects upon approval of the Secretary of the Interior. (42 Stat. 586)

EXPLANATORY NOTES

Provision Repeated. The provision relating to emergency repairs is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 782.

Cross Reference, Emergency Fund. The Act of June 26, 1948, 62 Stat. 1052, authorized an emergency fund to be appropriated from the reclamation fund, and appropriations subsequently were made directly to this fund. Section 105 of the Interior Department Appropriation Act, 1951 (General Appropriation Act, 1951), Act of September 6, 1950, 64 Stat. 695, and subsequent appropriation acts also contain provisions related to emergency work.

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 10329, Public Law 224 in the 67th Congress. H.R. Rept. No. 681. S. Rept. No. 510. S. Doc. 174 and H.R. Rept. No. 857 (first conference report). S. Doc. 201 and H.R. Rept. No. 1012 (second conference report).

SALE OF ELECTRIC POWER ON SALT RIVER PROJECT

An act authorizing the sale of surplus power developed under the Salt River reclamation project, Arizona. (Act of September 18, 1922, ch. 323, 42 Stat. 847)

[**Contracts authorized for sale of power—Must not exceed 50 years—Money derived to be placed to credit of Salt River project.**]—Whenever a development of power is necessary for the irrigation of lands under the Salt River reclamation project, Arizona, or an opportunity is afforded for the development of power under said project, the Secretary of the Interior is authorized, giving preference to municipal purposes, to enter into contracts for a period not exceeding fifty years for the sale of any surplus power so developed, and the money derived from such sales shall be placed to the credit of said project for disposal as provided in the contract between the United States of America and the Salt River Valley Water Users' Association, approved September 6, 1917: *Provided,* That no contract shall be made for the sale of such surplus power which will impair the efficiency of said project: *Provided, however,* That no such contract shall be made without the approval of the legally organized water users' association or irrigation district which has contracted with the United States to repay the cost of said project: *Provided further,* That the charge for power may be readjusted at the end of five, ten, or twenty year periods after the beginning of any contract for the sale of power in a manner to be described in the contract. (42 Stat. 847; 43 U.S.C. § 598)

Explanatory Note

Legislative History. H.R. 10248, Public Law 309 in the 67th Congress. H.R. Rept. No. 1000. S. Rept. No. 826. S. Doc. 245 and H.R. Rept. No. 1199 (conference reports).

Note of Opinion

1. U.S. as party

The United States is an indispensable party to a suit by the City of Mesa, a municipal corporation, to condemn a portion of the electrical plant and system operated by the Salt River Project Agricultural and Improvement District as an integral part of the Salt River reclamation project; and the United States not having consented to the suit, the court is without jurisdiction to entertain the action. *City of Mesa v. Salt River Project Agricultural Improvement and Power District,* 101 Ariz. 74, 416 P. 2d 187 (1966).

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1924

[**Extract from**] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1924, and for other purposes. (Act of January 24, 1923, ch. 42, 42 Stat. 1174)

* * * * *

RECLAMATION SERVICE

* * * * *

[**Repayment of construction cost.**]—Milk River project, Montana: For operation and maintenance, continuation of construction, and incidental operations, $140,000: *Provided,* That repayment of the construction cost of the project may be made through a division by the Secretary of the Interior of such cost into a primary construction charge and a supplemental construction charge, of approximate equality, the former payable according to section 2 and the latter payable according to section 4 of the extension act of August 13, 1914 (Thirty-eighth Statutes at Large, page 686); (42 Stat. 1206).

* * * * *

Explanatory Notes

Not Codified. The extract of this act shown here is not codified in the U.S. Code.

Reference in the Text. The extension act of August 13, 1914 (Thirty-eighth Statutes at Large, page 686), referred to in the text, is the Reclamation Extension Act. The Act appears herein in chronological order.

Legislative History. H.R. 13559, Public Law 395 in the 67th Congress. H.R. Rept. No. 1315. S. Rept. No. 988. H.R. Rept. No. 1387 (conference report).

DRAINAGE OF PIUTE INDIAN LANDS, NEWLANDS PROJECT

An act authorizing an appropriation to meet proportionate expenses of providing a drainage system for Piute Indian lands in the State of Nevada within the Newlands reclamation project of the Reclamation Service. (Act of February 14, 1923, ch. 77, 42 Stat. 1246)

[**Drainage of lands of Piute Indians—Reimbursement.**]—There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, the sum of $49,603.05, payable in 20 annual installments of $2,500 each, except the last, which shall be the amount remaining unpaid, for the purpose of meeting the proportionate expense of providing a drainage system for 4,047 acres of Piute Indian lands in the State of Nevada within the Newlands project of the Reclamation Service.

The money herein authorized to be appropriated shall be reimbursed in accordance with the provisions of law applicable to said Indian lands. (42 Stat. 1246; Act of June 7, 1924, 43 Stat. 595)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1924 Amendment. The Act of June 7, 1924, 43 Stat. 595, amended this act by increasing the sum authorized to be appropriated from $41,077.05 to $49,603.05, and increased the annual installments from $2,100 to $2,500. For legislative history of the 1924 Act see Public Law 231 in the 68th Congress; S. Rept. No. 339; H.R. Rept. No. 526.

Cross Reference, Cancellation of Charges. The Act of June 26, 1926, 44 Stat. 771, authorized an appropriation to reimburse the Truckee-Carson Irrigation District for operating and maintaining irrigation drains on lands of the Piute Indians. The act also provides that all charges assessed or to be assessed for the construction of irrigation works on Piute Indian lands be remitted and cancelled and the said lands were declared to have a water right without cost to the Indians. The 1926 Act appears herein in chronological order.

Legislative History. H.R. 10211, Public Law 413 in the 67th Congress. H.R. Rept. No. 998. S. Rept. No. 1074.

EXTEND RELIEF TO WATER USERS ACT

An act to extend the time for payment of charges due on reclamation projects, and for other purposes. (Act of February 28, 1923, ch. 145, 42 Stat. 1324)

[**Sec. 1. Time for payment extended to two years.**]—Section 1 of the act entitled "An act to authorize the Secretary of the Interior to extend the time for payment of charges due on reclamation projects, and for other purposes", approved March 31, 1922, is amended by striking out the words "one year" where they appear in such section and inserting in lieu thereof the words "two years." (42 Stat. 1324)

Sec. 2. [**Further extension.**]—The Secretary of the Interior is authorized, in the manner and subject to the conditions imposed by such act of March 31, 1922, to extend for a period not exceeding two years from December 31, 1922, the date of any payment of any charge the date of payment of which has been extended under the provisions of section 1 of such act. (42 Stat. 1324)

Sec. 3. [**Interest on extended payments—Penalty for nonpayment.**]—Every charge, the date of payment of which is extended under the provisions of section 2 of this act, shall draw interest at the rate of 6 per centum per annum from the date from which it was so extended in lieu of any penalty that may now be provided by law, but in case such charge is not paid at the end of the period for which it is so extended any such penalty shall attach from the date the charge was originally due, as if no extension had been granted. (42 Stat. 1325)

Sec. 4. [**Extension of time to two years.**]—Section 2 of such act of March 31, 1922, is amended by striking out the words "season of 1922" where they appear in such section and by inserting in lieu thereof the words "seasons of 1922 and 1923." (42 Stat. 1325)

EXPLANATORY NOTE

Editor's Note, Annotations. Annotations of opinions, if any, with respect to sections 1 through 4 of this Act are found under the Act of March 31, 1922.

Sec. 5. [**Accrued charges spread over remaining years.**]—Where an individual water user, or individual applicant for a water right under a Federal irrigation project constructed or being constructed under the act of June 17, 1902 (Thirty-second Statutes at Large, page 388), or any act amendatory thereof or supplementary thereto, is unable to pay any construction or operation and maintenance charge due excepting operation and maintenance charges for drainage on the Boise, Idaho, project, for the year 1922, or prior thereto, the Secretary of the Interior is hereby authorized in his discretion to add such accrued and unpaid charges to the construction charge of the land of such water user or applicant, and to distribute such accumulated charges equally over each of the subsequent years, beginning with the year 1924, at such rate per year as will complete the payment during the remaining years of the twenty-year period of payment of the original construction charge: *Provided,* That upon such adjustment being made, any penalties or interest which may have accrued in connection with such unpaid construction and operation and mainte-

nance charges shall be canceled, and in lieu thereof the amount so due, and the payment of which is hereby extended, shall draw interest at the rate of 6 per centum per annum, paid annually from the time said amount became due to date of payment: *Provided further,* That the applicant for the extension shall first show to the satisfaction of the Secretary of the Interior detailed statement of his assets and liabilities and actual inability to make payment at the time of the application and an apparent ability to meet the deferred charges in 1924 and subsequent years: *And provided further,* That in case the principal and interest herein provided for are not paid in the manner and at the time provided by this act, any penalty now provided by law shall attach from the date the charge was originally due: *And provided further,* That similar relief in whole or in part may be extended by the Secretary of the Interior to a legally organized group of water users of a project, upon presentation of a sufficient number of individual showings made in accordance with the foregoing proviso to satisfy the Secretary of the Interior that such extension is necessary. (42 Stat. 1325)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 4187, Public Law 454 in the 67th Congress. H.R. Rept. No. 1508.

SUIT RESPECTING KLAMATH PROJECT LAND AUTHORIZED

An act authorizing the State of California to bring suit against the United States to determine title to certain lands in Siskiyou County, Calif. (Act of March 3, 1923, ch. 220, 42 Stat. 1438)

[**Suit to determine title to lands in Siskiyou County, California—Secretary made a party—Defense by Attorney General.**]—Consent is hereby given that a suit or suits may be instituted by or in behalf of the State of California in the Supreme Court of the United States to determine the right, title, and interest of such State to certain lands in Siskiyou County, California, alleged to have been ceded by such State to the United States by act of the Legislature of the State of California entitled "An act authorizing the United States Government to lower the water levels of any or all of the following lakes: Lower or Little Klamath Lake, Tule or Rhett Lake, Goose Lake, and Clear Lake, situated in Siskiyou and Modoc Counties, and to use any part or all of the beds of said lakes for the storage of water in connection with the irrigation and reclamation operations conducted by the Reclamation Service of the United States; also ceding to the United States all the right, title, interest, or claim of the State of California to any lands uncovered by the lowering of the water levels of any or all of said lakes not already disposed of by the State", approved February 3, 1905, and in any such suit the right, title, and interest of such State and of the United States may be fully tested and determined if the Secretary of the Interior is made a party to such suit.

Upon the request of such Secretary the Attorney General of the United States is authorized and directed to defend the right, title, and interest of the United States to such land or any part thereof. (42 Stat. 1438)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Suit Never Taken. No suit has ever been instituted by the State of California pursuant to this statute. Nonetheless, the statute is without a limitation with respect to the time in which a suit or suits may be instituted.

Cross Reference, Conveyance of Goose Lake Lands. Pursuant to the authority granted by the Act of June 5, 1942, 56 Stat. 323, the United States quitclaimed to the States of California and Oregon all the right, title, and interest of the United States held under the laws of the respective States. The 1942 Act appears herein in chronological order.

Legislative History. S. 3892, Public Law 481 in the 67th Congress. S. Rept. No. 1070. H.R. Rept. No. 1626.

THE 1924 RELIEF ACT

An act to authorize the deferring of payments of reclamation charges. (Act of May 9, 1924, ch. 150, 43 Stat. 116)

[**Sec. 1. Extension of time for payment of accrued charges, rentals, and penalties—Interest on extensions.**]—The Secretary of the Interior is hereby authorized and empowered, in his discretion, to defer the dates of payments of any charges, rentals, and penalties which have accrued prior to the 2d day of March, 1924, under the act of June 17, 1902 (Thirty-second Statutes at Large, page 388), and amendatory and supplemental acts, or prior to that date as against water users on any irrigation project being constructed or operated and maintained under the direction of the Commissioner of Indian Affairs, as may, in his judgment, be necessary in or concerning any irrigation project now existing under said act: *Provided,* That no payment shall be deferred under this section in any particular case beyond March 1, 1927: *Provided,* That upon such adjustment being made, any penalties or interest which may have accrued in connection with such unpaid construction and operation and maintenance charges shall be canceled, and in lieu thereof the amount so due, and the payment of which is hereby extended, shall draw interest at the rate of 5 per centum per annum, paid annually from the time said amount became due to date of payment: *And provided further,* That in case the principal and interest herein provided for are not paid in the manner and at the time provided by this section, any penalty now provided by law shall thereupon attach from the date of such default. (43 Stat. 116; 43 U.S.C. § 384)

Explanatory Note

Cross Reference, Expenditures Restricted for American Falls Reservoir. An item included in the Interior Department Appropriation Act for 1925, approved June 5, 1924, imposes certain conditions on expenditures for the American Falls Reservoir. Extracts from the Act, including the item restricting expenditures for American Falls Reservoir, appear herein in chronological order.

Note of Opinion

1. Discretion of the Secretary

Relief under this section to a settler on the Boise project from a delinquent maintenance charge must come from the Secretary of the Interior, to whose discretion it administration is committed. *Mower v. Bond,* 8 F. 2d 518 (S. D. Idaho 1925)

Sec. 2. [**Addition of accrued charges to construction charges.**]—Where an individual water user, or individual applicant for a water right under a Federal irrigation project constructed or being constructed under the act of June 17, 1902 (Thirty-second Statutes at Large, page 388), or any act amendatory thereof or supplementary thereto, makes application prior to January 1, 1925, alleging that he will be unable to make the payments as required in section 1 hereof, the Secretary of the Interior is hereby authorized in his discretion prior to March 1, 1925 to add such accrued and unpaid charges to the construction charge of the land of such water user or applicant, and to distribute such accumulated charge

equally over each of the subsequent years, beginning with the year 1925, or, in the discretion of the Secretary, distribute a total of one-fourth over the first half of the remaining years of the twenty-year period beginning with the year 1925, and three-fourths over the second half of such period, so as to complete the payment during the remaining years of the twenty-year period of payment of the original construction charge: *Provided,* That upon such adjustment being made, any penalties or interest which may have accrued in connection with such unpaid construction and operation and maintenance charges shall be canceled, and in lieu thereof the amount so due, and the payment of which is hereby extended shall draw interest at the rate of 5 per centum per annum, paid annually from the time said amount became due to date of payment: *Provided, further,* That the applicant for the extension shall first show to the satisfaction of the Secretary of the Interior detailed statement of his assets and liabilities and probable inability to make payment at the time required in section 1: *And provided further,* That in case the principal and interest herein provided for are not paid in the manner and at the time provided by this act, any penalty now provided by law shall thereupon attach from the date of such default: *And provided further,* That similar relief in whole or in part may be extended by the Secretary of the Interior to a legally organized group of water users of a project, upon presentation of a sufficient number of individual showings made in accordance with the foregoing proviso to satisfy the Secretary of the Interior that such extension is necessary. (43 Stat. 116; 43 U.S.C. § 384)

EXPLANATORY NOTES

Popular Name. This statute is popularly known as the Phipps Act, being so named for Senator L. C. Phipps of Colorado.

Cross Reference, Leavitt Act. The Act of July 1, 1932, 47 Stat. 564, popularly known as the Leavitt Act, authorizes the Secretary of the Interior to adjust the reimbursable charges of the Government existing as debts against individual Indians or Indian tribes. The Leavitt Act appears herein in chronological order.

Legislative History. S. 1631, Public Law 115 in the 68th Congress. S. Rept. No. 111. H.R. Rept. No. 312. H.R. Rept. No. 591 (conference report).

INDIAN LANDS FOR AMERICAN FALLS RESERVOIR

An act authorizing the acquiring of Indian lands on the Fort Hall Indian Reservation, in Idaho, for reservoir purposes in connection with the Minidoka irrigation project. (Act of May 9, 1924, ch. 151, 43 Stat. 117)

[**Sec. 1. Lands to be acquired—Description—Right of Indians.**]—Subject to payment being made as provided herein, there is hereby granted to the United States, its successors and assigns, for the proposed American Falls Reservoir on the Snake River under the Minidoka Federal irrigation project, in Idaho, all right, title, and interest the Indians have to the tribal and allotted lands within that section of the Fort Hall Indian Reservation commonly referred to as the Fort Hall Bottoms, which lands will be inundated by the impounding of one million seven hundred thousand acre-feet of water within said proposed reservoir, together with a five-foot freeboard the elevation of which shall be established, using as a basis the one million five hundred thousand acre-foot contour line as shown in what is known as the Dyer-Dietz-Banks appraisal of Indian lands dated December 30, 1922, and on file in the Department of the Interior subject to the reservation of an easement to the Fort Hall Indians to use the said lands for grazing, hunting, fishing, and gathering of wood, and so forth, the same way as obtained prior to this enactment, in so far as such uses shall not interfere with the use of said lands for reservoir purposes. (43 Stat. 117)

Sec. 2. [**Agreement or condemnation authorized—Appraisal—Payment.**]—The Secretary of the Interior is hereby authorized to acquire by agreement or condemnation proceedings the area of allotted lands described in section 1. The value fixed by agreement with the allottees, and in any case where it may become necessary to institute condemnation proceedings for such purpose, the value of the allotment or allotments involved as determined by such proceedings, shall be paid out of the sum deposited to the credit of the Fort Hall Indians as provided in section 3 hereof. (43 Stat. 117)

Sec. 3. [**Amount to be taken from reservoir construction money and deposited to credit of Indians.**]—In consideration of the rights granted in section 1 hereof, of both tribal and allotted lands, there shall be deposited in the Treasury of the United States to the credit of the Fort Hall Indians the total sum of $700,000, which sum shall be taken from moneys appropriated for the construction of said reservoir: *Provided,* That the said sum of $700,000, when so deposited, shall draw interest at the rate of 4 per centum per annum. (43 Stat. 117)

Sec. 4. [**Appraisal of damages to adjoining lands—Determination by board—Payment for.**]—Should any lands above the five-foot freeboard, as provided in section 1, be damaged on account of the reservoir, the amount of the damage shall be determined by a board consisting of three members—two of which shall be appointed by the Secretary of the Interior—one from the Bureau of Indian Affairs, and one from the Bureau of Reclamation, the third member, who shall be a disinterested party, to be selected by the two so appointed. The amount of damage as fixed by the board shall be taken from moneys appro-

priated for the construction of said reservoir and deposited in the Treasury of the United States to the credit of the Fort Hall Indians. (43 Stat. 117)

Sec. 5. [Amount for relocation, etc., of main canal to irrigate Indian lands—Reimbursement by Indians benefited.]—There is hereby authorized to be appropriated not to exceed $100,000 of the money when deposited to the credit of the Fort Hall Tribe of Indians for use in relocating, enlarging, and reconstructing the main canal of the Fort Hall irrigation project to provide irrigation facilities for Indian lands situated in the southern portion of the Fort Hall Reservation, commonly known as the Michaud Flats, which amount so expended shall be reimbursed to the tribe by the Indians whose lands are benefited, on a per acre basis in accordance with such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That in all cases where the Indian title becomes extinguished prior to total reimbursement of the sum assessed against any particular allotment, the party acquiring title to such allotment shall be required to execute an agreement before any water will be furnished therefor, providing for the payment of construction charges assessed against such lands, and for the payment of the annual operation and maintenance charges. (43 Stat. 118)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2902, Public Law 116 in the 68th Congress. S. Rept. No. 330.

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1925

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1925, and for other purposes. (Act of June 5, 1924, ch. 264, 43 Stat. 390)

* * * * *

[Yuma project—Restrictions on development of electric power—Repaying cost of plant.]—Yuma project, Arizona-California: * * * not to exceed $250,000 may be expended for the construction of a hydroelectric power plant at the syphon drop on the main canal: *Provided,* That no part of said sum of $250,000 shall be expended until contracts have been entered into by a majority of the water-right applicants and entrymen, for the lands to be charged with the cost of said hydroelectric power plant in the manner provided by section 4 of the reclamation extension act approved August 13, 1914 (Thirty-eighth Statutes at Large, page 686), wherein said water-right applicants and entrymen shall agree to repay the cost of said power plant chargeable against their lands, in 12 equal annual installments, commencing December 1, 1925. (43 Stat. 416)

EXPLANATORY NOTE

Reference in the Text. The Reclamation Extension Act approved August 13, 1914 (Thirty-eighth Statutes at Large, page 686), referred to in the text, appears herein in chronological order.

* * * * *

[Boise project—Drainage expenditures limited—Restrictions on development of electric power—Contract requirements—Rates for power.]—Boise project, Idaho: * * * *Provided,* That the expenditure for drainage shall not exceed the amount paid by the water users pursuant to the provisions of the Boise public notice dated February 15, 1921, except for drainage in irrigation districts formed under State laws and upon the execution of agreements for the repayment to the United States of the costs thereof * * * *Provided further,—Repealed.*

EXPLANATORY NOTE

Provisos Repealed. Section 3 of the Act of August 24, 1954, 68 Stat. 794, repealed the last three provisos in the item in the Act relating to the Boise project, which read as follows: "*Provided further,* That no part of the money appropriated under this paragraph shall be expended for the development of electric power until the Secretary of the Interior shall have secured subject, to the needs of the Boise project, a contract with the Gem Irrigation District, providing for the purchase by that district, for a period to be determined by the Secretary of the Interior, of the electric power necessary for the irrigation of the lands of said district: *And provided further,* That the rates in such contract shall be sufficient to include interest at five per centum per annum on the cost of such power development plus a reasonable depreciation on the power plant, as found by the Secretary of the Interior, and that the contract shall provide that before delivery of power in any season the district shall furnish security satisfactory to the Secretary of the Interior to insure payment to the Government of the power charges for such season, and that such contract shall be entered into only in the event that the holders of not less than ninety per centum of the face value of the bonded and warrant indebtedness of the district shall subordinate their claims to the obligations of the district to the Government under such contract: *And provided further,* That in the event power is furnished from the said power plant to more than one contractor,

then the rates for power shall be fixed so that each such contractor, including said district, shall pay only its proper proportionate share of said interest and depreciation, as found by the Secretary of the Interior." Additionally, the 1954 Act repealed the proviso in that portion relating to the Boise project of the Act of March 4, 1929 (45 Stat. 1562, 1590). Extracts from the 1929 Act, including the portion relating to the Boise project, and the complete text of the 1954 Act appear herein in chronological order.

* * * * *

[Expenditures for American Falls Reservoir restricted—Title for Indian lands—Expenses shared.]—Minidoka project, Idaho: For operation and maintenance, continuation of construction, and incidental operations, $1,045,000: *Provided*, That no part of this appropriation (and no part of any unencumbered balance of the 1924 appropriation for the Minidoka project) shall be expended on the American Falls Reservoir until (1) all acts have been performed that are necessarily precedent to the confirmation of title in fee in the United States for said reservoir of such Indian lands as are essential to the construction of the same; (2) companies and districts which have contracted to cooperate with the United States in the construction of said reservoir and have contracted to participate in said reservoir to an aggregate amount of at least three hundred and sixty-five thousand acre-feet shall have paid to the United States their due proportionate share of all moneys expended by the United States on said reservoir prior to the date of said payments, including interest at the rate of 6 per centum per annum from the time such moneys were advanced by the United States; (3) The American Falls Reservoir district and the Empire Irrigation district shall each have filed with the Secretary of the Interior an agreement binding each of said districts to the elimination of the second paragraph of article 46 of their respective contracts of June 15, 1923, with the United States; and (4) the said companies and districts shall have paid to or deposited with the United States cash or United States Government securities amounting to a total of at least $1,500,000: *Provided further*, That no contractor shall secure a right to the use of water from said reservoir except under a contract containing the provision that the contractor shall, as a part of the construction cost, pay interest at the rate of 6 per centum per annum upon the contractor's proper proportionate share, as found by the Secretary of the Interior, of the moneys advanced by the United States on account of the construction of said reservoir prior to the date of the contract. (43 Stat. 417; 43 U.S.C. § 600)

EXPLANATORY NOTE

Cross Reference, Indian Lands for American Falls Reservoir. The Act of May 9, 1924, 43 Stat. 117, granted to the United States, subject to payment being made, all the right, title and interest of the Indians of the Fort Hall Indian Reservation in certain lands needed for the American Falls Reservoir. The 1924 Act appears herein in chronological order.

NOTES OF OPINIONS

. Surplus storage

A contract with the Murtaugh Irrigation District to purchase surplus storage in the American Falls Reservoir on the basis of a 100,000 cash payment and the balance of 500,000 in annual installments over a 20-year period may be entered into by the Secretary of the Interior under the Warren Act provided that the other contributors to the cost of constructing the reservoir, as authorized by the Act of June 5, 1924, 43 Stat. 417, give their consent. Solicitor Patterson Opinion, M-21227 (January 22, 1927).

The word "contractor" in the second proviso to the appropriation item for the Minidoka project in the Act of June 5, 1924, designates any purchaser of water from the American Falls Reservoir, and not merely the contractors who were cooperating with the United States in the construction of the reservoir. Therefore, the contract governing the Gravity Extension unit, pursuant to the Act of January 12, 1927, should provide that the irrigation district shall pay interest at the rate of six percent on a proportionate share of the cost to the United States of the American Falls Reservoir. Solicitor Patterson Opinion, M–22401 (June 14, 1927).

* * * * *

[**Newlands project—Drainage repayment contract.**]—Newlands project, Nevada: For operation and maintenance, continuation of construction, and incidental operations $400,000, of which amount $245,000 shall be used for drainage purposes, but only after execution by the Truckee-Carson irrigation district of an appropriate reimbursement contract satisfactory in form to the Secretary of the Interior, and after confirmation of such contract by decree of a court of competent jurisdiction and final decision on all appears from such decree. (43 Stat. 417)

EXPLANATORY NOTE

Provision Repeated. The amount of $245,000 for drainage purposes was reappropriated, subject to the same requirement for execution of a reimbursement contract, in each subsequent annual Interior Department Appropriation Act through the Act of January 12, 1927, 44 Stat. 959.

* * * * *

EXPLANATORY NOTES

Not Codified. The extracts of this act shown here are not codified with the exception of the second proviso included in the extract relating to American Falls Reservoir.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriations acts appear herein only in the act in which first used.

Legislative History. H.R. 5078, Public Law 199 in the 68th Congress. H.R. Rept No. 22. S. Rept. No. 134. H.R. Rept. No 268 (conference report).

COOPERATIVE INVESTIGATIONS OF CASPER-ALCOVA, DESCHUTES, AND SOUTHERN LASSEN PROJECTS

Joint resolution authorizing an investigation of the proposed Casper-Alcova irrigation project, Natrona County, Wyo.; the Deschutes project in the State of Oregon, and the Southern Lassen irrigation project in Lassen County, Calif. (Pub. Res. No. 32, of June 7, 1924, ch. 374, 43 Stat. 668)

[Plans for constructing and completing projects to be submitted to Congress—Contribution of one-half of cost by States.]—The Secretary of the Interior is hereby authorized and directed to prepare and submit to Congress at the beginning of the next regular session plans and estimates of the character and cost of structures necessary for the construction and completion of the proposed Casper-Alcova irrigation project in Natrona County, Wyoming, the Deschutes project in the State of Oregon, and the Southern Lassen Irrigation project, in Lassen County, California; *Provided,* That at least one-half of the cost of all such investigations, plans and estimates shall be advanced by the State in which the project is located, or by parties interested. (43 Stat. 668)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Investigations and Reports. Contracts were negotiated with the State of Oregon and the State of Wyoming providing for contribution by these States to the cost of the investigations of the Deschutes project and Casper Alcova project, respectively. As neither the State of California, nor other parties, were disposed to contribute the necessary funds for the investigation of the Southern Lassen project, no investigation under the terms of the above resolution was made of that project. The Deschutes report was submitted to the Congress February 19, 1926 and printed as House Document No. 663, 69th Congress. The Casper Alcova engineering, land classification and economic report was submitted to the Congress December 5, 1930 and printed as House Document No. 674, 71st Congress.

Legislative History. S.J. Res. 114, Public Resolution 32 in the 68th Congress. H.R. Rept. No. 699.

SECOND DEFICIENCY APPROPRIATION ACT FOR 1924 (FACT FINDERS' ACT)

[Extracts from] An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1924, and prior fiscal years, to provide supplemental appropriations for the fiscal year ending June 30, 1925, and for other purposes. (Act of December 5, 1924, ch. 4, 43 Stat. 672)

* * * * *

RECLAMATION SERVICE

* * * * *

[Commencement of construction work prohibited unless recommended by Commissioner of Reclamation and Secretary of the Interior and approved by the President.]—*Provided,* That no part of the sums herein appropriated shall be used for the commencement of construction work on any reclamation project which has not been recommended by the Commissioner of Reclamation and the Secretary of the Interior and approved by the President as to its agricultural and engineering feasibility and the reasonableness of its estimated construction cost. (43 Stat. 685)

* * * * *

[Return of contributions to cooperative investigations of projects.]—Hereafter the Secretary of the Interior is authorized to receive moneys from any State, municipality, irrigation district, individual, or other interest, public or private, expend the same in connection with moneys appropriated by the United States for any such cooperative investigation, and return to the contributor any moneys so contributed in excess of the actual cost of that portion of the work properly chargeable to the contribution. (43 Stat. 685; 43 U.S.C. § 396)

* * * * *

[THE FACT FINDERS' ACT]

Sec. 4. **[Definitions.]—Subsection A.** When used in this section—

(a) The word "Secretary" means the Secretary of the Interior.

(b) The words "reclamation law" mean the act of June 17, 1902 (Thirty-second Statutes, page 388), and all acts amendatory thereof or supplementary thereto.

(c) The words "reclamation fund" mean the fund provided by the reclamation law.

(d) The word "project" means a Federal irrigation project authorized by the reclamation law.

(e) The words "division of a project" mean a substantial irrigable area of a project designated as a division by order of the Secretary. (43 Stat. 701; 43 U.S.C. § 371)

Subsec. B. [Approval of new project contingent upon information as to water supply, engineering features, cost, land prices, feasibility, adaptability

for settlement and farm homes.]—No new project or new division of a project shall be approved for construction or estimates submitted therefor by the Secretary until information in detail shall be secured by him concerning the water supply, the engineering features, the cost of construction, land prices, and the probable cost of development, and he shall have made a finding in writing that it is feasible, that it is adaptable for actual settlement and farm homes, and that it will probably return the cost thereof to the United States. (43 Stat. 702; 43 U.S.C. § 412)

NOTES OF OPINIONS

New project 2
Secretary's discretion 1
Source of funds 3

1. Secretary's discretion

Federal court has no general supervisory power by which to control decision of the Secretary of the Interior as to whether a Reclamation Act project is economically feasible. In an action by irrigation entrymen to recover damages for losses alleged to have resulted because of a failure of the Secretary of the Interior to comply with subsection B of the Act of December 5, 1924, and to compel the Secretary to determine that the Third Division, Riverton Project, lacked economic feasibility, the court sustained a motion to dismiss on the grounds that the law requires the Secretary of the Interior to make a written finding that a new project, or new division of a project, is feasible before it can be approved for construction, but does not create a duty that the Secretary, sixteen years after the project was commenced, make a finding that it is not feasible. *Smith v. United States,* 224 F. Supp. 402 (D. Wyo. 1963), affirmed 333 F. 2nd 70 (10th Cir. 1964).

The Secretary of the Interior is not required to proceed with the construction of the Baker project, Oregon, even though Congress has appropriated funds therefor, if he is unable to find that the project is feasible and that the costs will be repaid to the United States, as required by subsection B, section 4, of the Act of December 5, 1924, 43 Stat. 702, and section 4 of the Act of June 17, 1902, 32 Stat. 389, and unless a contract has been executed and confirmed as required by the Act of May 10, 1926, 44 Stat. 479. Letter from the Attorney General to Representative Sinnott and Senators McNary and Stanfield, reprinted in the *New Reclamation Era,* September, 1926, at 152; 35 Op. Atty. Gen. 125 (1926); 34 Op. Atty. Gen. 545 (1925). See also Solicitor's Opinions dated June 11, 1926, and July 20, 1925.

2. New project

Although appropriations had been made for the Baker project prior to December 5, 1924, these appropriations had lapsed because construction was not started thereunder. Consequently, the Baker project is a "new project" within the meaning of subsection B. 34 Op. Atty. Gen. 545 (1925).

3. Source of funds

The provisions of subsection B apply only to reclamation projects financed out of the reclamation fund and therefore are not applicable to a project primarily for relief which is to be financed out of funds made available by the Emergency Relief Appropriation Act of 1937. Letter of Attorney General to Secretary, July 23, 1937, in re Glendive unit, Buffalo Rapids project.

Where a project is financed in part from nonreimbursable funds, a finding by the Secretary that the new project or the new division of a project will probably return to the United States the amount of the cost expended from the reclamation fund would seem to fulfill the requirements of subsection B. Letter from Department of Justice to Interior Department, September 7, 1937.

Subsec. C. [Qualifications of applicants for entry—Appointment of boards.]—The Secretary is hereby authorized, under regulations to be promulgated by him, to require of each applicant including preference right ex-service men for entry to public lands on a project, such qualifications as to industry, experience, character, and capital, as in his opinion are necessary to give reasonable assurance of success by the prospective settler. The Secretary is authorized to appoint boards in part composed of private citizens, to assist in determining such qualifications. (43 Stat. 702; 43 U.S.C. § 433)

NOTES OF OPINIONS

1. Examining Board

One is not entitled to make entry for land in a Federal irrigation project until his qualifications have been passed upon and approved by an examining board, and it is too late to cure the defect in that respect after the land has been withdrawn. *Thomas S. Cady,* 52 L.D. 222 (1927).

The intent of the law is to select the best qualified applicants for all farms available, having regard to their industry, experience, capital, etc. Determination of the fitness and qualifications of applicants rests primarily with the examining board, and its action in the selection of applicants and the assignment of farm units will not be disturbed in the absence of a clear showing that its discretion has been abused. William Lee Craig, A–11100 (January 11, 1928).

In an appeal by G. E. Farrell from the Examining Board, Kittitas Div., Yakima project, the First Assistant Secretary stated it would be impracticable for him to substitute his opinion for that of the Examining Board, who had had an opportunity to personally interview and question the applicant. Departmental decision, July 26, 1934.

Subsec. D. [Classification of lands—Different construction charges to be fixed against different classes of land.]—The irrigable lands of each new project and new division of a project hereinafter approved shall be classified by the Secretary with respect to their power, under a proper agricultural program, to support a family and pay water charges, and the Secretary is authorized to fix different construction charges against different classes of land under the same project for the purpose of equitably apportioning the total construction cost so that all lands may as far as practicable bear the burden of such cost according to their productive value. (43 Stat. 702; 43 U.S.C. § 462)

Subsec. E. [Two public notices relating to construction charge—Date when payments begin on construction charges.]—*Repealed.*

EXPLANATORY NOTE

Provision Repealed. Section 47 of the Act of May 25, 1926, the Omnibus Adjustment Act, repealed subsections E, F and L of this Act, except as otherwise provided in the Adjustment Act. Before repeal, subsection E read as follows: "Hereafter the Secretary shall as to each irrigable acre of land in each new project, or a new division of a project, issue two public notices relating to construction charges. The first public notice shall be issued when the land is ready for settlement and will announce the construction charge per irrigable acre. The second public notice shall be issued when in the opinion of the Secretary the agricultural development of the project shall have advanced sufficiently to warrant the commencement of payment of installments of such construction charge. The second public notice shall fix the date when payments will begin on the construction charge announced by the first public notice, which date shall be not more than five years from the date of the first public notice."

Subsec. F. [Construction charges to be based on productive power of land—Installments 5 per centum of average gross annual acre income for 10 calendar years—Existing contracts may be amended.]—*Repealed.*

EXPLANATORY NOTE

Provision Repealed. Section 47 of the Act of May 25, 1926, the Omnibus Adjustment Act, repealed subsections E, F and L of this Act, except as otherwise provided in the Adjustment Act. Before repeal, subsection F read as follows: "Hereafter all project construction charges shall be made payable in annual installments based on the productive power of the land as provided in this subsection. The installment of the construction charge per irrigable acre payable each year shall be 5 per centum of the average gross annual acre income for the ten calendar years first preceding, or for all years of record if fewer than ten years are available, of the area in cultivation in the division or subdivision thereof of the project in which the land is located, as found by the Secretary annually. The decision of the Secretary as to the amount of any such in-

stallment shall be conclusive. These annual payments shall continue until the total construction charge against each unit is paid. The Secretary is authorized upon request to amend any existing contract for a project water right so that it will provide for payment of the construction charge thereunder in accordance with the provisions of this subsection or for the deferment of such construction charges for a period of three years from the approval of this section, or both."

NOTES OF OPINIONS

Authority of the Secretary 1
Condition precedent 2
Construction charges 3
Power plant 4

1. Authority of the Secretary

The Secretary may amend Warren Act contracts under this subsection. Interpretation, 51 L.D. 207, 209–10 (1925).

The authority granted the Secretary in the last sentence of subsection F to amend existing contracts is permissive, not mandatory. Interpretation, 51 L.D. 207 (1925).

In the determination by the Secretary of the annual construction charge, the Secretary is without authority to change the per centum of the gross annual crop return payable each year, as set out in subsection F. Decision of Solicitor, May 8, 1935.

2. Condition precedent

The qualification in subsection G that, where two-thirds of a project or division is covered by water-rights contracts, a water users' association or irrigation district must take over operation and maintenance of the project as a condition precedent to receiving the benefits of "this section", applies only to the benefits provided under subsections F and L. Interpretation, 51 L.D. 215 (1925).

3. Construction charges

The provision in the fourth sentence of subsection F that the "annual payments shall continue until the total construction charge against *each unit* is paid" is not intended to relieve water users' associations and irrigation districts of their secondary or joint liability under existing contracts to guarantee payment of charges apportioned to each individual unit. Interpretation, 51 L.D. 207, 208–09 (1925).

The three-year deferment authorized in the last sentence applies to the total construction charge, not just to three annual installments under existing contracts. Interpretation, 51 L.D. 207, 210–11 (1925).

4. Power plant

While subsection F was in effect, a contract was made between the United States and the Shoshone Irrigation District, by which the district agreed to take over the control of the Garland division of the Shoshone project. In this contract the district did not agree to take an interest in the Shoshone power plant. After subsection F had been repealed, the district requested that it be allowed to purchase an interest in the power plant and make payment therefor on the crop-return basis. The Department held, in approving an Opinion of the Solicitor, dated March 24, 1928 (M–24229), that purchase of an interest in the power plant could not be made under subsection F after its repeal. It was held, however, that payment could be made under section 45 of the Act of May 25, 1926 (44 Stat. 648), allowing the district a period of 40 years from the first payment matured under the original water-right contract within which to make payment for the desired interest in the power plant.

Subsec. G. [Transfer of project to water users—Receipts credited as part of construction repayments.]—Whenever two-thirds of the irrigable area of any project, or division of a project, shall be covered by water-right contracts between the water users and the United States, said project shall be required, as a condition precedent to receiving the benefits of this section to take over, through a legally organized water users' association or irrigation district, the care, operation, and maintenance of all or any part of the project works, subject to such rules and regulations as the Secretary may prescribe, and thereafter the United States, in its relation to said project, shall deal with a water users' association or irrigation district, and when the water users assume control of a project, the operation and maintenance charges for the year then current shall be covered into the construction account to be repaid as part of the construction repayments. (43 Stat. 702; 43 U.S.C. § 500)

EXPLANATORY NOTE

1926 Modification. Paragraph 3 of section 45 of the Act of May 25, 1926, the Omnibus Adjustment Act, authorizes the Secretary to grant the relief provided for in this section to any of the projects mentioned in the 1926 Act, without requiring such project to take over the care, operation and maintenance of the project works. The 1926 Act appears herein in chronological order.

NOTES OF OPINIONS

Condition precedent 1
Current charges 2

1. Condition precedent

The qualification in subsection G that, where two-thirds of a project or division is covered by water-right contracts, a water users' association or irrigation district must take over operation and maintenance of the project as a condition precedent to receiving the benefits of "this section", applies only to the benefits provided under subsections F and L. Interpretation, 51 L.D. 215 (1925).

2. Current charges

The reference in the last clause to operation and maintenance charges "then current" does not require the United States to advance to the water users a sum sufficient to enable them to operate the project during the year in which control is transferred. Interpretation, 51 L.D. 207, 211–12 (1925).

Subsec. H. [Penalty against delinquent accounts reduced.]—The penalty of 1 per centum per month against delinquent accounts, provided in section 3 and section 6 of the act of August 13, 1914 (Thirty-eighth Statutes, page 686), is hereby reduced to one-half of 1 per centum per month as to all installments which may hereafter become due. (43 Stat. 703; 43 U.S.C. §§ 478, 494)

EXPLANATORY NOTE

Reference in the Text. The Act of August 13, 1914 (Thirty-eighth Statutes, page 686), referred to in the text, is the Reclamation Extension Act. The Act appears herein in chronological order.

NOTES OF OPINIONS

1. Application

Subsection H of the Fact Finders' Act, which reduces from one to one-half per cent per month the delinquency penalty on all charges coming due thereafter, also applies to rental charges fixed under section 11 of the Reclamation Extension Act of 1914. Instructions, 51 L.D. 218 (1925).

The Beerline Irrigation District submitted a proposed contract to reduce from 10 per cent to 6 per cent the interest rate on delinquent payments under its contracts of March 31, 1913, and July 3, 1919, but the Assistant Secretary on August 6, 1937, held that the authority vested in the Secretary of the Interior under Subsec. H of the act of Dec. 5, 1924, was not sufficient to authorize the amendment of these contracts; that Subsec. H authorized a reduction of interest rates only on the contracts referred to in sections 3 and 6 of the act of August 13, 1914. It was also held that Sec. 1 of the act of May 15, 1922, could be considered authority for fixing interest rates consistent with State law on contracts subsequently made; and that there was no consideration passing to the United States for amending these contracts as proposed. 8 Comp. Gen. 25 was cited as holding that contracts may not be modified to the prejudice of the United States, without adequate consideration therefor.

Subsec. I. [Profits from projects taken over by water users.]—Whenever the water users take over the care, operation, and maintenance of a project, or a division of a project, the total accumulated net profits, as determined by the Secretary, derived from the operation of project power plants, leasing of project grazing and farm lands, and the sale or use of town sites shall be credited to the construction charge of the project, or a division thereof, and thereafter the net

profits from such sources may be used by the water users to be credited annually, first, on account of project construction charge, second, on account of project operation and maintenance charge, and third, as the water users may direct. No distribution to individual water users shall be made out of any such profits before all obligations to the Government shall have been fully paid. (43 Stat. 703; 43 U.S.C. § 501)

EXPLANATORY NOTE

Cross References, Special Statutes. A number of special provisions relating to the application of revenues from individual projects are contained in appropriation acts and other statutes. References thereto are found in the index.

NOTES OF OPINIONS

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Shoshone project 6

1. Application of credits

The credit of "total accumulated net profits" at the time control is transferred will shorten the repayment period but not reduce the amount of annual installments, whereas the net profits thereafter arising will be credited annually first to the construction installment coming due and continuing with subsequent construction installments as far as such credit will go. Interpretation, 51 L.D. 207, 212–13 (1925).

Where the administrative officers of the Government fail to apply the net profits derived from the operation of a project power plant annually to the operation and maintenance costs of the project taken over by an irrigation district as required by subsection I of section 4 of the act of December 5, 1924, and such profits together with the amount paid by the irrigation district would have liquidated the debt of the district, no penalty can be charged against the district. First Assistant Secretary Dixon Opinion, 53 I.D. 257 (1931), in re North Platte project.

2. Power revenues—Generally

The availability of power revenues to aid irrigation has, in one form or another, been a part of general reclamation law almost since its beginning. This is evident from section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; the Act of February 24, 1911, 36 Stat. 930, 43 U.S.C. § 522; and subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, 43 U.S.C. § 501. This general trend has been reinforced by the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the Act of May 9, 1938, 52 Stat. 322, 43 U.S.C. § 392a, and a provision in the Interior Department Appropriation Act, 1947, Act of July 1, 1946, 60 Stat. 366, as well as section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1193, 43 U.S.C. § 485h. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

3. —Hayden-O'Mahoney amendment

The legislative history of the Hayden-O'Mahoney amendment indicates that the type of contract which was intended to be excepted from its application was that authorized to be entered into under subsection I of section 4 of the Act of December 5, 1924, that is, one where the power development has been financed by the Government and the water users have obligated themselves in fact to repay all of the costs. Solicitor Harper Opinion, M–33504 (September 26, 1944), in re disposition of net power revenues from the Grand Valley project.

After repayment of construction charges of the Grand Valley Project, and operation and maintenance costs during the repayment period, the net power revenues will be required, under the Hayden-O'Mahoney Amendment, to be covered into the General Treasury as miscellaneous receipts. Solicitor's Opinion, M–33504 (September 26, 1944).

4. —Minidoka project

By order of March 14, 1927, the Secretary of the Interior held, pursuant to this Act and the Act of May 10, 1926, 44 Stat. 480, that the profits from the sale of electric energy should be credited to the two districts of the Minidoka project in the same proportion as the costs of the power plant were charged; that is, 95.6 percent to the Burley irrigation district, and 4.4 percent

to the Minidoka irrigation district. In 1929, a committee appointed by the Secretary recommended that the proceeds from the sale of power be divided, 72.7 percent to the Burley irrigation district and 27.3 percent to the Minidoka irrigation district. The Burley irrigation district filed a motion for preliminary injunction to restrain the Secretary from reconsideration of the matter of ratio of ownership and participation by the two districts in the power profits previously adopted. The court held that the matter was finally determined by the Secretary of the Interior in his decision of March 14, 1927, above mentioned, and that he was without power to take the action recommended by the committee appointed in 1929. *Wilbur* v. *Burley Irrigation District,* 58 F. 2d 871, 61 App. D.C. 145 (1932).

The Government's power plant at the Minidoka Dam on the Minidoka project in eastern Idaho, had only a small supply of energy available for commercial sales during the irrigation season on account of the power demand for irrigation pumping on the project. The United States made a contract with the Idaho Power Co. by which the Government delivered to the company a portion of the output of the Government's Black Canyon power plant on the Boise project in the Western part of the State, in return for which the company supplemented the energy supply from the Minidoka plant so as to make firm power available for commercial sales throughout the year. The Secretary, also, to conserve for irrigation use the winter flow of the Snake River which theretofore had produced power at the Minidoka power plant, stopped the winter operation of the plant in order to store the water in American Falls reservoir above. The winter commercial power needs on the project were supplied under the same arrangement with the Idaho Power Co. The Secretary, for the year 1935, allocated $50,000 to the Black Canyon plant from revenues from commercial sales on the Minidoka project. The Burley district which was entitled to share in the profits of the Minidoka plant (*Wilbur* v. *Burley Irrigation District,* 58 F. 2d 871, 1932) brought a suit to enjoin the Secretary from making such a distribution, basing its claim on the contention that it was "the owner" of 95.6 percent of the Minidoka power plant. The court dismissed the suit holding, after distinguishing between the plaintiff's ownership of the right to a percentage of the profits and the "ownership of the plant" contended for by the plaintiff. "In the face of these findings, there can be no question that the Secretary's action in placing the plan into effect was essential (1) to fulfill plaintiff's requirements for power for irrigation and (2) to preserve the commercial business, without which there would have been no profits to share. In these circumstances he had lawful authority to stop the flow of winter water and cease generating winter power at the plant." *Burley Irrigation District* v. *Ickes,* 116 F. 2d 529, 73 App. D.C. 23 (1940) *cert. denied,* 312 U.S. 687 (1941).

5. —North Platte project

The net power revenues creditable to each of the four districts of the North Platte project should be credited each year on the annual installment of the construction charge of each district, without regard to the classification of the land, and the districts should agree to distribute the credit equally per acre to all of the irrigable lands of the districts, including land in class 5. Such distribution should be subject to the condition of the Act of March 3, 1925, 43 Stat. 1167, and to the restriction set forth in the last sentence of subsection I of the Act of December 5, 1924, 43 Stat. 703. Solicitor's Opinion, M–25908 (August 27, 1932).

6. —Shoshone project

The Act of March 4, 1929, prevents the Department from applying any of the net power revenues of the Shoshone power plant to a reduction of the annual charges due from the Shoshone Irrigation District to the United States in accordance with the provisions of subsection I of the Fact Finders' Act of December 5, 1924. Solicitor Finney Opinion, 53 I.D. 427 (1931).

The Act of March 4, 1929, relating to the disposition of Shoshone power revenues, is clearly within the constitutional power of Congress to enact. If the Act impairs any contract rights of the plaintiff under a prior contract, its remedy for recovery is in recourse to the Court of Claims. An action for a writ of mandamus to compel the Secretary of the Interior to determine and credit to the plaintiff annually a portion of the power revenues will not lie, both because this is in the nature of a suit for specific performance of a contract to which the United States has not given its consent, and because the matter is so completely within the discretion of the Secretary as to forbid interference by writ of mandamus. *United States ex rel. Shoshone Irr. Dist. v. Ickes,* 70 F.2d 771, 63 App. D.C. 167 (1934), *cert. denied* 293 U.S. 571 (1934).

11. Oil and gas revenues

The proceeds from oil and gas leases issued by the Strawberry Water Users' Association on former Indian reservation lands, the beneficial ownership of which was trans-

ferred to the project landowners by the Act of April 4, 1910, even though legal title remains in the United States, should be applied in conformity with subsection I of the Fact Finders' Act of 1924. Solicitor White Opinion, M–36051 (December 7, 1950).

16. Lease revenues

The First Assistant Secretary, in modifying departmental instructions of September 14, 1936, with reference to leases of land under the Taylor Grazing Act, held that the Secretary's authority to lease lands withdrawn in connection with a reclamation project, was recognized by the Congress in subsection I of the Act of December 5, 1924, and that all leases of land withdrawn for reclamation purposes should be made under the authority of subsection I; that all such leases should be made in the form approved June 18, 1934, and that whatever moneys may yet be received from leases of withdrawn reclamation lands made in accordance with prior instructions of September 14, 1936, should be disposed of in accordance with subsection I. Instructions, M–29482 (October 8, 1937).

Subsec. J. [Moneys from sale or rental of water shall be credited to project or division of project to which construction cost has been charged.]—All moneys or profits as determined by the Secretary heretofore or hereafter derived from the sale or rental of surplus water under the Warren Act of February 21, 1911 (Thirty-sixth Statutes, page 925), or from the connection of a new project with an existing project shall be credited to the project or division of the project to which the construction cost has been charged. (43 Stat. 703; 43 U.S.C. § 526)

EXPLANATORY NOTE

Reference in the Text. The Warren Act of February 21, 1911 (Thirty-sixth Statutes, page 925), referred to in the text, appears herein in chronological order.

NOTES OF OPINIONS

Application of credits 1
Power privileges 3
Secretary's discretion 2

1. Application of credits

The profits of the class described in subsection J may be credited by the Secretary in his discretion to construction charges, or to operation and maintenance charges to the extent they exist. Interpretation, 51 L.D. 207, 213–14 (1925).

2. Secretary's discretion

Certain profits arose on the Minidoka project from the sale of Jackson Lake water under the Warren Act. The Secretary of the Interior, after full consideration and a hearing accorded the parties, allocated the profits among the different divisions of the project. The Minidoka Irrigation District, representing one division of the project, being dissatisfied with the allocation, brought suit in the courts of the District of Columbia to secure a mandatory injunction compelling the Secretary to make an allocation in accordance with the contentions of the plaintiff. The trial court denied the Government's motion to dismiss, and the Government appealed to the Court of Appeals of the district, where the Secretary's allocation was upheld, and the lower court ordered to dismiss the bill. It was held that the Secretary was acting in a quasi-judicial capacity, that his decision was not arbitrary or capricious, and that the plaintiff was seeking a judgment in mandamus directing the Secretary to act contrary to the facts and the law of the case as found by him, and that such an appeal will not be entertained by the courts. *Wilbur v. Minidoka Irr. Dist,* 50 F. 2d 495, 60 App. D.C. 205 (1931), *cert. denied,* 284 U.S. 634 (1931).

3. Power privileges

Proceeds paid by a Warren Act contractor for use of a power site at a canal drop on a Federal reclamation project are required to be credited to the project by subsection J, section 4 of the Act of December 5, 1924. Solicitor Margold Opinion M–28725 (October 6, 1936), in re use of power site at C drop, Klamath project.

Subsec. K. [Surveys authorized where settlers appear unable to pay construction costs—Expense of such surveys.]—On each existing project where, in the opinion of the Secretary, it appears that on account of lack of fertility in the

soil, an inadequate water supply, or other physical causes, settlers are unable to pay construction costs, or whenever it appears that the cost of any reclamation project by reason of error or mistake or for any cause has been apportioned or charged upon a smaller area of land than the total area of land under said project, the Secretary is authorized to undertake a comprehensive and detailed survey to ascertain all pertinent facts, and report in each case the result of such survey to the Congress, with his recommendations: *Provided,* That the cost and expense of each such survey shall be charged to the appropriation for the project on account of which the same is made, but shall not be charged as a part of the construction or operation and maintenance cost payable by the water users under the project. (43 Stat. 703; 43 U.S.C. § 466)

EXPLANATORY NOTE

Cross Reference, Omnibus Adjustment Act. The Act of May 25, 1926, 44 Stat. 636, the Omnibus Adjustment Act, was enacted as a result of the survey and report made pursuant to the authority contained in subsection "K". See H.R. Doc. No. 201. Sixty-ninth Congress, first session. The Omnibus Adjustment Act appears herein in chronological order.

Subsec. L. [On adjustments all unpaid charges shall be added to obligation of water user.]—*Repealed.*

EXPLANATORY NOTE

Provision Repealed. Section 47 of the Act of May 25, 1926, the Omnibus Adjustment Act, repealed subsections E, F and L of this Act, except as otherwise provided in the Adjustment Act. Before repeal, subsection L read as follows: "In any adjustment of water charges as provided in this section all due and unpaid charges to the United States, both on account of construction and on account of operation and maintenance, including interest and penalties, shall be added in each case to the total obligation of the water user, and the new total thus established shall then be the construction charge against the land in question."

NOTES OF OPINIONS

1. Application

In this subsection the words, "in any adjustment of water charges," are understood to indicate the time which will determine what charges are due and unpaid, and what charges will thereafter be added in each case to the total obligation of the water user. It is believed that the adjustment of water charges occurs on that date when the adjustment contract is made, and that the charges due and unpaid on that date are the charges added in each case to the total obligation. So far as the construction charges are concerned, the provisions of subsection L and the provisions of the last sentence of subsection F may overlap if the adjustment contract is made at a date later than December 1, 1925. Interpretation, 51 L.D. 207, 214 (1925).

The qualification in subsection G that, where two-thirds of a project or division is covered by water-right contracts, a water users' association or irrigation district must take over operation and maintenance of the project as a condition precedent to receiving the benefits of "this section", applies only to the benefits provided under subsections F and L. Interpretation, 51 L.D. 215 (1925).

Subsec. M. [Exchange of farm unit—Construction payments credited—Preference right of ex-service man.]—*Repealed.*

EXPLANATORY NOTE

Provision Repealed. The Act of August 13, 1953, 67 Stat. 566, the Farm Unit Exchange Act, repealed subsection M of section 4 which read as follows: "That every entryman or assignee on a project farm unit not yet patented which unit shall be found by the Secretary to be insufficient to support a family and pay water charges shall have

the right upon application to exchange his entry for another farm unit of unentered public land on the same or another project located in the same State, in which event all installments of construction charges theretofore paid on account of the relinquished farm unit shall be credited on account of the new farm unit taken in exchange: *Provided,* That where two entrymen apply for the same farm unit under the exchange provision of this subsection, only one of whom is an ex-service man, as defined by the joint resolution of January 21, 1922 (Forty-second Statutes, page 358), the ex-service man shall have a preference in making such exchange." The 1953 Act appears herein in chronological order.

NOTES OF OPINIONS

1. Exchanges

All exchanges made under subsection M must be within the same State. Solicitor's Opinion, M–21655 (February 25, 1927).

The words "not yet patented" used in subsection M, have reference not to the date of the approval of the act but to the date when application for exchange of entry is made. *Norman E. Thackeray,* 52 L. D. 60 (1927).

In decision of March 22, 1934, the First Assistant Secretary of the Interior refused to approve an exchange of patented lands in the Frannie division for an unpatented unit in the Willwood division, Shoshone project.

Lands within a Federal irrigation project will not be allowed to remain subject to entry where they are found insufficient to support a family or, after relinquishment by a former entryman, while the latter's application for an exchange of entry under subsec. M of the act of December 5, 1924, is being considered. *Thomas S. Cady,* 52 L. D. 222 (1927).

Where an applicant for exchange of entry of lands within a Federal irrigation project has filed relinquishment prior to the determination of his application, another will not be permitted to enter the relinquished lands until his qualifications have been established by an examining board, and until he has filed a written statement that he has knowledge that the lands are classed as unproductive and insufficient to support a family after payment of water charges, a waiver of right to relief under the act of December 5, 1924, and consent to pay construction charges should the lands be subsequently embraced within a productive class. *Thomas S. Cady,* 52 L. D. 222 (1927).

Subsec. N. [Advance payment of operation and maintenance charges.]—All contracts providing for new projects and new divisions of projects shall require that all operation and maintenance charges shall be payable in advance. In each case where the care, operation, and maintenance of a project or division of a project are transferred to the water users the contract shall require the payment of operation and maintenance charges in advance. That whenever an adjustment of water charges is made under this section the adjustment contract shall provide that thereafter all operation and maintenance charges shall be payable in advance. (43 Stat. 704; 43 U.S.C.§ 493)

Subsec. O. [Expense of Washington office and of general investigations not chargeable to water users.]—The cost and expense after June 30, 1945, of the office of the Commissioner in the District of Columbia and, except for such cost and expense as are incurred on behalf of specific projects, of general investigations and of nonproject offices outside the District of Columbia, shall be charged to the reclamation fund and shall not be charged as a part of the reimbursable construction or operation and maintenance costs. (43 Stat. 704; Act of April 19, 1945, 59 Stat. 54; 43 U.S.C. § 377)

EXPLANATORY NOTE

1945 Amendment. The Act of April 19, 1945, 59 Stat. 54, amended subsection 0 to read as it appears above. Before amendment, the subsection read as follows: "That the cost and expense after June 30, 1925, of the main office at Washington, District of Columbia, of the Bureau of Reclamation in the Department of the Interior, and the

cost and expense of general investigations heretofore and hereafter authorized by the Secretary, shall be charged to the general reclamation fund and shall not be charged as a part of the construction or operation and maintenance cost payable by the water users under the projects."

NOTES OF OPINIONS

Investigations and research 1
Legal services 2

1. Investigations and research

The Bureau of Reclamation is authorized under reclamation law to expend appropriations made from the general funds of the Treasury under the heading "General Investigation—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.

Expenditures for weather modification research come under the heading of "general investigations" and are nonreimbursable, in accordance with subsection 0 of the Fact Finders' Act. The nonreimbursability of general research expenditures is also recognized in standard appropriation act language carried under the heading "Administrative Provisions" which recognizes that expenditures for "general engineering and research" from the appropriation for "General Investigations" are nonreimbursable under the Act of April 19, 1945, 43 U.S.C. § 377 (amending subsection 0). Letter of Solicitor Barry to Senator Jackson, June 11, 1964.

Costs of investigations made with Colorado River Development Funds are not reimbursable by the water users even though a project investigated with such funds is authorized for construction. Letter of Administrative Assistant Secretary Beasley to Comptroller General, June 11, 1959; Memorandum of Chief Counsel Fix, December 28, 1948, at 15.

Investigation costs incurred by the United States under contracts of 1918, 1920, 1929 and 1933 in connection with the All-American Canal are reimbursable by the Imperial Irrigation District. Nothing in the Kinkaid Act of May 18, 1920, or its legislative history implies that the expenses under the 1920 contract paid by the United States were to be a gift to the District, and the fact that the District contributed two-thirds the cost of the study does not imply that the one-third paid by the United States was to be nonreimbursable. Nor does the fact that study funds advanced by the District under the 1929 and 1933 contracts were later refunded imply that U.S. costs to the amount of the refunds were to be nonreimbursable. Memorandum of Chief Counsel Fisher, November 18, 1953.

2. Legal services

The actual cost of legal services performed in the field by the Office of the Solicitor on behalf of specific projects are chargeable to such projects and their reimbursability or nonreimbursability is determined by the application of the allocation and accounting procedures applicable to the particular project concerned. Solicitor Armstrong Opinion, 62 I.D. 181 (1955).

Subsec. P. [Reservation of easements or rights of way.]—Where, in the opinion of the Secretary, a right of way or easement of any kind over public land is required in connection with a project the Secretary may reserve the same to the United States by filing in the General Land Office and in the appropriate local land office copies of an instrument giving a description of the right of way or easement and notice that the same is reserved to the United States for Federal irrigation purposes under this section, in which event entry for such land and the patent issued therefor shall be subject to the right of way or easement so described in such instrument; and reference to each such instrument shall be made in the appropriate tract books and also in the patent. (43 Stat. 704; 43 U.S.C. § 417)

Subsec. Q. [Donations—May be reconveyed to grantor.]—Where real property or any interest therein heretofore has been, or hereafter shall be, donated and conveyed to the United States for use in connection with a project, and the Secretary decides not to utilize the donation, he is authorized without charge to reconvey such property or any part thereof to the donating grantor or to the heirs, successors, or assigns of such grantor. (43 Stat. 704, 43 U.S.C. § 376)

NOTES OF OPINIONS

1. Construction with other laws

Inasmuch as the Federal Property and Administrative Services Act of 1949, as amended, is "in addition and paramount to any authority conferred by any other law," its provisions giving other Federal departments and agencies a prior right to request a transfer of property no longer needed by the Bureau of Reclamation would apply to property originally donated by the Metropolitan Water District of Salt Lake City, Utah, but no longer needed, for the Provo River reclamation project, notwithstanding subsection Q of the Fact Finders' Act of 1924, which authorizes the Secretary of the Interior to reconvey donated property to the grantee. Department report of July 22, 1959, on H.R. 5270; printed in H.R. Rept. No. 822, 86th Cong., 1st Sess. 2; similar report in S. Rept. No. 1134, 86th Cong., 2nd Sess. 2. See Act of April 4, 1960.

The surplus property disposal provisions of the Federal Property and Administrative Services Act of 1949 are in addition and paramount to, but do not repeal, other authority to dispose of property such as subsection Q of the Fact Finders' Act, which authorizes the reconveyance of donated real property. However, the Administrator of General Services may, upon application, authorize the disposition of property under subsection Q. Memorandum of Associate Solicitor Fritz, March 7, 1955.

Subsec. R. [Swamp and cut-over timberlands—Appropriation from General Treasury.]—There is hereby authorized to be appropriated from the General Treasury, the sum of $100,000 for investigations to be made by the Secretary through the Bureau of Reclamation to obtain necessary information to determine how arid and semiarid, swamp, and cut-over timberlands may best be developed. (43 Stat. 704)

Sec. 5. [Title of act.]—This act hereafter may be referred to as the "Second Deficiency Act, Fiscal Year 1924." (43 Stat. 704)

EXPLANATORY NOTES

Not Codified. The first extract shown herein relating to commencement of construction work, subsection R, and section 5 are not codified in the U.S. Code.

Fact Finders' Act. Section 4 of this act, the "Second Deficiency Act, Fiscal Year 1924," was recommended by a committee of special advisers on reclamation appointed by the Secretary of the Interior and known as "Fact Finders." Section 4 is popularly known as the "Fact Finders' Act." See Senate Document No. 92, Sixty-eighth Congress.

Legislative History. H.R. 9559, Public Law 292 in the 68th Congress. H.R. Rept. No. 907. H.R. Rept. No. 1019 and H.R. Rept. No. 1024 (conference reports).

LA PLATA RIVER COMPACT

An act granting the consent and approval of Congress to the La Plata River compact.
(Act of January 29, 1925, ch. 110, 43 Stat. 796)

[**Consent of Congress to Compact.**]—The consent and approval of Congress is hereby given to the compact signed by the commissioners of the States of Colorado and New Mexico at the city of Santa Fe, on the 27th day of November 1922, and approved by the Legislature of the State of Colorado by an act entitled "An act to approve the La Plata River compact," April 13, 1923, and by the Legislature of the State of New Mexico by an act entitled "An act ratifying and approving the La Plata compact," approved February 7, 1923, which compact is as follows:

"The State of Colorado and the State of New Mexico, desiring to provide for the equitable distribution of the waters of the La Plata River and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, pursuant to Acts of their respective legislatures, have resolved to conclude a compact for these purposes and have named as their commissioners Delph E. Carpenter, for the State of Colorado, and Stephen B. Davis, Junior, for the State of New Mexico, who have agreed upon the following articles:

"Article I

"The State of Colorado, at its own expense, shall establish and maintain two permanent stream-gauging stations upon the La Plata River for the purpose of measuring and recording its flow, which shall be known as the Hesperus station and the interstate station, respectively.

"The Hesperus station shall be located at some convenient place near the village of Hesperus, Colorado. Suitable devices for ascertaining and recording the volume of all diversions from the river above Hesperus station shall be established and maintained (without expense to the State of New Mexico), and whenever in this compact reference is made to the flow of the river at Hesperus station it shall be construed to include the amount of the concurrent diversions above said station.

"The interstate station shall be located at some convenient place within one mile of and above or below the interstate line. Suitable devices for ascertaining and recording the volume of water diverted by the Enterprise and Pioneer Canals, now serving approximately equal areas in both States, shall be established and maintained (without expense to the State of New Mexico), and whenever in this compact reference is made to the flow of the river at the interstate station it shall be construed to include one-half the volume of the concurrent diversions by such canals, and also the volume of any other water which may hereafter be diverted from said river in Colorado for use in New Mexico.

"Each of said stations shall be equipped with suitable devices for recording the flow of water in said river at all times between the 15th day of February and the

1st day of December of each year. The State engineers of the signatory States shall make provision for cooperative gauging at two stations, for the details of the operation, exchange of records and data, and publication of the facts.

"ARTICLE II

"The waters of the La Plata River are hereby equitably apportioned between the signatory States, including the citizens thereof, as follows:

"1. At all times between the 1st day of December and the 15th day of the succeeding February each State shall have the unrestricted right to the use of all water which may flow within its boundaries.

"2. By reason of the usual annual rise and fall, the flow of said river between the 15th day of February and the 1st day of December of each year shall be apportioned between the States in the following manner:

"(a) Each State shall have the unrestricted right to use all the waters within its boundaries on each day when the mean daily flow at the interstate station is one hundred cubic feet per second, or more.

"(b) On all other days the State of Colorado shall deliver at the interstate station a quantity of water equivalent to one-half of the mean flow at the Hesperus station for the preceding day, but not to exceed one hundred cubic feet per second.

"3. Whenever the flow of the river is so low that in the judgment of the State engineers of the States the greatest beneficial use of its waters may be secured by distributing all of its waters successively to the lands in each State in alternating periods, in lieu of delivery of water as provided in the second paragraph of this article, the use of the waters may be so rotated between the two States in such manner, for such periods, and to continue for such time as the State engineers may jointly determine.

"4. The State of New Mexico shall not at any time be entitled to receive nor shall the State of Colorado be required to deliver any water not then necessary for beneficial use in the State of New Mexico.

"5. A substantial delivery of water under the terms of this article shall be deemed a compliance with its provisions and minor and compensating irregularities in flow or delivery shall be disregarded.

"ARTICLE III

"The State engineers of the States, by agreements from time to time, may formulate rules and regulations for carrying out the provisions of this compact, which, when signed and promulgated by them, shall be binding until amended by agreement between them or until terminated by written notice from one to the other.

"ARTICLE IV

"Whenever any official of either State is designated to perform any duty under this contract, such designation shall be interpreted to include the State official or officials upon whom the duties now performed by such official may hereafter devolve.

"ARTICLE V

"The physical and other conditions peculiar to the La Plata River and the territory drained and served thereby constitute the basis for this compact, and neither of the signatory States concedes the establishment of any general principle or precedent by the concluding of this compact.

"ARTICLE VI

"This compact may be modified or terminated at any time by mutual consent of the signatory States, and upon such termination all rights then established hereunder shall continue unimpaired.

"ARTICLE VII

"This compact shall become operative when approved by the legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the legislatures shall be given by the governor of each State to the governor of the other State, and the President of the United States is requested to give notice to the governors of the signatory States of approval by the Congress of the United States.

"In witness whereof, the commissioners have signed this compact in duplicate originals, one of which shall be deposited with the secretary of state of each of the signatory States.

"Done at the city of Santa Fe, in the State of New Mexico, this twenty-seventh day of November, in the year of our Lord one thousand nine hundred and twenty-two." (43 Stat. 796)

"DELPH E. CARPENTER.
"STEPHEN B. DAVIS, Junior."

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1656, Public Law 346 in the 68th Congress. H.R. Rept. No. 1076.

REFUNDS TO WORLD WAR I VETERANS

An act to provide for refunds to veterans of the World War of certain amounts paid by them under Federal irrigation projects. (Act of February 21, 1925, ch. 277, 43 Stat. 956)

[**Sec. 1. Definitions.**]—As used in this act—(a) The term "veteran" includes any individual a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918; but does not include (1) any individual at any time during such period or thereafter separated from such forces under other than honorable conditions, (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform, or (3) any alien at any time during such period or thereafter discharged from the military or naval forces on account of his alienage; and

(b) The term "reclamation law" means the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and all acts amendatory thereof or supplementary thereto. (43 Stat. 956)

Sec. 2. [Veterans entitled to refund—Investigation and approval of applications for refunds and payment thereof.]—(a) Any veteran—who at any time since April 6, 1917, has made entry upon a farm unit within a Federal irrigation project under the reclamation law and (1) who no longer retains such entry because of cancellation by, or relinquishment to, the United States after or (2) who, prior to receipt by him of a final certificate in respect of such entry, but in no case more than one year after date of passage of this act, desires to relinquish such entry—may, in accordance with regulations prescribed by the Secretary of the Interior, file application for the refund provided in subdivision (b). A veteran who has been compensated, in cash or otherwise, for any such relinquishment shall not be entitled to the benefits of this act, and before payment of such refund the Secretary of the Interior, under such regulations as he may prescribe, shall require proof that the veteran has not been so compensated.

(b) Upon receipt of such application the Secretary of the Interior is authorized to investigate the facts and, in his discretion, to pay as a refund to any such veteran entitled thereto a sum equal to all amounts paid to the United States by such veteran, or for his account, as construction charges and as interest and penalties on such charges in respect of such unit. Every such refund so approved by the Secretry of the Interior shall be paid from the appropriation for the project on which the entry in question was made. (43 Stat. 956)

Notes of Opinions

1. Application

The right of a veteran to refund under the act of February 21, 1925, of charges paid by him on a reclamation homestead entry which he relinquishes prior to receipt of final certificate and within one year after the passage of the act is not defeated by action of the Government in canceling the entry, for sufficient reasons, independently of the relinquishment. *Fred E. Hargis,* 51 L.D. 329 (1926).

The act of February 21, 1925, is applicable only to public lands and does not authorize refund of charges paid on a water-right application for the irrigation of land in private ownership. *Lawrence W. Crehore,* 51 L.D. 345 (1926).

The word "after" in the following clause of section 2, act of February 21, 1925—"who no longer retains such entry because of cancellation by, or relinquishment to the United States after"—is meaningless, was inadvertently retained in the process of legislation, and should be ignored. *Fred E. Hargis,* 51 L.D. 329 (1926).

Sec. 3. [Benefits accruing to estates of veterans—Relinquishment of rights on acceptance of refund.]—(a) The estate of a veteran shall be entitled to the benefits of this act in any case where the veteran, if living, could have availed himself of such benefits. Application for such benefits shall be made by, and payments thereof shall be made to, the executor or administrator of such estate.

(b) A veteran (or his estate) accepting in respect of any farm unit the benefits of this act, shall be deemed thereby to have relinquished, in accordance with regulations prescribed by the Secretary of the Interior, all right, title, or interest of such veteran (or estate) in such farm unit and any improvements thereon. (43 Stat. 956)

Sec. 4. [Cancellation of water rights.]—The Secretary of the Interior is authorized to cancel any application for permanent water right for any farm unit in respect of which a veteran (or his estate) has received the benefits of this act, and to terminate all rights and liabilities of such veteran (or estate) in respect of such application. (43 Stat. 957)

Sec. 5. [Regulations by Secretary of Interior.]—The Secretary of the Interior is authorized to make such regulations as he deems necessary to execute the functions imposed upon him by this act. (43 Stat. 957)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2397, Public Law 433 in the 68th Congress, H.R. Rept. No. 1299.

MESA DIVISION, YUMA AUXILIARY PROJECT

Joint resolution to authorize the appropriation of certain amounts for the Yuma irrigation project, Arizona, and for other purposes. (Act of February 21, 1925, ch. 291, 43 Stat. 962)

[**Amounts authorized to furnish water—Moneys received to be covered into reclamation fund—Installment payments—Existing contracts to conform to payments.**]—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000, to be paid out of the reclamation fund established by the act of June 17, 1902 (Thirty-second Statutes, page 388), for operation and maintenance and completion of construction of the irrigation system required to furnish water to all of the irrigable lands in part 1 of the Mesa division, otherwise known as the first Mesa unit of the Yuma auxiliary project, authorized by the act of January 25, 1917 (Thirty-ninth Statutes, page 868), as amended by the act of February 11, 1918 (Fortieth Statutes, page 437): *Provided,* That all moneys received by the United States in payment of land and water rights in said part 1 of the Mesa division, beginning one year from the date this act becomes effective, shall be covered into the reclamation fund until the sum advanced from said fund hereunder is fully paid: *Provided further,* That the purchase price of land and water rights hereafter sold in said part 1 of the Mesa division shall be paid to the United States in ten equal installments, the first of which shall be due and payable at the date of purchase, and the remaining installments annually thereafter, with interest on deferred installments at the rate of 6 per centum per annum, payable annually; and the Secretary of the Interior is authorized, at any time within one year from the date this act becomes effective to amend any existing uncompleted contract for the purchase of land and water rights so that the aggregate amount of principal and interest remaining unpaid under such contract may be paid in ten equal installments in accordance with the conditions of this proviso, beginning with the date of amendatory contract: *And provided further,* That land and water rights in said part 1 of the Mesa division heretofore or hereafter offered at public sale under said act of January 25, 1917, and not disposed of at such public sale may be sold later at private sale at not less than $25 per acre for the land and at $200 per acre for the water right. (43 Stat. 962)

Explanatory Notes

Not codified. This Act is not codified in the U.S. Code.

References in the Text. The Act of January 25, 1917 (Thirty-ninth Statutes, page 868), as amended by the Act of February 11, 1918 (Fortieth Statutes, page 437), referred to in the text, authorized the Yuma Auxiliary project, Arizona. Both Acts appear herein in chronological order.

Legislative History. S.J. Res. 172, Public Resolution 51 in the 68th Congress, S. Rept. No. 907.

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1926

[**Extracts from**] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1926, and for other purposes. (Act of March 3, 1925, ch. 462, 43 Stat. 1141)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[**Maintenance of headquarters outside District of Columbia except for office of chief engineer prohibited.**]—*Provided,* That no part of said appropriations may be used for maintenance of headquarters for the Bureau of Reclamation outside the District of Columbia except for the office of the chief engineer * * *. (43 Stat. 1166)

* * * * *

EXPLANATORY NOTE

Provision Repeated. An identical provision is carried in the appropriation act of May 10, 1926 (44 Stat. 453); also in the appropriation act of January 12, 1927 (44 Stat. 934). In the appropriation act of March 7, 1928 (45 Stat. 227), the words "and staff" are added after "chief engineer." The act of March 4, 1929 (45 Stat. 1589), extends the appropriation to cover certain field officers of the Division of Reclamation Economics. This provision was carried in the Interior appropriation acts until omitted in the Interior Appropriation Act of 1938, approved August 9, 1937. The Interior Appropriation Act of 1942, approved June 28, 1941, established a branch of the Washington office in the Denver office on a nonreimbursable basis.

[**Sun River project—Contracts for payments—No extension until Montana assumes development—State funds—Charges payable in advance.**]—Sun River project, Montana: * * * *Provided,* That no part of this appropriation shall be used for construction purposes until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law, providing for payment by the district or districts as hereinafter provided. The Secretary of the Interior shall by public notice announce the date when water is available under the project: *Provided further,* That no part of the sum hereby appropriated shall be expended for the construction of new canals or for the extension of the present canal system for the irrigation of lands outside of the forty thousand acres for the irrigation of which a canal system is now provided, until a contract or contracts shall have been executed between the United States and the State of Montana, whereby the State shall assume the duty and responsibility of promoting the development and settlement of the project after completion, securing, selecting, and financing of settlers to enable the purchase of the required livestock, equipment, and supplies and the improvement of the lands to render them habitable and productive. The State shall provide the funds necessary for this purpose and shall conduct operations in a manner satisfactory to the Secretary of the Interior: *Provided further,* That the operation and maintenance charges on account of land in this project shall be paid annually

in advance not later than March 1, no charge being made for operation and maintenance for the first year after said public notice. It shall be the duty of the Secretary of the Interior to give such public notice when water is actually available for such lands. (43 Stat. 1166)

EXPLANATORY NOTE

Cross Reference, Provision Revised. The Act of May 10, 1926, the Interior Department Appropriation Act for 1927, repeats the above provision in revised form. The revised provision does not include the mandatory condition in the second proviso above with respect to a contract or contracts between the United States and the State of Montana. Extracts from the Act, including the Sun River project item, appear herein in chronological order.

* * * * *

[North Platte project—Balance available—Power plant and revenues applied to construction costs.]—North Platte project, Nebraska–Wyoming: For operation and maintenance, continuation of construction, and incidental operations, $510,000: * * * (43 Stat. 1167)

EXPLANATORY NOTE

Proviso Repealed. A proviso which was repealed by section 1 of the Act of May 25, 1948, 62 Stat. 273, read as follows: "*Provided further,* That all net revenues from any power plant connected with this project shall be applied to the repayment of the construction costs incurred by the government on the project until such obligations are fully repaid.

NOTES OF OPINIONS

1. Application of power revenues

Where the administrative officers of the Government fail to apply the net profits derived from the operation of a project power plant annually to the operation and maintenance costs of the project taken over by an irrigation district as required by subsection I of section 4 of the act of December 5, 1924, and such profits together with the amount paid by the irrigation district would have liquidated the debt of the district, no penalty can be charged against the district. First Assistant Secretary Dixon Opinion, 53 I.D. 257 (1931)

The net power revenues creditable to each of the four districts of the North Platte project should be credited each year on the annual installment of the construction charge of each district, without regard to the classification of the land, and the districts should agree to distribute the credit equally per acre to all of the irrigable lands of the districts, including land in class 5. Such distribution should be subject to the condition of the Act of March 3, 1925, 43 Stat. 1167, and to the restriction set forth in the last sentence of subsection I of the Act of December 5, 1924, 43 Stat. 703. Solicitor's Opinion, M–25908 (August 27, 1932)

* * * * *

[Newlands project, Spanish Springs division—Contract with irrigation district required—Contract required of Southern Pacific Co. for sale of irrigated lands, etc.—Water right canceled if sale fraudulent—Contract with Nevada to assume development of project—Advance payments—Priority of present users—Power-plant revenues.]—Newlands project, Spanish Springs division, Nevada: * * * *Provided,* That no water shall be delivered to irrigators on this division outside of the limits of the Truckee-Carson project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment by the district or districts as hereinafter provided; *Pro-*

vided further, That no part of the sum provided for herein shall be expended for construction on account of any lands owned by the Southern Pacific Company until an appropriate contract in form approved by the Secretary of the Interior shall have been properly executed by the said company, fixing the price and conditions of sale of said lands, to actual settlers, and such contract shall provide that until one-half of the construction charges against said lands shall have been fully paid no sale of any such lands shall be valid unless and until the purchase price involved in such sale is approved by the Secretary of the Interior, and shall also provide that upon proof of fraudulent representation as to the true consideration involved in any such sale the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sale; and all public lands irrigable under the Spanish Springs division shall be entered subject to the conditions of this section which shall be applicable thereto: *Provided further,* That the Secretary of the Interior is authorized to enter into such contract or contracts as may be possible whereby the State of Nevada, or local interests, shall aid in promoting the development and settlement of the project after completion by the securing and selection of settlers and the financing of them to enable the purchase of the required livestock, equipment, and supplies and the improvement of the lands to render them habitable and productive: *Provided further,* That the operation and maintenance charges on account of land in this division shall be paid annually in advance not later than March 1, no charge being made for operation and maintenance for the first year after said public notice. It shall be the duty of the Secretary of the Interior to give such public notice when water is actually available for such lands: *Provided further,* That the existing water rights of the present water users of the Newlands project shall have priority over the water rights of the proposed Spanish division: *Provided further,* That the lands on the existing project below the Lahontan Reservoir shall not be liable for any part of the construction costs of the Spanish Springs division: *Provided further,* That all net revenues from any power plant connected with the Spanish Springs division of the Newlands project shall be applied to the repayment of the construction costs incurred by the Government on said division until such obligations are fully repaid and all net revenues from any power plant connected with the Lahontan Reservoir of the Newlands project shall be applied to the repayment of the construction costs incurred by the Government on the existing project until such obligations are fully repaid. (43 Stat. 1167)

EXPLANATORY NOTE

Cross Reference, Provision Revised. The Act of May 10, 1926, the Interior Department Appropriation Act for 1947, repeats the above provision in revised form. The revised provision does not include the proviso with respect to a contract between the Secretary of the Interior and the Southern Pacific Company. It does include, however, an excess lands provision. Extracts from the 1926 Act, including the Spanish Springs division item, appear herein in chronological order.

* * * * *

[Vale project—Contracts for payments by districts—Repayment contracts required of districts—No water delivery until Oregon assumes development of project after completion—State to provide funds—Advance payments—Pur-

chase of storage reservoir of Warm Springs project—Drainage works.]—Vale project, Oregon: *Repealed*—

EXPLANATORY NOTES

Provision Repealed. Section 5 of the Act of October 27, 1949, 63 Stat. 943, which appears herein in chronological order, repealed all beginning with the first *"Provided"* under "Vale Project, Oregon" in this act. The repealed provisions read as follows: *"Provided,* That no part of this appropriation shall be used for construction purposes on the Vale project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law, providing for payment by the district or districts as hereinafter provided: *Provided further,* That no part of the sum provided for herein shall be expended for construction on account of any lands in private ownership until an appropriate repayment contract in accordance with the terms of this act and in form approved by the Secretary of the Interior, shall have been properly executed by a district organized under State law, embracing the lands in public or private ownership irrigable under the project and the execution thereof shall have been confirmed by a decree of a court of competent jurisdiction, which contract, among other things, shall provide for an appraisal approved by the Secretary of the Interior, showing the present actual bona fide value of all such irrigable lands, fixed without reference to the proposed construction, and shall provide that until one-half of the construction charges against said lands shall have been fully paid no sale of any such lands shall be valid unless and until the purchase price involved in such sale is approved by the Secretary of the Interior, and shall also provide that upon proof of fraudulent representation as to the true consideration involved in any such sale the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sale; and all public lands irrigable under the project shall be entered subject to the conditions of this section, which shall be applied thereto: *Provided further,* That no water shall be delivered to irrigators on this project until a contract or contracts shall have been executed between the United States and the State of Oregon, whereby the State shall assume the duty and responsibility of promoting the development and settlement of the project after completion, including the subdivision of lands held in private ownership by any individual in excess of one hundred and sixty irrigable acres, the securing, selection, and financing of settlers to enable the purchase of the required livestock, equipment, and supplies and the improvement of the lands to render them habitable and productive. The State shall provide the funds necessary for this purpose and shall conduct operations in a manner satisfactory to the Secretary of the Interior: *Provided further,* That the operation and maintenance charges on account of land in this project shall be paid annually in advance not later than March 1, no charge being made for operation and maintenance for the first year after said public notice. It shall be the duty of the Secretary of the Interior to give such public notice when water is actually available for such lands: *Provided further,* That not more than $200,000 of the amount herein appropriated shall be available for purchase of an interest in the existing storage reservoir of the Warm Springs project, said interest to be conveyed to the United States free of all prior liens and encumbrances of every kind whatever: *Provided further,* That the contract for the purchase of said interest in said reservoir shall also provide for construction of the necessary drainage works by the said Warm Springs and Vale projects and the proportion of cost of said works to be borne by each."

Provision Repeated. A provision making funds available for purchase of a proportionate interest in the existing storage reservoir of the Warm Springs project, similar to the penultimate proviso in the note above, is contained in each subsequent annual Interior Department Appropriation Act through the Act of March 4, 1929, 45 Stat. 1591.

NOTES OF OPINIONS

1. Warm Springs reservoir

The purchase referred to in the last proviso but one, above, was considered by the Supreme Court of Oregon, which held that after special statutory proceedings were held confirming contract between the United States and the Warm Springs Irrigation District for the sale by the district to the United States of an interest in Warm Springs Reservoir belonging to the district, a district land owner who defaulted in the special proceedings could not succeed in a collateral attack by means of a suit to enjoin the sale. *Johnson v. Warm Springs Irr. Dist.,* 118 Ore. 239, 246 P. 527 (1926).

Under its contract with the Warm Springs

Irrigation District, the United States is entitled to claim credit in water stored in the Warm Springs Reservoir for water lost by the Vale project through deep percolation which subsequently reappears and is used by the District for its Warm Springs project. *United States v. Warm Springs Irr. Dist.*, 38 F. Supp. 239 (D. Ore. 1940).

* * * * *

[Salt Lake Basin project, Utah—Contracts for payments by districts required.]—Salt Lake Basin project, Utah, first division: For construction of Echo Reservoir, Utah Lake control, and Weber-Provo Canal, and incidental operations, $900,000: *Provided,* That any unexpended balance of any appropriation available for the Salt Lake Basin project for the fiscal year 1925 shall remain available during the fiscal year 1926: *Provided further,* That no part of this appropriation shall be used for construction purposes until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law, or water users' association or associations providing for payment by the district or districts, or water users' association or associations, as hereinafter provided: *Provided further,* That the operation and maintenance charges on account of land in this project shall be paid annually in advance not later than March 1, no charge being made for operation and maintenance for the first year after said public notice. It shall be the duty of the Secretary of the Interior to give such public notice when water is actually available for such lands. (43 Stat. 1170)

EXPLANATORY NOTE

Provision Repeated. Similar provisions relating to the Salt Lake Basin project are contained in the Interior Department Appropriation Act for 1927, Act of May 10, 1926, 44 Stat. 484, except that the following is added at the end: "and the operation and maintenance charges, if any, payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment."

[Yakima project, Kittitas division, Washington—Contracts for payments—Appropriate repayment contracts—Provisions in contracts—No construction expenditure until State assumes development, etc., of project after completion—State to provide funds—Advance payments required.]—Yakima project (Kittitas division), Washington: For construction of the Kittitas division and incidental operations, $375,000: *Provided,* That no part of this appropriation shall be used for construction purposes until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment by the district or districts as hereinafter provided. (43 Stat. 1170)

EXPLANATORY NOTE

Provision Repealed. Section 7(c) of the Act of May 6, 1949 (63 Stat. 62), which appears herein in chronological order, repealed all except the first sentence under this subheading. The repealed provisions read as follows: "The Secretary of the Interior shall by public notice announce the date when water is available under the project: *Provided further,* That no part of the sum provided for herein shall be expended for construction on account of any lands in private ownership until an appropriate repayment contract in form approved by the Secretary of the Interior shall have been properly executed by a district organized under State law, embracing the lands in public or private ownership irrigable under the project, and the execu-

tion thereof shall have been confirmed by decree of a court competent jurisdiction, which contract, among other things, shall contain a provision for an appraisal, showing the present actual bona fide value of all such irrigable lands fixed without reference to the proposed construction of said Kittitas division, and shall provide that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall be valid unless and until the purchase price involved in such sale is approved by the Secretary of the Interior, and shall also provide that upon proof of fraudulent representation as to the true consideration involved in any such sale the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sale; and all public lands irrigable under the project shall be entered subject to the conditions of this section which shall be applicable thereto: *Provided further,* That no part of the sum hereby appropriated shall be expended for construction until a contract or contracts shall have been executed between the United States and the State of Washington pursuant to its land settlement act embodied in chapter 188, Laws of 1919, as amended by chapter 90, Laws of 1921, and by chapters 34 and 112, Laws of 1923, or additional enactments, if necessary, whereby the State shall assume the duty and responsibility of promoting the development and settlement of the project after completion, including the subdivision of lands held in private ownership by any individual in excess of one hundred and sixty irrigable acres, the securing, selection, and financing of settlers to enable the purchase of the required livestock, equipment, and supplies, and the improvement of the lands to render them habitable and productive. The State shall provide the funds necessary for this purpose and shall conduct operations in a manner satisfactory to the Secretary of the Interior: *Provided further,* That the operation and maintenance charges on account of land in this project shall be paid annually in advance not later than March 1, no charge being made for operation and maintenance for the first year after said public notice. It shall be the duty of the Secretary of the Interior to give such public notice when water is actually available for such lands.

NOTE OF OPINION

. Contract with State

The Secretary may not cancel, without authority from Congress, the contract dated December 19, 1925, between the United States and the State of Washington, wherein the State agreed to expend up to $300,000 in settlement of the Kittitas division of the Yakima project. However, the Secretary may make a supplemental agreement with the State, limiting the expenditure of the State to $75,000, which amount is in proportion to the land still to be developed. First Assistant Secretary Opinion, December 13, 1933.

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts of this act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 10020, Public Law 580 in the 68th Congress. H.R. Rept. No. 1033. S. Rept. No. 839. H.R. Repts. Nos. 1482, 1584 and 1663 (conference reports).

COLORADO RIVER FRONT WORK AND LEVEE SYSTEM ADJACENT TO YUMA PROJECT

[Extract from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes. (Act of March 3, 1925, ch. 467, 43 Stat. 1186)

* * * * *

Sec. 16. [Reclamation fund to be reimbursed for work on Colorado River adjacent to Yuma project—Transfer to reclamation fund of amount for levee work, fiscal year 1926.]—(a) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $650,000, or so much thereof as may be necessary, to reimburse the reclamation fund for the benefit of the Yuma Federal irrigation project in Arizona and California for all costs, as found by the Secretary of the Interior, heretofore incurred and paid from the reclamation fund for the operation and maintenance of the Colorado River front work and levee system adjacent to said project.

(b) There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, the sum of $50,000 or so much thereof as may be necessary, to be transferred to the reclamation fund and to be expended under the direction of the Secretary of the Interior for the purpose of paying the operation and maintenance costs of said Colorado River front work and levee system adjacent to said Yuma project, Arizona California, for the fiscal year ending June 30, 1926. (48 Stat. 1198)

(c) *Repealed.*

Explanatory Note

Provision Repealed. The Act of January 21, 1927, 44 Stat. 1010, which appears herein in chronological order, repealed subsection 16(c), and at the same time enacted a similar provision. The repealed subsection read as follows: "There is hereby authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated for the fiscal year ending June 30, 192' and annually thereafter the sum of $35,00(or so much thereof as may be necessary, ; the share of the Government of the Unite States of the costs of operating and mai taining said Colorado River front wo and levee system."

* * * * *

Explanatory Notes

Not Codified. The extract of this act shown here is not codified in the U.S. Code.

Cross Reference, Additional Provisions. For additional provisions concerning the Colorado Front Work and Levee System, see the Act of January 21, 1927, and the notes thereunder. The Act appears herein in chronological order.

Cross Reference, Earlier Authorization. The Act of June 25, 1910, 36 Stat. 883, appropriated one million dollars to tl President for the protection of property Imperial Valley and elsewhere along tl Colorado River against damage fro changes in the channel of the Colorac River. The Act appears herein in chron logical order.

Legislative History. H.R. 11472, Publ Law 585 in the 68th Congress. H.R. Rep No. 1122. S. Rept. No. 1143.

NOTE OF OPINION

1. Emergency repairs

Expenditure is authorized for emergency repairs under appropriation acts for 1927 and 1928, if existing works or water supply for land under cultivation in Yuma project be endangered by floods or other extraordinary conditions. Dec. Comp. Gen., A–16521 (March 15, 1927).

SOUTH PLATTE RIVER COMPACT

An act to grant the consent and approval of Congress to the South Platte River Compact.
(Act of March 8, 1926, ch. 46, 44 Stat. 195)

[**Consent of Congress to Compact.**]—The consent and approval of Congress is hereby given to the compact signed by the commissioners for the States of Colorado and Nebraska at the city of Lincoln, State of Nebraska, on the 27th day of April, anno Domini 1923, and thereafter approved by the Legislature of the State of Colorado by an Act approved February 26, 1925 (Session Laws, Colorado, 1925, chapter 179, pages 529–541), and by the Legislature of the State of Nebraska by an act approved May 3, 1923 (Session Laws, Nebraska, 1923, chapter 125, pages 299–310), which compact is as follows:

"The State of Colorado and the State of Nebraska, desiring to remove all causes of present and future controversy between said States, and between citizens of one against citizens of the other, with respect to the waters of the South Platte River, and being moved by considerations of interstate comity, have resolved to conclude a compact for these purposes and, through their respective governors, have named as their commissioners:

"Delph E. Carpenter for the State of Colorado, and Robert H. Willis for the State of Nebraska, who have agreed upon the following articles:

"Article I

"In this compact—

"1. The State of Colorado and the State of Nebraska are designated, respectively, as 'Colorado' and 'Nebraska.'

"2. The provisions hereof respecting each signatory State shall include and bind its citizens and corporations and all others engaged or interested in the diversion and use of the waters of the South Platte River in that State.

"3. The term 'upper section' means that part of the South Platte River in the State of Colorado above and westerly from the west boundary of Washington County, Colorado.

"4. The term 'lower section' means that part of the South Platte River in the State of Colorado between the west boundary of Washington County and the intersection of said river with the boundary line common to the signatory States.

"5. The term 'interstate station' means that stream-gauging station described in Article II.

"6. The term 'flow of the river' at the interstate station means the measured flow of the river at said station, plus all increment to said flow entering the river beween the interstate station and the diversion works of the western irrigation district in Nebraska.

"Article II

"1. Colorado and Nebraska, at their joint expense, shall maintain a stream-gauging station upon the South Platte River at the river bridge near the town

of Julesburg, Colorado, or at a convenient point between said bridge and the diversion works of the canal of the western irrigation district in Nebraska, for the purpose of ascertaining and recording the amount of water flowing in said river from Colorado into Nebraska and to said diversion works at all times between the 1st day of April and the 15th day of October of each year. The location of said station may be changed from year to year as the river channels and water flow conditions of the river may require.

"2. The State engineer of Colorado and the secretary of the department of public works of Nebraska shall make provision for the cooperative gauging at and the details of operation of said station and for the exchange and publication of records and data. Said State officials shall ascertain the rate of flow of the South Platte River through the lower section in Colorado and the time required for increases or decreases of flow, at points within said lower section, to reach the interstate station. In carrying out the provisions of Article IV of this compact, Colorado shall always be allowed sufficient time for any increase in flow (less permissible diversions) to pass down the river and be recorded at the interstate station.

"ARTICLE III

"The waters of Lodgepole Creek, a tributary of the South Platte River, flowing through Nebraska and entering said river within Colorado, hereafter shall be divided and apportioned between the signatory States as follows:

"1. The point of division of the waters of Lodgepole Creek shall be located on said creek 2 miles north of the boundary line common to the signatory States.

"2. Nebraska shall have the full and unmolested use and benefit of all waters flowing in Lodgepole Creek above the point of division and Colorado waives all present and future claims to the use of said waters. Colorado shall have the exclusive use and benefit of all waters flowing at or below the point of division.

"3. Nebraska may use the channel of Lodgepole Creek below the point of division and the channel of the South Platte River between the mouth of Lodgepole Creek and the interstate station for the carriage of any waters of Lodgepole Creek which may be stored in Nebraska above the point of division and which Nebraska may desire to deliver to ditches from the South Platte River in Nebraska, and any such waters so carried shall be free from interference by diversions in Colorado and shall not be included as a part of the flow of the South Platte River to be delivered by Colorado at the interstate station in compliance with Article IV of this compact: *Provided, however,* That such runs of stored water shall be made in amounts of not less than 10 cubic feet per second of time and for periods of not less than twenty-four hours.

"ARTICLE IV

"The waters of the South Platte River hereafter shall be divided and apportioned between the signatory States as follows:

"1. At all times between the 15th day of October of any year and the 1st day of April of the next succeeding year Colorado shall have the full and uninterrupted use and benefit of the waters of the river flowing within the boundaries of the State, except as otherwise provided by Article VI.

"2. Between the 1st day of April and the 15th day of October of each year Colorado shall not permit diversions from the lower section of the river to supply Colorado appropriations having adjudicated dates of priority subsequent to the 14th day of June, 1897, to an extent that will diminish the flow of the river at the interstate station on any day below a mean flow of one hundred and twenty cubic feet of water per second of time, except as limited in paragraph 3 of this article.

"3. Nebraska shall not be entitled to receive, and Colorado shall not be required to deliver, on any day any part of the flow of the river to pass the interstate station, as provided by paragraph 2 of this article, not then necessary for beneficial use by those entitled to divert water from said river within Nebraska.

"4. The flow of the river at the interstate station shall be used by Nebraska to supply the needs of present perfected rights to the use of water from the river within said State before permitting diversions from the river by other claimants.

"5. It is recognized that variable climatic conditions, the regulation and administration of the stream in Colorado, and other causes, will produce diurnal and other unavoidable variations and fluctuations in the flow of the river at the interstate station, and it is agreed that, in the performance of the provisions of said paragraph 2, minor or compensating irregularities and fluctuations in the flow at the interstate station shall be permitted; but where any deficiency of the mean daily flow at the interstate station may have been occasioned by neglect, error, or failure in the performance of duty by the Colorado water officials having charge of the administration of diversions from the lower section of the river in that State, each such deficiency shall be made up, within the next succeeding period of seventy-two hours, by delivery of additional flow at the interstate station, over and above the amount specified in paragraph 2 of this article, sufficient to compensate for such deficiency.

"6. Reductions in diversions from the lower section of the river, necessary to the performance of paragraph 2 of this article by Colorado, shall not impair the rights of appropriators in Colorado (not to include the proposed Nebraska canal described in Article VI), whose supply has been so reduced, to demand and receive equivalent amounts of water from other parts of the stream in that State according to its constitution, laws, and the decisions of its courts.

"7. Subject to compliance with the provisions of this article, Colorado shall have and enjoy the otherwise full and uninterrupted use and benefit of the waters of the river which hereafter may flow within the boundaries of that State from the 1st day of April to the 15th day of October in each year, but Nebraska shall be permitted to divert, under and subject to the provisions and conditions of Article VI, any surplus waters which otherwise would flow past the interstate station.

"ARTICLE V

"1. Colorado shall have the right to maintain, operate, and extend, within Nebraska, the Peterson Canal and other canals of the Julesburg irrigation district which now are or may hereafter be used for the carriage of water from the South Platte River for the irrigation of lands in both States, and Colorado shall continue to exercise control and jurisdiction of said canals and the carriage and delivery of water thereby. This article shall not excuse Nebraska water users from making reports to Nebraska officials in compliance with the Nebraska laws.

"2. Colorado waives any objection to the delivery of water for irrigation of lands in Nebraska by the canals mentioned in paragraph 1 of this article, and agrees that all interests in said canals and the use of waters carried thereby, now or hereafter acquired by owners of lands in Nebraska, shall be afforded the same recognition and protection as are the interests of similar landowners served by said canals within Colorado: *Provided, however,* That Colorado reserves to those in control of said canals the right to enforce the collection of charges or assessments, hereafter levied or made against such interests of owners of the lands in Nebraska, by withholding the delivery of water until the payment of such charges or assessments: *Provided, however,* such charges or assessments shall be the same as those levied against similar interests of owners of land in Colorado.

"3. Nebraska grants to Colorado the right to acquire by purchase, prescription, or the exercise of eminent domain, such rights of way, easements, or lands as may be necessary for the construction, maintenance, operation, and protection of those parts of the above-mentioned canals which now or hereafter may extend into Nebraska.

"ARTICLE VI

"It is the desire of Nebraska to permit its citizens to cause a canal to be constructed and operated for the diversion of water from the South Platte River within Colorado for irrigation of lands in Nebraska; that said canal may commence on the south bank of said river at a point southwesterly from the town of Ovid, Colorado, and may run thence easterly through Colorado along or near the line of survey of the formerly proposed Perkins County Canal (sometimes known as the South Divide Canal) and into Nebraska, and that said project shall be permitted to divert waters of the river as hereinafter provided. With respect to such proposed canal it is agreed:

"1. Colorado consents that Nebraska and its citizens may hereafter construct, maintain, and operate such a canal and thereby may divert water from the South Platte River within Colorado for use in Nebraska in the manner and at the time in this article provided, and grants to Nebraska and its citizens the right to acquire by purchase, prescription, or the exercise of eminent domain such rights of way, easements, or lands as may be necessary for the construction, maintenance, and operation of said canal; *subject, however,* to the reservations and limitations and upon the conditions expressed in this article which are and shall be limitations upon and reservations and conditions running with the rights

and privileges hereby granted, and which shall be expressed in all permits issued by Nebraska with respect to said canal.

"2. The net future flow of the lower section of the South Platte River which may remain after supplying all present and future appropriations from the upper section and after supplying all appropriations from the lower section perfected prior to the 17th day of December, 1921, and after supplying the additional future appropriations in the lower section for the benefit of which a prior and preferred use of thirty-five thousand acre-feet of water is reserved by subparagraph (a) of this article, may be diverted by said canal between the 15th day of October of any year and the 1st day of April of the next succeeding year, subject to the following reservations, limitations, and conditions:

"(a) In addition to the water now diverted from the lower section of the river by present perfected appropriations Colorado hereby reserves the prior, preferred, and superior right to store, use, and to have in storage in readiness for use on and after the 1st day of April in each year an aggregate of thirty-five thousand acre-feet of water to be diverted from the flow of the river in the lower section between the 15th day of October of each year and the 1st day of April of the next succeeding year, without regard to the manner or time of making such future uses, and diversions of water by said Nebraska canal shall in no manner impair or interfere with the exercise by Colorado of the right of future use of the water hereby reserved.

"(b) Subject at all times to the reservation made by subparagraph (a) and to the other provisions of this article, said proposed canal shall be entitled to divert five hundred cubic feet of water per second of time from the flow of the river in the lower section, as of priority of appropriation of date December 17, 1921, only between the 15th day of October of any year and the 1st day of April of the next succeeding year upon the express condition that the right to so divert water is and shall be limited exclusively to said annual period and shall not constitute the basis for any claim to water necessary to supply all present and future appropriations in the upper section or present appropriations in the lower section and those hereafter to be made therein as provided in subparagraph (a).

"3. Neither this compact nor the construction and operation of such a canal nor the diversion, carriage, and application of water thereby shall vest in Nebraska, or in those in charge or control of said canal or in the users of water therefrom, any prior, preferred, or superior servitude upon or claim or right to the use of any water of the South Platte River in Colorado from the 1st day of April to the 15th day of October of any year or against any present or future appropriator or user of water from said river in Colorado during said period of every year, and Nebraska specifically waives any such claims and agrees that the same shall never be made or asserted. Any surplus waters of the river, which otherwise would flow past the interstate station during such period of any year after supplying all present and future diversions by Colorado, may be diverted by such a canal, subject to the other provisions and conditions of this article.

"4. Diversions of water by said canal shall not diminish the flow necessary to pass the interstate station to satisfy superior claims of users of water from the river in Nebraska.

"5. No appropriations of water from the South Platte River by any other canal within Colorado shall be transferred to said canal or be claimed or asserted for diversion and carriage for use on lands in Nebraska.

"6. Nebraska shall have the right to regulate diversions of water by said canal for the purposes of protecting other diversions from the South Platte River within Nebraska and of avoiding violations of the provisions of Article IV; but Colorado reserves the right at all times to regulate and control the diversions by said canal to the extent necessary for the protection of all appropriations and diversions within Colorado or necessary to maintain the flow at the interstate station as provided by Article IV of this compact.

"ARTICLE VII

"Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado.

"ARTICLE VIII

"Whenever any official of either State is designated herein to perform any duty under this contract, such designation shall be interpreted to include the State official or officials upon whom the duties now performed by such official may hereafter devolve, and it shall be the duty of the officials of the State of Colorado charged with the duty of the distribution of the waters of the South Platte River for irrigation purposes to make deliveries of water at the interstate station in compliance with this compact without necessity of enactment of special statutes for such purposes by the General Assembly of the State of Colorado.

"ARTICLE IX

"The physical and other conditions peculiar to the South Platte River and to the territory drained and served thereby constitute the basis for this compact and neither of the signatory States hereby concedes the establishment of any general principle or precedent with respect to other interstate streams.

"ARTICLE X

"This compact may be modified or terminated at any time by mutual consent of the signatory States, but, if so terminated, and Nebraska or its citizens shall seek to enforce any claims of vested rights in the waters of the South Platte River, the statutes of limitation shall not run in favor of Colorado or its citizens with reference to claims of the western irrigation district to the water of the South Platte River from the 16th day of April, 1916, and as to all other present claims from the date of the approval of this compact to the date of such termina-

tion, and the State of Colorado and its citizens who may be made defendants in any action brought for such purpose shall not be permitted to plead the statutes of limitation for such periods of time.

"ARTICLE XI

"This compact shall become operative when approved by the legislature of each of the signatory States and by the Congress of the United States. Notice of approval by the legislature shall be given by the governor of each State to the governor of the other State, and to the President of the United States, and the President of the United States is requested to give notice to the governors of the signatory States of the approval by the Congress of the United States.

"In witness whereof the commissioners have signed this compact in duplicate originals, one of which shall be deposited with the Secretary of State of each of the signatory States.

"Done at Lincoln, in the State of Nebraska, this twenty-seventh day of April, in the year of our Lord one thousand nine hundred and twenty-three. (44 Stat. 195–201)

"DELPH E. CARPENTER.
"ROBERT H. WILLIS."

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2825, Public Law 37 in the 69th Congress. S. Rept. No. 140. H.R. Rept. No. 314 (on H.R. 8901).

LANDS FOR FAIR GROUNDS, TOWN SITE OF POWELL

An act authorizing the Secretary of the Interior to convey certain lands in Powell town site, Shoshone reclamation project, Wyoming, to Park County, Wyoming. (Act of April 3, 1926, ch. 104, 44 Stat. 235)

[**Sec. 1. Patent authorized.**]—The Secretary of the Interior is hereby authorized and directed to cause a patent to issue conveying blocks 3, 4, 5, 14, 15, 16, and the east half of blocks 6 and 13, town site of Powell, on the Shoshone reclamation project, Wyoming, to Park County, Wyoming, in a trust for use as a county fair grounds; but in said patent there shall be reserved to the United States all oil, coal, and other mineral deposits within said lands and the right to prospect for, mine, and remove the same. (44 Stat. 235)

Sec. 2. [**Conditions.**]—The conveyance herein is made upon the express condition that within thirty days of the receipt of any request therefor from the Secretary of the Interior the county clerk of Park County, Wyoming, shall submit to the Secretary of the Interior a report as to the use made of the land herein granted the county during the preceding period named in such request, showing compliance with the terms and conditions stated in this Act; and that in the event of his failure to so report, or in the event of a showing in such report to the Secretary of the Interior that the terms of the grant have not been complied with, the grant shall be held to be forfeited, and the title shall revert to the United States, and the Secretary of the Interior is hereby authorized and empowered to determine the facts and declare such forfeiture and such reversion and restore said land to the public domain, and such order of the Secretary shall be final and conclusive. (44 Stat. 235)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1169, Public Law 91 in the 69th Congress. S. Rept. No. 137. H.R. Rept. No. 454.

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1927

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1927, and for other purposes. (Act of May 10, 1926, ch. 277, 44 Stat. 453)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[Extension of time for payment of unpaid operation and maintenance or water-rental charges—Interest—Contracts for payment of unpaid construction charges—Interest.]—* * * The Secretary of the Interior is hereby authorized, in his discretion, until June 30, 1927, to extend the time for payment of operation and maintenance or water-rental charges due and unpaid for such period as in his judgment may be necessary, not exceeding five years. The charges so extended shall bear interest, payable annually, at the rate of 6 per centum per annum until paid. The Secretary of the Interior is also authorized, in his discretion, until June 30, 1927, to contract with any irrigation district or water-users' association for the payment of the construction charges then remaining unpaid within such term of years as the Secretary may find to be necessary. The construction charges due and unpaid when such contract is executed shall bear interest payable annually at the rate of 6 per centum per annum until paid. (44 Stat. 479)

[Sun River, Owyhee and Baker projects—Contracts for payment of cost of constructing, operating, and maintaining works while in control of United States—Cooperation by States—Operation and maintenance charges.]—No part of the sums provided for in this act for the Sun River, Owyhee, and Baker projects shall be expended for construction purposes until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than 40 years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Upon such confirmation of such contract as to any one of such projects, the construction thereof shall proceed in accordance with any appropriations therefor provided for in this act. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and

in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided further,* That the operation and maintenance charges on account of lands in said project and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment. (44 Stat. 479)

EXPLANATORY NOTES

1949 Amendment. Section 5 of the Act of October 27, 1949, 63 Stat. 943, struck the word "Vale" which appeared after the word "Owyhee" in the first sentence of the above paragraph. The 1949 Act appears herein in chronological order.

Exemption of Beaver Creek Reservoir. A proviso under the subsequent appropriation item for the Sun River project in this Act exempts the Beaver Creek Reservoir from the above restrictions.

NOTES OF OPINIONS

1. Condition precedent

The Secretary of the Interior is not required to proceed with the construction of the Baker project, Oregon, even though Congress has appropriated funds therefor, if he is unable to find that the project is feasible and that the costs will be repaid to the United States, as required by subsection B, section 4, of the Act of December 5, 1924, 43 Stat. 702, and section 4 of the Act of June 17, 1902, 32 Stat. 389, and unless a contract has been executed and confirmed as required by the Act of May 10, 1926, 44 Stat. 479. Letter from the Attorney General to Representative Sinnott and Senators McNary and Stanfield, reprinted in the *New Reclamation Era,* September, 1926, at 152; 35 Op. Atty Gen. 125 (1926); 34 Op. Atty Gen. 545 (1925). See also Solicitor's Opinions dated June 11, 1926, and July 20, 1925.

* * * * *

[Minidoka project—Application of net proceeds from power plants, etc., to pay water-right charges.]—Minidoka project, Idaho: * * * *Provided,—Repealed.*

EXPLANATORY NOTE

Provision Repealed. The Act of May 31, 1962, which appears herein in chronological order, authorizing the execution of amendatory contracts between the United States and (1) the Burley Irrigation District, and (2) the Minidoka Irrigation District, repealed the portion of this Act relating to the Minidoka project, which contained the following proviso: "That the accumulated net profits as determined by the Secretary of the Interior, arising under the project, derived from the operation of the project power plants, leasing of Government grazing and farm lands, the sale and use of town sites, and from all other sources shall be applied by the Secretary of the Interior, so far as may be necessary, in payment of any water-right charges due the United States by any individual water user or irrigation district to whose benefit personally or in the aggregate such accumulated profits should equitably accrue in the judgment of the Secretary of the Interior, whose decision shall be inclusive. Any surplus of such accumulated net profits and future profits from such sources shall be applied as provided by subsection I, section 4, act of December 5, 1924 (Forty-third Statutes, p. 701). (44 Stat. 480)"

NOTES OF OPINIONS

District's interest in power plant 2
Finality of apportionment of power profits between districts 1

1. Finality of apportionment of power profits between districts

By order of March 14, 1927, the Secretary of the Interior held that the profits from the sale of electric energy should be credited to the two districts of the Minidoka project in the same proportion as the costs of the power plant were charged; that is, 95.6 per cent to the Burley irrigation district, and 4.4 per cent to the Minidoka irrigation district. In 1929, a committee appointed by the Secretary recommended that the proceeds from the sale of power be divided 72.7 per cent to the Burley irrigation district and 27.3 per cent to the Minidoka irrigation district. The Burley irrigation district filed a motion for preliminary injunction to restrain the Secretary from reconsideration of the matter of ratio of ownership and participation by the two districts in the power profits previously adopted. The court held that the matter was finally determined by the Secretary of the Interior in his decision of March 14, 1927, above mentioned, and that he was without power to take the action recommended by the committee appointed in 1929. *Wilbur* v. *Burley Irr. Dist.*, 58 F.2d 871, 61 App. D.C. 145 (1932)

2. District's interest in power plant

The Government's power plant at the Minidoka Dam on the Minidoka project in eastern Idaho, had only a small supply of energy available for commercial sales during the irrigation season on account of the power demand for irrigation pumping on the project. The United States made a contract with the Idaho Power Co. by which the Government delivered to the company a portion of the output of the Government's Black Canyon power plant on the Boise project in the Western part of the State, in return for which the company supplemented the energy supply from the Minidoka plant so as to make firm power available for commercial sales throughout the year. The Secretary, also, to conserve for irrigation use the winter flow of the Snake River which theretofor had produced power at the Minidoka power plant, stopped the winter operation of the plant in order to store the water in American Falls reservoir above. The winter commercial power needs on the project were supplied under the same arrangement with the Idaho Power Co. The Secretary, for the year 1935, allocated $50,000 to the Black Canyon plant from revenues from commercial sales on the Minidoka project. The Burley district which was entitled to share in the profits of the Minidoka plant (*Wilbur v. Burley Irrigation District,* 58 F.2d 871 (1932)) brought a suit to enjoin the Secretary, from making such distribution, basing its claim on the contention that it was "the owner" of 95.6 percent of the Minidoka power plant. The court dismissed the suit holding after distinguishing between the plaintiff's ownership of the right to a percentage of the profits and the "ownership of the plant" contended for by the plaintiff, "In the face of these findings, there can be no question that the Secretary's action in placing the plan into effect was essential (1) to fulfill plaintiff's requirements for power for irrigation and (2) to preserve the commercial business, without which there would have been no profits to share. In these circumstances he had lawful authority to stop the flow of winter water and cease generating winter power at the plant." *Burley Irr. Dist. v. Ickes,* 116 F. 2d 529, 73 App. D.C. 23 (1940), *cert. denied,* 312 U.S. 687 (1941).

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[**Milk River project—Restriction on maintenance of Glasgow division—Contracts for payment of construction and operation and maintenance charges.**]—Milk River project, Montana: * * * and no part of this amount shall be available for maintenance and operation of the Glasgow division after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State laws providing for payment of construction and operation and maintenance charges for such district or districts: *Provided,* That no part of this amount shall be available for maintenance and operation of the Malta division after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of construction and operation and maintenance charges by such district or districts: *Provided further,* That any moneys which may be advanced for construction and operation and maintenance of the said Malta division after December 31, 1926, or of the Glasgow division hereafter shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said funds had been specifically appropriated for said purposes. (44 Stat. 481)

[**Sun River project—Appropriation contingent upon balance from prior appropriation remaining available.**]—Sun River project, Montana: * * * *Provided,* That the unexpended balance of the appropriation of $611,000 for the fiscal year 1926, made available by the act of March 3, 1925 (Forty-third Statutes, p. 1167), shall remain available for the fiscal year 1927: *Provided,* That the restrictions carried elsewhere in this act upon the use of appropriations for construction purposes upon the Sun River and certain other projects shall not be deemed to apply to the construction of the Beaver Creek Reservoir. (44 Stat. 481)

[**Lower Yellowstone project—Contracts for payment of construction and operation and maintenance charges.**]—Lower Yellowstone project, Montana-North Dakota: * * * *Provided,* That not to exceed $65,000 of the unexpended balance of the appropriation of $180,000 for the fiscal year 1926, made available by the act of March 3, 1925 (Forty-third Statutes, p. 1167), shall remain available for the fiscal year 1927: *Provided further,* That no part of this amount shall be available for maintenance and operation after December 31, 1926, unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of construction and operation and maintenance charges by such district or districts. (44 Stat. 481)

[**North Platte project—Contracts for payment of construction and operation and maintenance charges.**]—North Platte project, Nebraska-Wyoming: * * * : *Provided,* That no part of this amount shall be available for maintenance and operation of any division of the project after December 31, 1926, unless a contract or contracts shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment of

construction and operation and maintenance charges against lands of that division by such district or districts. (44 Stat. 482)

[Newlands project—Spanish Springs division—Contracts for payment of cost of constructing, operating and maintaining works while in control of United States—Cooperation by States—Operation and maintenance charges on lands in division.]—Newlands project, Spanish Springs division, Nevada: *Provided,* That no water shall be delivered to irrigators on this division outside of the limits of the Truckee-Carson irrigation district until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or with irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in the control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and the development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State whereby such State shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof affixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from the division if the owners thereof shall refuse to execute valid recordable contracts for sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior, and that until one-half of the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior, and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided further,* That the operation and maintenance charges on account of lands in said division shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment. (44 Stat. 482)

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[**Shoshone project—Frannie division—Investigating feasibility of discontinuing any part of project—Balance available.**]—Shoshone project, Wyoming: * * * *Provided,* That no part of this amount shall be available for maintenance and operation of the Frannie division after December 31, 1926, and that any moneys which may be advanced for construction and operation and maintenance of the said Frannie division after that date shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said funds had been specifically appropriated for said purposes: *Provided further,* That the Secretary of the Interior is authorized to use so much of this amount as may be necessary in investigating the feasibility of discontinuing the operation of any portion of this project and removing the water users thereon to other lands elsewhere on the project and shall report hereon to Congress as early as may be practicable: (44 Stat. 484)

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EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Act. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 6707, Public Law 206 in the 69th Congress. H.R. Rept. No. 37. S. Rept. No. 373. H.R. Rept. No. 925 (conference report).

BLOCK 223, TOWN SITE OF HEYBURN

An act providing for the issuance of patent to the Boyle Commission Company for block numbered 223, town site of Heyburn, Idaho. (Act of May 17, 1926, ch. 315, 44 Stat. 1471)

[**Patent to Boyle Commission Company.**]—The Secretary of the Interior is hereby authorized and directed to issue a patent under the Act of April 16, 1906 (Thirty-fourth Statutes, page 116), and the Act of June 27, 1906 (Thirty-fourth Statutes, page 519), to the Boyle Commission Company, for block numbered 223, town site of Heyburn, Idaho, without requiring any further payments on account of the purchase price fixed for said land: *Provided,* That, except for the reduction thus made in the purchase price, the issuance of patent shall be subject to all the conditions and limitations of the aforesaid Acts of April 16, 1906, and June 27, 1906. (44 Stat. 1471)

Explanatory Notes

References in the Text. The Acts of April 16, 1906 (Thirty-fourth Statutes, page 116), and of June 27, 1906 (Thirty-fourth Statutes, page 519), referred to in the text, deal, respectively, with town sites and power development, and with farm units, town sites and desert land entries. Both Acts appear herein in chronological order.

Legislative History. H.R. 4681, Private Law 48 in the 69th Congress. H.R. Rept. No. 136. S. Rept. No. 683.

THE OMNIBUS ADJUSTMENT ACT

An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes. (Act of May 25, 1926, ch. 383, 44 Stat. 636)

[**Sec. 1. Adjustment of water-right charges on specified projects.**]—The Secretary of the Interior be, and he is hereby, empowered and directed to make, under subsection K, section 4, act of December 5, 1924 (Forty-third Statutes at Large, page 701), in connection with the irrigation projects hereinafter named, adjustment of water-right charges standing upon the records of said projects as of June 30, 1925, as follows: (44 Stat. 636)

EXPLANATORY NOTE

Reference in the Text. Subsection K, section 4 of the Act of December 5, 1924 (Forty-third Statutes at Large, page 701), referred to in the text, deals with surveys authorized to be made whenever it appears that settlers are unable to pay construction costs. The Act is the Fact Finders' Act, which appears herein in chronological order.

BELLE FOURCHE PROJECT, SOUTH DAKOTA

Sec. 2. [**Deductions from total cost.**]—There shall be deducted from the total cost of said project the following sums:

(1) $355,809, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) One thousand two hundred and eight acres permanently unproductive because of topography steep and rough heretofore eliminated;

(b) Six thousand eight hundred and ninety-seven acres permanently unproductive because of topography steep and rough; based on present land classification.

(2) $119,606 on account of operation and maintenance deficit prior to reclamation extension act of 1914.

(3) $12,036 on account of error or mistake representing Johnson Creek lateral storage investigations and Nine Mile location surveys as shown on page 14 of House Document Numbered 201, Sixty-ninth Congress, first session. (44 Stat. 636)

Sec. 3. [**Construction charges suspended.**]—All payments upon construction charges shall be suspended against the following lands:

(a) Ten thousand five hundred acres temporarily unproductive for lack of fertility in the soil, seepage, and excessive alkali salts;

(b) Six thousand eight hundred and ninety-five acres, Willow Creek lands awaiting further developments, temporarily unproductive.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and shown in the table on page 14 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document. (44 Stat. 636)

BOISE PROJECT, IDAHO

Sec. 4. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Two thousand nine hundred and ninety acres, Arrowrock division, temporarily unproductive for lack of fertility in the soil and being water-logged;

(b) Four hundred and eight acres, Arrowrock division, Nampa and Meridian district, temporarily unproductive for lack of fertility in the soil, being water-logged;

(c) Two thousand six hundred and fifty acres, Arrowrock division, temporarily unproductive because of light, sandy soil that blows easily;

(d) Three hundred and eighty-eight acres, Arrowrock division, temporarily unproductive because of porous soil difficult to irrigate.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 15 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, of said document. (44 Stat. 637)

CARLSBAD PROJECT, NEW MEXICO

Sec. 5. [Deductions from total cost.]—There shall be deducted from the total cost of the said project the sum of $374,885.69 on account of error and mistake in providing for additional storage in Lake McMillan Reservoir as follows:

(1) Acquisition of flowage rights required for additional storage, rights of way, and expenses incidental thereto, $164,383.62.

(2) For additional and incidental construction required for said additional storage, $210,502.07, as follows:

(a) Preliminary surveys, and so forth, $6,718.62.

(b) Extra dam construction, $89,153.13.

(c) Holes in reservoir bottom, $2,379.52.

(d) Spillway numbered 1, $49,549.80.

(e) Spillway numbered 2, $62,701. (44 Stat. 637)

Sec. 6. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands: One thousand and five acres temporarily unproductive for lack of fertility in the soil because of seepage and alkalinity; all as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 17 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, of said document. (44 Stat. 637)

GRAND VALLEY PROJECT, COLORADO

Sec. 7. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

$760,628, or such an amount as represents the construction costs as found by the Secretary of the Interior against the following lands:

(a) Nine thousand one hundred and seven acres permanently unproductive for lack of fertility in the soil, shallow soil, alkalinity, and unfavorable topography;

(b) One thousand six hundred and fifty acres, West End Extension, permanently unproductive because of unfavorable topography, shallow soil, and alkalinity. (44 Stat. 637)

Sec. 8. [Construction charges suspended.]—When construction charges are announced for the productive lands of the project all payments of construction charges shall be suspended against the following lands:

(a) Seven thousand one hundred and fifty acres temporarily unproductive for lack of fertility in the soil, seepage, and alkalinity;

(b) Eleven thousand eight hundred and sixty-three acres of productive lands temporarily unproductive because no construction thus far of the Garfield pumping division, or of the Loma siphon land extension, or any other means of reclaiming the same, and there being no present demand for these unirrigated lands.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and shown in the table on page 19 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, said document. (44 Stat. 638)

Huntley Project, Montana

Sec. 9. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

(1) $46,987, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Four hundred and four acres, Pryor division, permanenty unproductive because eroded and marginal to the river;

(b) Four hundred and twenty-seven acres, Eastern and Fly Creek divisions, permanently unproductive for lack of fertility in the soil.

(2) $81,354 on account of operation and maintenance deficit prior to reclamation extension act of 1914.

The Secretary is further directed to assume as a definite loss such sums as in his judgment may be just and proper in connection with moneys expended for experiments with reclamation on alkali lands and costs in excess of contracted returns, such total not to exceed $41,000. (44 Stat. 638)

Sec. 10. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Eleven thousand one hundred and seventy acres, Pryor division, temporarily unproductive, being gumbo and alkali soil;

(b) One thousand three hundred and thirty-six acres, Pryor division, temporarily unproductive, being private lands unpledged;

(c) Nine hundred and seventy acres, Eastern and Fly Creek divisions, temporarily unproductive, seeped.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 21 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document. (44 Stat. 638)

King Hill Project, Idaho

Sec. 11. [Deduction from total cost.]—There shall be deducted from the total cost of said project the following sum:

(1) $531,958, or such amounts as represent actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Seven hundred and ten acres permanently unproductive, being not susceptible of improvements because of lack of fertility in the soil;

(b) Three thousand seven hundred and sixty-four acres on account of inadequate water supply, porous soil, and gravelly subsoil. (44 Stat. 638)

Sec. 12. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) One thousand eight hundred and ninety-eight acres, on account of probably insufficient water supply, porous soil, and sandy and porous subsoil;

(b) Five hundred and sixteen acres included in town sites and suspended areas.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 23 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document. (44 Stat. 639)

Klamath Project, Oregon

Sec. 13. [Deduction from total cost.]—There shall be deducted from the total cost of said project the following sum:

(1) $1,587, or such amounts as may be actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Thirty-eight acres main divisions, Klamath irrigation district, permanently unproductive for lack of fertility in the soil. (44 Stat. 639)

Sec. 14. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Five hundred and seventeen acres, main division, Klamath irrigation district, temporarily unproductive for lack of fertility in the soil;

(1) The Secretary of the Interior is hereby authorized to reclassify all lands within the Klamath irrigation district and to place in the temporarily unproductive class such lands as he determines are properly subject to this classification.

(b) One hundred and twenty-nine acres, Horsefly irrigation district, temporarily unproductive for lack of fertility in the soil;

(c) Eighty-three acres, Langell Valley irrigation district, temporarily unproductive for lack of fertility in the soil.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments, as shown in the table on page 27 of said Document 201, as checked and modified as recommended in "General recommendations" numbered 2 and 4, page 60 of said Document 201. (44 Stat. 639; Act of June 23, 1932, 47 Stat. 332; 43 U.S.C. § 610)

EXPLANATORY NOTE

1932 Amendment. The Act of June 23, 1932, 47 Stat. 331, amended section 14 by adding to it subsection "(a–1)". The 1932 Act appears herein in chronological order.

NOTE OF OPINION

1. Reclassification authority

The Secretary, having once reclassified land within the Klamath Irrigation District pursuant to the Act of June 23, 1932 (42 Stat. 311), has exhausted his authority under that act to treat productive, paying lands either as temporarily unproductive or as permanently unproductive. Memorandum of Acting Chief Counsel Fix, August 21, 1944.

Sec. 15. [Adjustment of construction charges against Tule Lake division.]—The Secretary is further authorized and directed when announcement is made of the construction charges for the Tule Lake division of this project to take into consideration the recommendation of the board on page 26 of said Document 201, that a loss to the reclamation fund will ultimately ensue on this division and also a probable loss of $34,000 from lands of the Horsefly irrigation district by reason of the construction of the Gerber Reservoir, and he is further authorized and directed to deduct from the cost of said division the sum of $234,407 as recommended by the Board of Survey and Adjustments on page 26 of said document, and to fix and allocate the construction cost per acre in accordance with the findings and recommendations of the said board on page 26 of said document. The construction charge against the area in this division now under contract shall also be adjusted accordingly: *Provided,* That the construction charges shall in no event exceed a just and equitable charge against the Tule Lake division based on the value of water for irrigation under the economic conditions prevailing, notwithstanding such charges may not return the full cost of construction. (44 Stat. 639)

Sec. 16. [Suits of Klamath Irrigation District to set aside contract with California-Oregon Power Co. not affected.]—Nothing in this act shall be held to affect or prejudice the claims of the Klamath irrigation district or the State of Oregon in any suit or action now or hereafter instituted to set aside that certain contract between the United States and the California-Oregon Power Company, dated Febaruary 24, 1917, together with all contracts or modifications thereof, and to set aside or cancel the sale made by the United States of the so-called Ankeny and Keno Canals and the lands embraced in the rights of way thereof in the year 1923 to the said California-Oregon Power Company.

A. [Suspension of construction charges—Langell Irrigation district.]—All payments upon construction charges shall be suspended against such lands in the Langell Valley irrigation district as the Secretary of the Interior shall cause to be classified as to productivity and as the said Secretary may determine to be temporarily unproductive because nonagricultural and unsuitable for irrigation, and the said Secretary is hereby authorized to reduce the construction obligations of the Langell Valley irrigation district exclusive of costs incurred in the construction of Clear Lake Channel in the ratio and proportion as the number of acres so found and determined to be temporarily unproductive bears to the total number of acres now included as a part of said irrigation district: *Provided,* That the amount of irrigation water to which the Langell Valley irrigation district is

entitled shall be reduced in proportion to the area temporarily suspended from construction charges.

B. [Contract for resumption of payment of construction charges required.]—The Secretary of the Interior, as a condition precedent to the allowance of the benefits offered under section 16–A, shall require the Langell Valley irrigation district to execute a contract providing for the resumption of construction charges by said district upon all, or any, of such acreages so found and determined to be temporarily unproductive, as the Secretary of the Interior may, subsequent to such suspension, find and declare to be possessed of sufficient productive power to be again placed in the paying class. (44 Stat. 639; Act of June 27, 1934, 48 Stat. 1266)

EXPLANATORY NOTE

1934 Amendment. The Act of June 27, 1934, 48 Stat. 1266, amended section 16 by adding to it subsections "16–A" and "16–B". The 1934 Act appears herein in chronological order.

LOWER YELLOWSTONE PROJECT, MONTANA-NORTH DAKOTA

Sec. 17. [Deduction from total cost.]—There shall be deducted from the total cost of said project the following sum:

(1) $382,254, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Five hundred and seventy-four acres permanently unproductive on account of right of way of the Great Northern Railway;

(b) Seven hundred and eighty-eight acres permanently unproductive, embracing town sites;

(c) Six thousand and seventy-seven acres on account of error in original estimate of irrigable area. (44 Stat. 640)

Sec. 18. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Five hundred acres temporarily unproductive because of damage by erosion;

(b) Two thousand eight hundred acres temporarily unproductive because water-logged;

(c) Seven thousand one hundred and eighty-eight acres temporarily unproductive because of forest covering and rough topography;

(d) Three hundred and thirteen acres temporarily unproductive because located in United States reserves.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments as shown in the table on page 28 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document. (44 Stat. 640)

MILK RIVER PROJECT, MONTANA

Sec. 19. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

(1) $100,978, or such an amount as represents the construction costs as found by the Secretary of the Interior against the following lands:

(a) One thousand seven hundred and seventy acres permanently unproductive for lack of fertility in the soil.

(2) $145,054 on account of error or mistake, representing unused Saint Mary East Canal and measuring Saint Mary waters as shown on page 31 of said Document 201.

(3) $929,212, major work unused as shown on page 31 of said Document Numbered 201.

(4) $735,945, major and minor works unused as shown on page 31 of said Document Numbered 201. (44 Stat. 640)

Sec. 20. [Construction charges suspended.]—When the construction charges are announced for the productive lands of the project all payments of construction charges shall be suspended against the following lands:

(a) Twenty-three thousand five hundred acres temporarily unproductive for lack of fertility in the soil;

(b) Nine thousand four hundred and thirty acres temporarily unproductive because of inadequate storage and refractory soils.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and shown in the table on page 31 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document.

A. [Deduction from total cost of construction, cost against permanently unproductive land.]—There shall be deducted from the total cost chargeable to the Chinook division of this project the following sum:

(1) Twenty-one thousand six hundred and eighty-four dollars and fifty-eight cents, or such amount as represents the construction cost as found by the Secretary of the Interior against the following lands:

(a) One thousand seven hundred and seventy and seventeen one-hundredths acres permanently unproductive because of nonagricultural character.

B. [Suspension of payments against temporarily unproductive and other lands—Contracts to be executed.]—All payments upon construction charges shall be suspended against the following lands in the Chinook division:

(a) Twelve thousand six hundred and seventeen and sixty-four one-hundredths acres temporarily unproductive because of heavy soil and seepage;

(b) Eleven thousand three hundred and seven acres for which no canal system has been constructed, all as shown by the land classification of the Chinook division made under the direction of the Secretary of the Interior and approved by him under date of January —, 1930. The Secretary of the Interior, as a condition precedent to the allowance of the benefits offered under sections 20–A and 20–B, shall require each irrigation district within the Chinook division to execute a contract providing for repayment of the construction charges as hereby adjusted within forty years and upon a schedule satisfactory to said Secretary; and no water from the Saint Mary River watershed shall be furnished for the irrigation of lands within any district after the irrigation season of 1930 until

the required contract has been duly executed. (44 Stat. 640; Act of July 3, 1930, 46 Stat. 1010)

EXPLANATORY NOTE

1930 Amendment. The Act of July 3, 1930, 46 Stat. 1010, amended section 20 by adding to it subsections "20–A" and "20–B". Section 2 of the 1930 Act also provided that: "All contracts with the Government touching the project shall be uniform as to time of payment and charge for the construction of the Saint Mary diversion." The 1930 Act appears herein in chronological order.

NOTE OF OPINION

1. Chinook division

In an opinion dated September 22, 1931, the District Court of the 18th Judicial District of Montana held that the Act of July 3, 1930 (46 Stat. 1010) requires that *all* payments upon construction charges shall be suspended against the 23,924 acres in the Chinook Division enumerated in the Act, not merely the construction charges against said acreage up to June 30, 1925, as contended by the Government. The court fixed the acreage construction charge for the division at $14.05, subject to the reservation contained in the proposed contracts.

MINIDOKA PROJECT, IDAHO

Sec. 21. [Deduction from total cost.]—There shall be deducted from the total cost of said project the following sum:

(1) $9,172, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) One hundred and seventy-eight acres, Gravity division, permanently unproductive for lack of fertility in the soil;

(b) Thirty-eight acres, South Side Pumping division, permanently unproductive for lack for fertility in the soil and impregnated with alkali. (44 Stat. 641)

Sec. 22. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) One thousand six hundred and thirty-four acres, Gravity division, temporarily unproductive because water-logged and for lack of fertility in the soil;

(b) Nine hundred and twenty acres, Gravity division, temporarily unproductive because of inadequate water supply and of porous soil;

(c) Five hundred and twenty-five acres, Gravity division, temporarily unproductive because of "blow soil";

(d) One hundred and ninety-seven acres, South Side Pumping division, temporarily unproductive for lack of fertility in the soil and because water-logged.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 33 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, of said document. (44 Stat. 641)

NEWLANDS PROJECT, NEVADA

Sec. 23. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

(1) $3,315,136, or such amount as represents actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Four hundred and four acres permanently unproductive for lack of fertility in the soil;

(b) Fifty thousand acres on account of inadequate water supply; major works unused;

(c) Thirty-two thousand five hundred and eighty-two acres on account of inadequate water supply; major and minor works unused.

(2) $139,687 for operation and maintenance deficit prior to reclamation extension act of 1914;

(3) $82,221, Truckee River water-right adjudication;

(4) $71,605 expense pumping at Lake Tahoe and Truckee Canals, less amount recovered from sale of power;

(5) $155,465 on account of error or mistake covering various items due chiefly to lesser irrigable area than contemplated;

(6) $884,998 on account of error or mistake, being aggregate shortage of returns because of low acre charges in the early contracts, allowing also for surcharge on nine hundred and thirty-four acres of land. (44 Stat. 641)

Sec. 24. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Four thousand four hundred and fourteen acres temporarily unproductive for lack of fertility in the soil;

(b) Ten thousand six hundred and ninety-four acres public and private lands uncontracted at present.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 37 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, of said document. (44 Stat. 642)

North Platte Project, Nebraska-Wyoming

Sec. 25. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

INTERSTATE DIVISION

(1) $36,250, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Five hundred and thirty-two acres permanently unproductive for lack of fertility in the soil;

(2) $23,751.59 on account of error or mistake in charging the cost of secondary investigations to this division.

FORT LARAMIE DIVISION

(1) $22,680 on account of error or mistake in charging the cost of secondary nvestigations to this division.

NORTHPORT DIVISION

(1) $3,425 on account of error or mistake in charging the cost of secondary investigations to this division. (44 Stat. 642.)

Sec. 26. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

INTERSTATE DIVISION

(a) Twenty-five thousand three hundred and ninety-nine acres temporarily unproductive for lack of fertility in the soil, being partly seeped and partly blow sand;

(b) Five hundred and fifteen acres temporarily unproductive, being unclassified land.

FORT LARAMIE DIVISION

(a) Seven thousand six hundred and sixty-five acres temporarily unproductive for lack of fertility in the soil. (44 Stat. 642)

EXPLANATORY NOTE

Provision Repealed. The Act of August 13, 1957, 71 Stat. 342, repealed the last item in section 26, which read as follows:

NORTHPORT DIVISION

"(a) Two thousand five hundred and fifty-five acres temporarily unproductive for lack of fertility in the soil.

"All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the tables on pages 39 and 40 of said Document 201, as revised and as checked and modified as outlined in General recommendations numbered 2 and 4, page 60 of said document." (44 Stat. 642)

The 1957 Act, which appears herein in chronological order, also provides that this repeal shall not affect the obligation of the Northport Irrigation District as expressed in its contract with the United States dated August 19, 1948.

NOTE OF OPINION

1. Construction charges

The contract of August 19, 1948, with the Northport Irrigation District, made pursuant to the Act of May 25, 1948, fixes the construction charge obligation of the district at $952,045.57, thus superseding earlier contracts which reduced the obligation by the amount of the construction charge applicable to temporarily unproductive or suspended lands. Consequently, the Secretary is without authority to declare 2,555 acres of land (construction charges against these lands were suspended by section 26 of the Omnibus Adjustment Act) permanently unproductive and to write off as a loss to the reclamation fund the amount of the construction charge allocated to such lands, as provided in section 43 of the Omnibus Adjustment Act. Solicitor Davis Opinion, 61 I.D. 154 (1953).

OKANOGAN PROJECT, WASHINGTON

Sec. 27. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

(1) $227,783, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Two thousand three hundred and fifty-four acres permanently unproductive on account of sandy soil;

(b) Six acres, Duck Lake feeder canal right-of-way, permanently unproductive on account of other physical causes.

(2) $492,917 on account of error or mistake in charging the cost of examination, surveys, construction, and purchase in connection with the following items: Colville extension, power plants numbered 1 and 2, Salmon Lake Reservoir, power plant numbered 3, transmission line, pumping plant at Riverside, and sandy land water rights. (44 Stat. 643)

Sec. 28. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Fifty-seven acres, temporarily unproductive because of sandy soil.

(b) Twenty-nine acres, temporarily unproductive because of seepage. (44 Stat. 643)

Sec. 29. [Total cost of certain works suspended.]—The sum of $89,708.22, representing the total cost of works described below, shall be suspended and treated as a probable loss until the question of a permanent project water supply is settled, and if such works are then abandoned the Secretary of the Interior is authorized to deduct the sum named from the total cost of the project. The works are (1) Robinson Flat pumping plant, (2) Duck Lake pumping plant, (3) Salmon Lake pumping plant, (4) Government wells numbered 1 and 2, and (5) private wells and pumping plant.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments, as shown in the tables on page 42 of said Document 201, subject to checking and modification as recommended in "General recommendations" numbered 2 and 4, on page 60 of said document. (44 Stat. 643)

Rio Grande Project, New Mexico-Texas

Sec. 30. [Deduction from total cost—Credit authorized to El Paso County Water Improvement District No. 1.]—There shall be deducted from the total cost of said project the following sum:

(a) $31,661.35 on account of error or mistake in charging the costs of the following items against said project: Operation and maintenance deficit (El Paso County water improvement district numbered 1); Farm unit survey, Leasburg division (Elephant Butte irrigation district), 50 per centum of $14,530; Palomas Valley, farm unit survey; Palomas Valley, canal survey; Palomas Valley, flood protection and drainage; Palomas Valley, percentage cost of general investigations charged; San Luis Valley, drainage investigations.

All as shown in the table on page 45 of said Document 201 as revised and subject to checking and modification as recommended in "General recommendations" on pages 60 and 61 of said document.

(b) The Secretary of the Interior is hereby authorized to credit on the contract dated January 17, 1920, as supplemented by contract of October 12, 1922, between the United States and the El Paso County Water Improvement District Number 1, the sum of $350,000 or such portion thereof as in the opinion of the Secretary of the Interior may be necessary and is actually expended in the investigation and construction of necessary works to be built at the expense of

said district as a part of the Rio Grande project for the protection of its water supply encroached upon by diversions made from the Rio Grande for use in Mexico. The amounts expended by said district shall be credited upon the said contracts of January 17, 1920, and October 12, 1922, between the United States and the district to the extent of construction charges payable annually by the district to the United States under the contracts mentioned, the first credit to be applied in the year in which the funds, or a portion thereof, within above limitation, are expended. Thereafter such credits shall continue until all costs so incurred by the district shall have been absorbed. During the years credits are so applied no payments shall be required on the part of said district under its contracts mentioned. The total indebtedness under said contracts shall be reduced to the extent of expenditures made hereunder. (44 Stat. 643)

SHOSHONE PROJECT, WYOMING-MONTANA

Sec. 31. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

(1) $1,677,630, or such amount as represents actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Four thousand and eleven acres, Garland division, permanently unproductive for lack of fertility in the soil;

(b) Eighteen thousand three hundred and twenty-four acres, Frannie division, permanently unproductive for lack of fertility in the soil.

(2) (a) $21,373 on account of operation and maintenance deficit prior to reclamation extension act of 1914 (Garland division);

(b) $16,663 on account of operation and maintenance deficit prior to reclamation extension act of 1914 (Frannie division). (44 Stat. 644)

Sec. 32. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Three thousand seven hundred and nine acres, Garland division, temporarily unproductive for lack of fertility in the soil;

(b) Three thousand three hundred and fifty-three acres, Frannie division, temporarily unproductive for lack of fertility in the soil.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 47 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, of said document.

(c) Five hundred and twenty-four acres on account of having been abandoned. (44 Stat. 644)

SUN RIVER PROJECT, MONTANA

Sec. 33. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

(1) $79,649, or such amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Nine hundred and sixty-two acres, Fort Shaw division, permanently unproductive for lack of fertility in the soil, nonirrigable and nonarable;

(b) One hundred and five acres, Fort Shaw division, permanently unproductive because inaccessible by erosion and floods;

(c) One thousand two hundred and thirty-three acres, Fort Shaw division, permanently unproductive because flooded and eroded.

(2) $11,734 because of error or mistake on account of adjustment losses.

(3) $34,148, Operation and Maintenance deficit prior to the reclamation extension act of 1914. (44 Stat. 644)

Sec. 34. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Two thousand five hundred and eighteen acres, Fort Shaw division, temporarily unproductive, subscribed, water-logged;

(b) One thousand two hundred and ninety-two acres, Fort Shaw division, temporarily unproductive, unentered, and unsubscribed.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and as shown in the table on page 49 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60, of said document. (44 Stat. 645)

Umatilla Project, Oregon

Sec. 35. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sums:

EAST DIVISION

(1) $490,390, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Two thousand five hundred and seventy-five acres permanently unproductive for lack of fertility in the soil, not susceptible of improvement;

(b) Two thousand two hundred and fifty-five acres permanently unproductive because of porous soil, gravelly subsoil.

(2) $388,448 on account of error or mistake—excluded from district repayments on account of faulty construction.

(3) $16,711 on account of error or mistake; loss on Hermiston district lands.

(4) $91,083 on account of operation and maintenance deficit prior to reclamation extension act of 1914.

WEST DIVISION

(1) $5,703, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Fifty-nine acres permanently unproductive for lack of fertility in the soil, not susceptible of improvement.

(2) $252 on account of error or mistake representing shortage of contracted returns from fifty-four acres under water-right applications.

(3) The water-rights formerly appurtenant to all permanently unproductive lands on the Umatilla project shall be available to the remaining lands without added cost to the water users. (44 Stat. 645)

Sec. 36. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

EAST DIVISION

(a) Six hundred and ten acres temporarily unproductive for lack of fertility in the soil because of water-logging;

(b) Five hundred and thirty acres representing in amount $37,100 and described as probable loss on Hermiston district lands.

WEST DIVISION

(a) Three thousand four hundred and twenty-two acres temporarily unproductive because of inadequate water supply;

(b) Five hundred and ninety-five acres temporarily unproductive because of water-logging.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments, as shown in the tables on page 52 of said Document 201, as revised and as checked and modified as recommended in "General recommendations" numbered 2 and 4, on page 60 of said document. (44 Stat. 646)

UNCOMPAHGRE PROJECT, COLORADO

Sec. 37. [Deductions from total cost.]—There shall be deducted from the total cost of the said project the following sums:

(1) $1,318,056, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

(a) Four hundred and thirty-nine acres permanently unproductive for lack of fertility in the soil;

(b) Twenty-four thousand nine hundred and eighteen acres permanently unproductive because of an inadequate water supply.

(2) $47,371 on account of error or mistake representing deductions recommended and covered in contract of May 7, 1918, between the United States and the Uncompahgre Valley Water Users' Association. The total thus to be deducted from the project cost shall be charged off as a permanent loss to the reclamation fund. (44 Stat. 646)

Sec. 38. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) Seventeen thousand acres temporarily unproductive because water-logged;

(b) Five thousand six hundred and twenty-nine acres temporarily unproductive because of rolling and uneven topography;

(c) Five thousand acres temporarily unproductive because of alkalinity;

(d) The water rights formerly appurtenant to the permanently unproductive lands shall be available to the remaining land on said project without added cost to the water users, because of the Gunnison Tunnel not yet being completed and there being an inadequate water supply.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and shown in the table on page 55 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document. (44 Stat. 646)

YAKIMA PROJECT, WASHINGTON

Sec. 39. [Deductions from total cost.]—There shall be deducted from the total cost of said project the following sum:

$3,068, or such an amount as represents the actual construction charges as found by the Secretary of the Interior against the following lands:

Fifty-nine acres, Sunnyside division, permanently unproductive because of shallow soil overyling rock. (44 Stat. 646)

Sec. 40. [Construction charges suspended.]—All payments upon construction charges shall be suspended against the following lands:

(a) One thousand eight hundred and forty-nine acres, Sunnyside division, temporarily unproductive, being either water-logged, alkalied, rough, steep, shallow soil overlying hardpan, or difficult to subdue.

(b) Three thousand and thirty-two acres, Tieton division, temporarily unproductive because of shallow, poor soil with rough topography.

All as shown by classification heretofore made under the supervision of the Board of Survey and Adjustments and shown on page 57 of said Document 201, checked and modified as outlined in "General recommendations" numbered 2 and 4, page 60 of said document. (44 Stat. 647)

ADMINISTRATIVE PROVISIONS

Sec. 41. [Permanently unproductive land excluded from project—Disposition of water rights.]—All lands found by the classification to be permanently unproductive shall be excluded from the project, and no water shall be delivered to them after the date of such exclusion unless and until they are restored to the project. Except as herein otherwise provided, the water right formerly appurtenant to such permanently unproductive lands shall be disposed of by the United States under the reclamation law: *Provided,* That the water users on the projects shall have a preference right to the use of the water: *And provided further,* That any surplus water temporarily available may be furnished upon a rental basis for use on lands excluded from the project under this section, on terms and conditions to be approved by the Secretary of the Interior. (44 Stat. 647; 43 U.S.C. § 423)

NOTE OF OPINION

1. **Notice**

Where the United States is under contract to furnish water for land now found, in accordance with the act, to be permanently unproductive, not only the owner of the land but also any interested mortgagees

or other lienors are entitled to a notice and an opportunity to consent or object to the severance of the water right. Interpretation, 51 L.D. 525, 526 (1926).

Sec. 42. [Disposition of construction charges already paid on permanently unproductive lands—Cash refunded if all lands excluded.]—The construction charges heretofore paid on permanently unproductive lands excluded from the project shall be applied as a credit on charges due or to become due on any remaining irrigable land covered by the same water-right contract or land taken in exchange as provided in section 44 of this act. If the charges so paid exceed the amount of all water-right charges due and unpaid, plus the construction charges not yet due, the balance shall be paid in cash to the holder of the water-right contract covering the land so excluded or to the irrigation district affected; which in turn shall be charged with the responsibility of making suitable adjustments with the landowners involved. Should all the irrigable lands of a water-right applicant be excluded from the project as permanently unproductive, and no exchange be made as provided in section 44 hereof, the total construction charges heretofore paid, less any accrued charges on account of operation and maintenance, shall be refunded in cash, the water-right contract shall be canceled, and all liens on account of water-right charges shall be released. (44 Stat. 647; 43 U.S.C. § 423a)

NOTES OF OPINIONS

Construction charges 2
Water rights 1

1. Water rights

Where a perpetual vested water right has been granted by the United States, the Government is obligated to furnish water to lands owned by applicants, or, if the lands are found to be permanently unproductive and the water right is to be abrogated pursuant to the act of May 25, 1926, the applicants are entitled to adequate compensation therefor in an amount equivalent to a paid-up water right, even though no money was actually paid to the Government for the water rights. The compensation payable to the applicants may be on the same basis as the refund of construction charges. Comp. Gen. Dec. A–20551 (December 12, 1927), *In re P. L. Duncan and John Nelson,* Umatilla project.

At the initiation of a project, a tract of land had a partial water right and the Government adjusted the water right by considering that the value of the water right then held was $35 and by agreeing to furnish a complete water right for $25 per irrigable acre to be paid by the landowner. Upon the enactment of the adjustment act, the tract of land was found to be permanently unproductive. The owner applied, under section 42, for credits on other land on account of the construction charge on this tract. The Comptroller General held that credit may be allowed for refund of the recognized value of the old water right per irrigable acre on the area of unproductive land, as well as for the amounts paid thereon under the contract with the United States, the amount so allowed to be applied upon the remaining irrigable acreage of productive land; i.e., the applicant may be given consideration on the basis of his having paid $35 per irrigable acre construction charge on behalf of his old water right, plus such amount per irrigable acre as he may have paid upon the $25 per irrigable acre charge. Id. *In re Joseph F. McNaugh.*

2. Construction charges

Except where the vested right feature is involved, it is necessary in a refund of construction charges paid on permanently unproductive land under section 42, act of May 25, 1926, to show that the owner of the property or his predecessors in title have actually paid to the Government as construction charges the amount proposed to be refunded. Vouchers for refund of construction charges should be stated in sufficient detail to enable the General Accounting Office to verify the fact that the amount proposed to be refunded has been collected. Such vouchers are not such as should be paid by a disbursing officer; they should be forwarded to the General Accounting Office for settlement as claims. Comp. Gen. Dec. A–21979 (March 17, 1928), *In re Herman Seseman,* Shoshone project.

Sec. 43. [Suspension of construction charges against areas temporarily unproductive—Payments made credited to construction charge—Credits—Delivery of water—Permanently unproductive lands.]—The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior shall declare them to be possessed of sufficient productive power properly to be placed in a paying class, whereupon payment of construction charges against such areas shall be resumed or shall begin, as the case may be. Any payments made on such areas shall be credited to the unpaid balance of the construction charge on the productive area of each unit. Such credit shall be applied on and after the passage and approval of this act, which shall not be construed to require revision of accounts heretofore adjusted under the provisions of this section as originally enacted. While said lands so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges, or such other charges as may be fixed by the Secretary of the Interior the advance payment of which may be required, in the discretion of the said Secretary. Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands as provided in this act except that no refund shall be made of the construction charges paid on such unproductive areas and applied as a credit on productive areas as herein authorized. (44 Stat. 647; Act of April 23, 1930, 46 Stat. 249; 43 U.S.C. § 423b)

Explanatory Note

1930 Amendment. The Act of April 23, 1930, 46 Stat. 249, amended section 43 by (1) adding to its present second and third sentences, and (2) by adding to its last sentence the words "except that no refund shall be made of the construction charges paid on such unproductive areas and applied as a credit on productive areas as herein authorized." The 1930 Act appears herein in chronological order.

Notes of Opinions

Effect of determination 2
Reclassification authority 1
Supplemental charges 3

1. Reclassification authority

The Secretary of the Interior has the authority at the present time, pursuant to section 43 of the Act of May 25, 1926 (44 Stat. 636), as amended by the Act of April 23, 1930 (46 Stat. 249), to reclassify lands classed as temporarily unproductive under such act, as amended, either as lands in a paying class or as lands permanently unproductive, and to effect the necessary adjustments of the repayment obligations to reflect such changes in classification. Memorandum of Acting Chief Counsel Fix, August 21, 1944.

2. Effect of determination

The contract of August 19, 1948, with the Northport Irrigation District, made pursuant to the Act of May 25, 1948, fixed the construction charge obligation of the district at $952,045.57, thus superseding earlier contracts which reduced the obligation by the amount of the construction charge applicable to temporarily unproductive or suspended lands. Consequently, the Secretary is without authority to declare 2,555 acres of land (construction charges against these lands were suspended by section 26 of the Omnibus Adjustment Act) permanently unproductive and to write off as a loss to the reclamation fund the amount of the construction charge allocated to such lands, as provided in section 43 of the

Omnibus Adjustment Act. Solicitor Davis Opinion, 61 I.D. 154 (1953).

3. Supplemental charges

There is no foundation for an interpretation of section 43 of the Omnibus Adjustment Act as amended by the Act of April 23, 1930, which would authorize a deferment of the beginning of payment of supplemental construction charges of the Huntley project for a term of years after the completion of the payment of the primary construction charges. Solicitor Finney Opinion, 53 I.D. 323 (1931).

Sec. 44. [Exchanges, if lands eliminated or insufficient to support family—Final proof on original entry accepted—Entry of contiguous land—Selection of equal area on relinquishing eliminated, by private owner—Credit for amounts paid—Rights not assignable—Rights of lien holders to be considered—Preference to ex-service men.]—Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose entries under water rights have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other public lands within the same project or any other existing Federal reclamation project, with credit under the homestead laws for residence, improvement, and cultivation made or performed by them upon their original entries and with credit upon the new entry for any construction charges paid upon or in connection with the original entry: *Provided,* That when satisfactory final proof has been made on the original entry it shall not be necessary to submit final proof upon the lieu entry. Any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit reduced by elimination, with all credits in this section hereinbefore specified in lieu of the lands eliminated. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior, and free from all encumbrances, relinquish and convey to the United States lands so owned and held by them, not exceeding an area of one hundred and sixty acres, and select an equal area of vacant public land within the irrigable area of the same or any other Federal reclamation project, with credit upon the construction costs of the lands selected to the extent and in the amount paid upon or in connection with their relinquished lands, and the Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section: *Provided further,* That the rights extended under this section shall not be assignable: *And provided further,* That in administering the provisions of this section and section 42, the Secretary of the Interior shall take into consideration the rights and interests of lien holders, as to him may seem just and equitable: *Provided further,* That where two entrymen apply for the same farm unit under the exchange provisions of this section, only one of whom is an ex-service man, as defined by the joint resolution of January 21, 1922 (Forty-second Statutes, page 358), the ex-service man shall have a preference in making such exchange. (44 Stat. 648; 43 U.S.C. § 423c)

NOTE OF OPINION

1. Vicinity

The term "in the vicinity" within the purview of this section is interpreted to mean land so located that it may be consolidated with the remaining area of the farm unit reduced so that the two areas may be handled as one farm. This will vary depending upon the accessibility of the tracts involved. It will also be influenced to a considerable extent by the presence or absence of canals, drainage ditches, and other physical barriers which obstruct communication, by the character and location of roads between the areas involved, and other physical features which go to render it feasible for the entryman to handle the two areas as a whole. Interpretation, 51 L.D. 525, 530 (1926).

Sec. 45. [Amendment of water-right contracts—Water users to contract to pay charges on remaining productive lands—Extension of time on construction charges discretionary with Secretary—Limitation of 40 years—Relief provided for in Fact Finders' Act authorized—Secretary's decision on amending contracts conclusive—Discretionary execution of contracts made in good faith to operate January 1, 1927—Paying charges for 1926, 1927, and 1928—Completion of supplemental contract with Belle Fourche District.]—The Secretary of the Interior is hereby authorized, in his discretion, to amend any existing water-right contract to the extent necessary to carry out the provision of this act, upon request of the holder of such contract. The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract, shall require the execution of a contract by a water-users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

The Secretary is authorized, in his discretion, upon the request of individual water users or district, and upon performance of the condition precedent above set forth, to amend any existing water-right contract to provide for increase in the time for payment of construction charges, which have not then accrued, to the extent that may be necessary under the conditions in each case, subject to the limitation that there shall be allowed for repayment not more than forty years from the date the first payment matured under the original contract, and also to extend the time for payment of operation and maintenance or water rental charges due and unpaid for such period as in his judgment may be necessary not exceeding five years, the charges so extended to bear interest payable annually at the rate of 6 per centum per annum until paid, and to contract for the payment of the construction charges then due and unpaid within such terms of years as the Secretary may find to be necessary, with interest payable annually at the rate of 6 per centum per annum until paid.

The Secretary is further authorized, in his discretion, to grant the relief provided for in section 4, act of December 5, 1924 (Forty-third Statutes at Large, page 701), to any of the projects mentioned in this act, without requiring such project to take over the care, operation, and maintenance of the project works.

The decision of the Secretary as to the necessity for amending any such contract shall be conclusive: *Provided,* That nothing in this act shall prevent the execution of any contract heretofore negotiated or in connection with which negotiations have been heretofore opened in good faith or which may be hereafter opened in good faith under the act approved December 5, 1924 (Forty-third Statutes at Large, page 701), and which shall be executed on or before January 1, 1927, unless the water users affected elect to have the contract governed by this section: *Provided further,* That in the execution of any contract provided for in the last proviso, the Secretary of the Interior shall have authority to arrange for payment of construction charges by any project or division for the calendar years 1926, 1927, and 1928 in proportion to the state of development of the project in those years: *Provided further,* That the Secretary of the Interior is authorized to complete and execute the supplemental contract, now being negotiated and which has been approved as to form by the Secretary, between the United States and the Belle Fourche Irrigation District and at the expiration of said supplemental contract to enter into a permanent contract on behalf of the United States with said District in accordance with the terms of said supplemental contract. (44 Stat. 648; 43 U.S.C. § 423d)

EXPLANATORY NOTE

Reference in the Text. Section 4, Act of December 5, 1924 (Forty-third Statutes at Large, page 701), referred to in the text, is the Fact Finders' Act. The Act appears herein in chronological order.

NOTE OF OPINION

1. Purchase of interest in power plant

While subsection F, section 4 of the Act of December 5, 1924 (43 Stat. 702) was in effect, a contract was made between the United States and the Shoshone Irrigation District, by which the district agreed to take over the control of the Garland division of the Shoshone project. In this contract the district did not agree to take an interest in the Shoshone power plant. After subsection F, supra, had been repealed, the district requested that it be allowed to purchase an interest in the power plant and make payment therefor on the crop-return basis. The Department held, in approving an Opinion of the Solicitor dated March 24, 1928 (M-24229), that purchase of an interest in the power plant could not be made under subsection F after its repeal. It was held, however, that payment could be made under section 45 of the Act of May 25, 1926 (44 Stat. 648), allowing the district a period of 40 years from the first payment matured under the original water-right contract within which to make payment for the desired interest in the power plant.

Sec. 46. [**No water delivery on new projects until contracts made by district for payment of costs—Cooperation of States—Appraisal and sale of lands in private ownership in excess of 160 acres—No water if owner refuses to sell—Payment required before right to receive water—Payments of operation and maintenance charges annually in advance—Public notice when water available.**]—No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find

to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided, however,* That if excess land is acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance, or by devise, water therefor may be furnished temporarily for a period not exceeding five years from the effective date of such acquisition, delivery of water thereafter ceasing until the transfer thereof to a landowner duly qualified to secure water therefor: *Provided further,* That the operation and maintenance charges on account of lands in said projects and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment. (44 Stat. 649; Act of July 11, 1956, 70 Stat. 524; 43 U.S.C. § 423e)

EXPLANATORY NOTES

1956 Amendment, Involuntary Acquisition. The Act of July 11, 1956, 70 Stat. 524, amended section 46 by adding to it the proviso which begins "*Provided, however,*". Additionally, section 3 of the 1956 Act authorizes the Secretary of the Interior, upon request of any holder of an existing contract under the Federal reclamation laws, to amend the contract to conform to the provisions of sections 1 and 2 of the Act, section 1 being the amendment of this Act and section 2 being an amendment of section 3 of the Act of August 9, 1912. Both the 1956 Act, and that of 1912, appear herein in chronological order.

Supplementary Provision, Death of Spouse. The Act of September 2, 1960, 74 Stat. 732, provides that where lands which were eligible to receive water become excess because of the death of a husband or

wife, they may continue to receive water while owned by the surviving spouse until remarriage, without execution of a recordable contract. The Act appears herein in chronological order.

Reference Source, Excess Lands. At the request of the Senate Committee on Interior and Insular Affairs the Secretary of the Interior submitted to the committee on June 30, 1964, a report setting forth the history of the laws, regulations and policies relating to limitations on the delivery of water from Federal reclamation projects for irrigation purposes to lands in excess of a specified number of acres in individual ownership. This report was published as a Committee Print, 88th Cong., 2d Sess., entitled "Acreage Limitation Policy."

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1. Repayment contracts—Generally

The validity and construction of a contract between the United States and an irrigation district is a question of federal law, and the decision of the United States Supreme Court interpreting such contracts in the instant case, and holding them valid, is therefore binding upon the state court. *Ivanhoe Irr. Dist. v. All Parties,* 53 Cal. 2d 692, 3 Cal. Rptr. 331–35, 350 P.2d 69, 83–87 (1960).

The proviso to the Minidoka project portion of the appropriation act of January 12, 1927 (44 Stat. 934) constitutes the Gravity Extension [Gooding] division of the Minidoka project a portion of the Minidoka project proper, and section 46 of the adjustment act is therefore applicable to the gravity extension division. Solicitor Patterson Opinion, M–22401 (June 14, 1927).

By section 46 of the Omnibus Adjustment Act of 1926, the mechanism of repayment by "selling" water rights to private landowners disappeared and was replaced by an undertaking by an irrigation district to repay construction charges. Solicitor Barry Opinion, 71 I.D. 496, 502 (1964), in re application of excess land laws to private lands in the Imperial Irrigation District.

2. —When required

Although execution of a repayment contract is required prior to the delivery of water, it is not a condition precedent to the exercise of the power of eminent domain for the acquisition of land or the construction of the distributing systems. *United States v. 277.97 Acres of Land,* 112 F. Supp. 159 (S.D. Cal. 1953).

Pending completion of a project or division of a project, water may be furnished under section 46 on a temporary, rental basis. It has been the policy of the Bureau of Reclamation, however, to require the execution of repayment contracts with water users in advance of or substantially concurrently with the commencement of construction. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 12, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 877 (1948).

3. —Confirmation proceedings

A proceeding to confirm a contract between an irrigation district and the United States for delivery of a supply of water to the district for irrigation purposes and for construction of a distribution system is *in rem* in nature, and the only issue involved is the validity of the contract. *Ivanhoe Irr. Dist. v. All Parties,* 53 Cal. 2d 692, 3 Cal. Rptr. 317, 320, 350 P. 2d 69, 72 (1960).

Whether the United States has the water rights it needs to operate a reclamation project, and whether it acquires such rights by purchase, by direct or inverse condem-

nation, by appropriation or by any other means, are not material to a determination in a confirmation proceeding as to whether a contract with an irrigation district is valid and should be confirmed. Whatever title the federal government may need, it can get. *Ivanhoe Irr. Dist. v. All Parties,* 53 Cal. 2d. 692, 3 Cal. Rptr. 317, 331, 350 P. 2d 69, 83 (1960).

The Federal Government lawfully may contract to sell water that it does not own, as long as it has legal power to secure title; and the holding of the United States Supreme Court that the United States possesses such power is binding on state courts. *Ivanhoe Irr. Dist. v. All Parties,* 53 Cal. 2d 692, 3 Cal. Rptr. 317, 331, 350 P. 2d 69, 83 (1960).

The United States, not having intervened as a party and not being suable without its consent, is not bound by either the finding, the decision, or the final judgment of a state court in proceedings held to confirm a repayment contract. Solicitor Barry Opinion, 71 I.D. 496, 518 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

4. —Irrigation districts

The reasoning of the Solicitor's memorandum opinion, M–28771 (October 10, 1936), in re the Public Irrigation District for the Pine River Project, Colorado, that the term "irrigation district", as used in section 46 of the Omnibus Adjustment Act, means that an organization must have the power of taxation in order to enter into a repayment contract, is no longer valid, for section 2(g) of the Reclamation Project Act of 1939 defines "organization" in a broader sense; and a still broader definition is given in section 2(c) of the Small Reclamation Projects Act. Memorandum of Associate Solicitor Hogan, August 17, 1964, in re Louden Irrigating Canal and Reservoir Company.

5. —Cost, what constitutes

The term "cost of constructing" in section 46 means the actual, historical cost of construction. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 11, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 876 (1948).

6. —Increase in costs

Where a repayment contract is entered into with the water users, based on estimates of costs at that time, and provides for a determination by the Secretary as to continuation of work when increased costs reach a ceiling fixed in the contract, the Secretary may require an additional obligation to be assumed by water users as a condition to continuation of construction when that ceiling is reached. In reaching a decision the Secretary must consider the ability of water users to bear increased costs as well as the ability of purchasers of power to absorb them. Solicitor Barry Opinion, 68 I.D. 305 (1961), in re Columbia Basin repayment problems.

The Coachella Valley County Water District is not required to pay for the additional costs—i.e., those in excess of the $13,500,000 fixed in the repayment contract of December 22, 1947—incurred by the United States in completing the distribution system pursuant to the provision in the Interior Department Appropriation Act, 1952, and subsequent appropriations. *United States v. Coachella Valley County Water District,* 111 F. Supp. 172 (S.D. Cal. 1953).

The specific provisions in the Interior Department Appropriation Act, 1952, 65 Stat. 258, directing completion of the Coachella distribution works at a cost in excess of the repayment contract, but subject to the liability of the Coachella Valley County Water District to repay such excess costs unless judicially determined otherwise, suspends the prohibition in section 46 of the Omnibus Adjustment Act of 1926 against the delivery of water in the absence of a repayment contract covering the costs of the completed project. Memorandum of Solicitor Davis, May 11, 1953, *reversing* Solicitor White Opinion, M–36150 (November 21, 1952).

In a situation where the United States has expended the amount of money fixed for repayment in a contract required by section 46, but the contemplated project is not completed, the government is under no obligation to continue construction in the absence of a new or amended contract; if the United States chooses to expend additional sums to complete the construction, it cannot thereby impose an obligation on the water users to repay such additional amounts. The respective rights and obligations of the water users and the United States depend in part on the provisions of the repayment contract. These provisions generally fall into two categories: (1) Under the first type, wherein the contract specifically recognizes that it may be impossible to complete the project works within the limits of the stated sum, the water users are obligated to repay the contract amount and they are entitled to receive delivery of water to the extent

possible from the partially completed works without entering into an amended or new contract to repay any additional sums that the United States might expend. (2) Under the second type of contract, the water users' obligation to repay the stated cost is conditioned upon completion or substantial completion of the works described; in this case, at the point of time when the United States has expended the contract amount but the project is not completed, there is neither an obligation on the part of the water users to repay the costs nor on the part of the United States to afford them whatever benefits are possible from the partially completed works; and if the United States expends additional amounts to complete the project, the United States may not deliver water from the completed project until a repayment contract covering the additional costs has been executed. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 13–17, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 877–80 (1948).

11. Excess land laws—Generally

From the beginning of the Federal reclamation program in 1902, the policy as declared by the Congress has been one requiring that the benefits therefrom be made available to the largest number of people, consistent, of course, with the public good. This policy has been accomplished by limiting the quantity of both public and private land in a single ownership to which project water might be supplied. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 292 (1958).

Generally speaking, the excess land provisions of reclamation law represent a firmly established, time-honored, and sound public policy which seeks to achieve the twofold purpose of preventing speculation and of spreading the benefits of a reclamation project among the larger group of small landowners rather than confirming those benefits to the relatively smaller group of large landowners. These excess-land provisions are of general applicability to all reclamation projects. Solicitor Harper Opinion, M–33902, at 3 (May 31, 1945), in re applicability of excess land provisions to Coachella Valley lands.

Where a particular project has been exempted from the excess land laws because of its peculiar circumstances, the Congress has always made such exemption by express enactment. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 292 (1958).

Where Congress has deemed it proper to waive or modify the excess land laws in certain projects, it has always found it appropriate to enact positive legislation setting forth the exemption or other modification in unmistakable terms. Solicitor Barry Opinion, 71 I.D. 496, 506–7 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

Excess land provisions are the heart of reclamation law, and where such provisions have not been sufficiently drastic, or where policy reasons militate against their application, Congress has enacted express provisions applicable to specific projects. Solicitor Harper Opinion, M–33902, at 5 (May 31, 1945) in re applicability of excess land provisions to Coachella Valley lands.

12. —Constitutionality

The excess acreage limitation does not constitute an unconstitutional discrimination between the non-excess and the excess landowner. The limitation is a reasonable classification to carry out the purpose of the project, which is to benefit people, not land, and it prevents the use of the Federal reclamation service for speculative purposes. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 297 (1958).

The "possible severance" of excess acreage under water supply and distribution system contracts does not constitute an unconstitutional lack of due process, particularly in view of the fact that excess land will benefit from the project through improvement of underground water level, which is not chargeable to the owner of such excess acreage under the contract. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 296–7 (1958).

The authority to impose excess land limitation conditions in repayment contracts comes from the power of the Congress to condition the use of Federal funds, works, and projects on compliance with reasonable requirements. Conversely, a state cannot compel use of Federal property on terms other than those prescribed or authorized by Congress. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 291, 295 (1958)

Provisions of contract between irrigation district and the United States for sale by district of its irrigation system to the United States and purchase of water supply by district from the United States, that any land owner owning more than 160 acres as condition precedent to right to receive water for lands in excess of 160 acres, must dispose of excess lands are not invalid on ground that they constituted a taking of property without due process of law. *Application of Frenchman Valley Irrigation District,* 167 Neb. 78, 91 N.W. 2d 415 (1958)

13. —Construction with other laws

The provisions of reclamation law of general application dealing with land limitations include section 5 of the Act of June 17, 1902, sections 1 and 2 of the Warren Act of 1911, section 3 of the Act of August 9, 1912, section 12 of the Reclamation Extension Act of 1914, and section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 501 (1964), in re application of excess land laws to private lands in Imperial Irrigation District. *Accord:* Solicitor Harper Opinion, M–33902 (May 31, 1945), in re application of excess land laws to private lands in Coachella Valley.

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

Section 46 is an extension of the policy embodied in section 12 of the Reclamation Extension Act of 1914. Solicitor Barry Opinion, 68 I.D. 372, 394 (1961), in re proposed repayment contracts for Kings and Kern River projects.

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.

Where a federal statute provides that the reclamation laws shall govern the construction, operation, and management of project works, the excess land provisions of the reclamation laws are thereby carried into effect unless the terms of the statute provide otherwise. Solicitor Barry Opinion, 71 I.D. 496, 501–08 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

Sections 1 and 4(b) of the Boulder Canyon Project Act, which require the costs of the main canal connecting with Imperial Valley and appurtenant structures to be repaid pursuant to reclamation law, carry into effect the excess land provisions of section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 500–01 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

The Warren Act standing alone requires the application of acreage limitations where the United States cooperates with an entity in the construction of irrigation facilities even where no Federal subsidy is extended to the lands served. However, in connection with the State service area served by the San Luis joint-use facilities, Congress did not intend to apply the Warren Act since Federal reclamation policy does not require application of acreage limitations where there is no Federal investment involved, and since application of Federal law would clash with another basic national policy to leave the States free where Federal interests are not impaired. Solicitor Barry Opinion, 68 I.D. 412, 423–27 (1961), in re agreement with State of California for construction of San Luis Unit, Central Valley Project.

14. —State laws

Under California law, irrigation districts have authority and capacity to enter into contracts with the United States calling for delivery of water in accordance with federal law, including the 160-acre limitation, as an alternative to the requirements of section 22250 of the state Water Code that water distributed by the districts shall be apportioned ratably to each landowner in proportion to the assessment against his land. *Ivanhoe Irr. Dist.* v. *All Parties,* 53 Cal. 2d 692, 3 Cal. Rptr. 317, 327–29, 350 P. 2d 69, 79–81 (1960).

The 160-acre limitation is a basic part of federal reclamation policy, and the state legislature has adopted this concept as state policy for federal projects by authorizing irrigation districts to cooperate and contract with the United States under reclamation law. *Ivanhoe Irr. Dist.* v. *All Parties,* 53 Cal. 2d 692, 3 Cal. Rptr. 317, 330, 350 P. 2d 69, 82 (1960).

Private lands cannot be forced into an irrigation district which would operate under a contract with the United States devised to compel the owner to dispose of some of his property whether he wishes to or not, and at valuations which may meet his emphatic disapproval and concerning which he would have nothing to say; but such privately owned lands of all objectors should be excluded from the area of the proposed district. *In re Owl Creek Irr. Dist.,* 71 Wyo. 30, 253 P. 2d 867, 882–83 (1953), aff'd on rehearing, 71 Wyo. 70, 258 P. 2d 220 (1953).

15. —Administrative practice

Repeated action by the Congress since the inception of the Central Valley Project constitutes ratification of the administrative construction that the excess land laws apply to the project and confirmation and approval of the contracts executed by the Sec-

retary thereunder. *Ivanhoe Irr. Dist.* v. *McCracken,* 357 U.S. 275, 292–3 (1958).

The Secretary has no authority under section 46 to provide administrative relief from the excess land provisions of the section as originally enacted. Solicitor Bennett Opinion, 64 I.D. 273, 277 (1957), in re proposed contract with Kings River Conservation District.

16. —Standing to sue

There is nothing in the excess land statutes to indicate that Congress intended to confer a litigable right upon private persons claiming injury from the Secretary of the Interior's failure to discharge his duty to the public. *Turner v. Kings River Conservation Dist.,* 360 F. 2d 184, 198 (9th Cir. 1966).

17. —Inverse condemnation

If the enforcement of excess land provisions impairs any compensable property rights in water, then recourse for compensation is open in the courts. *Ivanhoe Irr. Dist. v. McCracken,* 357 U.S. 275, 291 (1958).

18. —Payout, effect of

The Federal reclamation laws do not authorize the Secretary of the Interior to enter into a contract with a water-user organization which provides that the excess land provisions relating to pre-existing holdings are set aside by lump-sum or accelerated payment of construction charges. Solicitor Barry Opinion, 68 I.D. 372 (1961), in re proposed repayment contracts for Kings and Kern River projects. *Accord: Letter of Attorney General,* 68 I.D. 370 (1961).

The memorandum opinion by Associate Solicitor Cohen, M–35004 (October 22, 1947), concluding that "upon full payment of construction obligation under a joint-liability repayment contract, the lands receiving water under such contract are, under the provisions contained in section 3 of the Act of August 9, 1912, relieved of the statutory excess-land restrictions," and Administrative Letter 303 of December 16, 1947, based on the opinion, are in error. Solicitor Barry Opinon, 68 I.D. 372, 376, 395 (1961), in re proposed repayment contracts for the Kings and Kern River projects.

Department excess land regulations applying to individual water right applications (43 CFR 230.65, 230.80) and public land entries (43 CFR 401.9) do not indicate that payout affects the requirement for disposal of pre-existing excess holdings. Solicitor Barry Opinion, 68 I.D. 372, 398 (1961), in re proposed repayment contracts for Kings and Kern River projects.

Payout is not relevant to the recordable contract requirements of section 46. Solicitor Barry Opinion 68 I.D. 372, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The Secretary of the Interior lacks statutory authority to permit individual holders of excess lands in the Kings River Conservation District to pay the reimbursable costs administratively allocable to those holdings and thereby be relieved from the limitations on supplying water to excess lands. Solicitor Bennett Opinion, 64 I.D. 273 (1957), in re proposed contract with the Kings River Conservation District.

The Act of August 9, 1912, relates to individual contracts, in contrast to the joint liability contract specifically required by section 46 of the Omnibus Adjustment Act of 1926; and the provisions of the former relating to the effect of payout on excess lands cannot be infused with a new life for the purpose of implementing the latter, which contains no comparable provisions. Solicitor Bennett Opinion, 64 I.D. 273, 275–6 (1957), in re proposed contract with Kings River Conservation District.

Except in the case of contracts approved by Act of Congress, contractual provisions relieving lands of the operation of the excess land laws upon payout by the individual or by the district do not, as a matter of law, operate to bind the parties. Letter of Secretary Udall to Chairman Wayne Aspinall, House Committee on Interior and Insular Affairs, August 27, 1962.

A contract containing a clause terminating excess land limitations upon payment of construction charges is considered not to be affected by the 1961 Solicitor's Opinion holding that payout does not suspend application of excess land laws to pre-existing holdings if such contract has been approved by Congress, even though it was submitted to Congress for some other reason such as under section 7 of the Reclamation Project Act of 1939. Letter from Secretary Udall to Chairman Wayne Aspinall, House Committee on Interior and Insular Affairs, April 11, 1962, note No. 2.

19. —Vested water rights

Neither the existence nor non-existence of a vested water right is itself determinative of whether the excess land laws are applicable in any given case. Solicitor Barry Opinion, 71 I.D. 496, 513 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

The excess lands provisions of section 46 of the Omnibus Adjustment Act apply to lands with a vested water right which receives a supplemental water supply from the Gravity Extension Unit (Gooding division) of the Minidoka project. Solicitor

Patterson Opinion, M–22401 (June 14, 1927).

20. —Supplemental water supply

Section 46 applies even where the project provides a relatively small supplemental water supply. Solicitor Bennett Opinion, 64 I.D. 273, 274 (1957), in re proposed contract with Kings River Conservation District.

21. —Delivery of water

So long as project water is supplied only to the "nonexcess land" of the landowner and is not received by his "excess land," the Department is not required to object to the retention of the "excess land" or to its irrigation by means of water from another source. Solicitor White Opinion, M–36011 (September 23, 1949), in re Tulare Irrigation District contract.

Where project water is commingled with non-project water in a river channel from which water is drawn as a supplemental supply for irrigating both excess and non-excess lands, only so much of the commingled water as represents the quantity of water supplied by the Bureau of Reclamation must necessarily be regarded as project water for the purpose of the 160-acre limitation. Solicitor White Opinion, M–36011 (September 23, 1949), in re Tulare Irrigation District contract.

Commingling of project water (from Friant-Kern canal) with non-project water in a river (Kaweah River) from which water is drawn as a supplemental supply for irrigating both excess and non-excess lands will be permitted if (a) the Bureau of Reclamation turns into the river, for transportation to the district, only enough project water to irrigate 160 acres or less for each landowner in the district, (b) an equivalent amount, at least, of the commingled water is used on the non-excess lands within the district, and (c) the commingled water is applied to excess lands only to the extent that the available supply of water might exceed the quantity of water delivered by the Bureau. Solicitor White Opinion, M–36011 (September 23, 1949), in re Tulare Irrigation District contract. [Ed. note: This is known as the "Tulare formula".]

Under the water service contract of June 5, 1963, and the proposed distribution system contract with the Westlands Water District, project distribution facilities may not be used to carry water of any kind (whether project, non-project, or pumped water) to excess lands. The "Tulare formula" (see Solicitor White Opinion, M–36011 (September 23, 1949), in re proposed Tulare Irrigation District contract) applies only to the use of nonproject facilities. Letter from Solicitor Barry to Senator Frank Moss, July 23, 1964, reprinted in *Hearing on Westlands Water District* [distribution system] *Contract Before the Senate Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 157 (1964).

Any plan for supplying water from a project of the Bureau of Reclamation which involves the commingling of project water with other water would be inconsistent with the 160-acre limitation unless it encompassed measures deemed adequate, from the standpoint of engineering and administration, to ensure that an owner of excess lands will apply to his non-excess lands a minimum quantity of water equivalent to his share of the quantity of water released from the project. Memorandum of Solicitor White to Commissioner of Reclamation August 9, 1950, in re proposed water use contracts of the Conejos Water Conservancy District.

If project water, even though identifiable as such, reaches the underground strata underlying excess lands as the unavoidable result of the furnishing by an irrigation district of project water to eligible lands, and the excess landowner pumps such water, this would not constitute a "furnishing" of project water to those excess lands within the meaning of the term "furnishing" as used in the contract between the United States and the district. Letter from Secretary Krug to Board of Directors, Orange Cove Irrigation District, January 25, 1949. See also statement of Secretary Krug, February 24, 1949, printed in *Hearings on First Deficiency Appropriation Bill for 1949, H.R. 2632 Before a Subcommittee of the Senate Committee on Appropriations,* 81st Cong., 1st Sess. 256–59 (1949).

Where an operating agreement with the Westlands Water District provides that the District will pump from the underground and furnish to nonexcess lands an amount of water estimated to be the portion of project water reaching the underground from surface application, a clause in the water service contract relating to the unavoidable furnishing of underground water to excess lands may be deleted as surplusage. Letter of Solicitor Barry to Mr. Russell Giffen, January 26, 1965.

22. —Condemnation

Where excess land under recordable contract or otherwise is condemned for nonagricultural purposes, it should be appraised as if it were nonexcess, regardless of its classification at the time. Letter of Solicitor Barry to Assistant Attorney General Clark, July 16, 1962, and reply from Chief of

Land Acquisition Section, Department of Justice, July 23, 1962.

31. Ownership of excess lands—Generally

The 160-acre limitation is a limitation on the quantity of land in individual ownership that is eligible to receive project water. Solicitor White Opinion, M–36011 (September 23, 1949), in re Tulare Irrigation District contract.

The administrative practice followed by the Department has been to limit application of the excess-land provisions of reclamation law to ownerships within the boundaries of the irrigation district with which the United States contracts. Consequently, an individual's ownership of land in one district or project has not been considered in determining his eligibility to receive water for lands in another district or project. Letter from Assistant Secretary Aandahl to Representative Harlan Hagen, April 23, 1954; letter from Regional Counsel Graham to Mr. M. G. Hoffmann, March 12, 1954.

32. —Coalescence of holdings

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The prohibition of the excess land laws on the coalescence of holdings is effective only after the date of initial water delivery. Deputy Solicitor Weinberg Opinion, 72 I.D. 245 (1965), in re Westlands Water District contract.

A person who involuntarily acquires lands which become excess in his hands, cannot extend his eligibility to receive water beyond the 5-year period provided by the Act of July 11, 1956, 70 Stat. 524, by executing a recordable contract. Acting Solicitor Fisher Opinion, 68 I.D. 433, 434 (1961) (dictum), *limited on other grounds,* Deputy Solicitor Weinberg Opinion, 72 I.D. 245, 247 (1965).

The term "excess land" as used in the Act of July 11, 1956, an act which provides that "excess land" acquired involuntarily in certain cases may be furnished water for five years thereafter, means only lands which are excess after, but not before, the acquisition. The purpose of the Act is to prevent a sudden diminution in the privileges respecting the land as the result of the transfer, not to enlarge the estate or its privileges in the hands of the new owner over that or those of the person from whom it was acquired. Memorandum of Associate Solicitor Fisher to Regional Solicitor, Sacramento, April 28, 1959.

For purposes of the Act of July 11, 1956, an act which allows lands that become excess by virtue of certain involuntary acquisitions to receive water for five years thereafter, the date of the "acquisition" with respect to an heir or devisee should be considered to be the date of death, whether or not the property is covered by a will and irrespective of provisions of local law relating to the estate of the decedent. Memorandum of Associate Solicitor Fisher to Regional Solicitor, Sacramento, April 28, 1959.

The Act of July 11, 1956, does not apply in a case where the death of the prior owner took place before the water service contract was executed, because the land was neither excess nor nonexcess when acquired by the heirs or devisees. Memorandum of Deputy Solicitor Weinberg, December 10, 1965, in re Orlando trusts.

33. —State ownership

The excess land laws do not apply to lands owned and managed by a state for purposes of the conservation, development, and improvement of wildlife. Memorandum of Associate Solicitor Weinberg to Acting Regional Solicitor, Denver, September 25, 1961.

34. —Trusts and multiple ownerships

A conveyance in trust by a corporation of excess lands receiving water under a recordable contract is not a valid compliance with section 46 unless the trust arrangement satisfies the following seven minimum requirements: (1) the grant is irrevocable and complete; (2) the trust property consists solely of the land granted; (3) the trust document identifies individual persons as beneficiaries and describes the interest of each; (4) the trustee named shall receive compensation only for management services and has no interest in and transacts no business with the trust; (5) the trustee makes periodic distribution of net returns; (6) if a beneficiary's undivided interest exceeds his permissible holding, the trustee must designate a specific tract as the excess land; and (7) each beneficiary has the right to partition at his option. Joint memorandum of Commissioner and Solicitor, March 19, 1962, approved by the Secretary December 21, 1962.

The requirement in the joint memorandum of March 19, 1962, that the trust property consist solely of the land granted has been interpreted to permit inclusion of personal property such as farm equipment. The requirement that the trustee make periodic distribution of net returns has been

interpreted to mean that the trustee need not make precisely scheduled annual distributions so long as distributions are made on such a schedule as the trustee reasonably decides is appropriate. Nor does the trustee have to distribute all net returns if he reasonably decides to retain income for farm operations. Further, the requirement that the beneficiary have a right to partition has been interpreted to mean that so far as an incompetent is concerned he must have such a right only after he becomes *sui juris*. Memorandum of Associate Solicitor Hogan, Water and Power, to Regional Solicitor, Sacramento, April 27, 1965, in re the use of multiple-ownership concepts in satisfaction of the 160-acre requirement.

A conveyance of excess lands in trust does not make the lands eligible to receive water unless the arrangement can be equated to a disposition by outright sale. A trust arrangement in which the trustee bears a close relationship to the beneficiary and also participates as an owner in a portion of the land under the trust does not meet the test. Letter from Solicitor Barry to Jess P. Telles, Jr., August 12, 1963.

An arrangement is not in violation of the excess land laws whereby a corporation purchases four tracts in the Wellton-Mohawk division of the Gila project totalling 380 acres, each of which is eligible to receive water, and makes an irrevocable conveyance of the lands to an Arizona bank as trustee in the nature of a passive trust, receiving compensation only for management services, the beneficiaries of the trust being four out-of-state pension funds, each of which receives regular distribution of trust proceeds and each of which has the right at any time to obtain partition and sale of the farm held for its benefit. Letter from Solicitor Barry to Tress E. Pittenger, Jr., December 18, 1963.

Where the trustee has full power to invade the corpus of a trust for appropriate purposes, to deal with all real or personal property as absolute owner for practically all purposes, and to determine the amount of income, and there is one named beneficiary who has only a life estate in the income of the trust with a power to appoint among his issue, only 160 acres of trust property is nonexcess lands. Neither the named beneficiary nor any issue has a substantial enough interest in the real estate to qualify as owner. Moreover, if the same person is trustee of three such trusts, only 160 acres in total for all such trusts may be considered nonexcess. Memorandum of Solicitor Barry, October 26, 1965, in re O'Neill trusts.

Provisions in the trust instrument that an adult beneficiary has no right of alienation of his interest and that the trust property is not subject to the claim of creditors, are not commensurate with the ownership interest required of a competent person under section 46 of the 1926 Act where more than 160 acres are held in undivided interests. Memorandum of Deputy Solicitor Weinberg, November 4, 1965, in re Antle trust.

A business trust which has all the essential characteristics of the corporation whose property is to be transferred to it, namely, association, an objective to carry on business and divide the gains therefrom, continuity of life, centralization of management, limited liability and free transfer of interests, cannot be the recipient of a disposition in compliance with the excess land laws. Letter of Solicitor Barry to Charles F. Wheatley, Jr., November 29, 1965.

Two minimum requirements for a partnership to be eligible to receive water under the excess land laws are that each competent participant has a partitionable interest in the land and that he has a right to alienate his interest. Memorandum of Deputy Solicitor Weinberg, November 29, 1965, in re Pradera Del Lago, a partnership.

A liquidation of a corporation whereby the stockholders receive the real property in the same ratio as their former shareholdings does not constitute a reorganization under section 368 of the Internal Revenue Code and each owner is entitled to own up to 160 acres as nonexcess land even though the property is leased to a partnership composed of the same individuals for management purposes. Memorandum of Deputy Solicitor Weinberg, November 29, 1965, in re Lapadula Farms.

Where a parcel of 624 acres is held in undivided one-half interests in two trusts, involving a mother and six children as beneficiaries, where both trusts are designed to give the mother the greatest beneficial interest and ownership, only 160 acres are eligible to receive water as nonexcess lands. Memorandum of Deputy Solicitor Weinberg, December 10, 1965, in re Orlando trusts.

Where a testamentary trust in California provides that the trustee holds property for a period of ten years from the date of the death of the testator, during which he distributes the income to certain named individuals and then the title passes to them, the trust is entitled to own only 160 acres as nonexcess because the beneficiaries do not own a partitionable interest during the period of the trust. Memorandum of Deputy Solicitor Weinberg, December 1, 1965, re Brockman property.

41. Pre-existing holdings—Generally

Section 46 of the 1926 Act and section 12 of the 1914 Act deal specifically with the breakup of pre-existing holdings, while the 1902 and the 1912 Acts are relevant to the issue of the effect of excess land limitations on the coalescence of holdings. Solicitor Barry Opinion, 68 I.D. 372, 375, 376, 390, 404 (1961), in re proposed repayment contracts for Kings and Kern River projects.

The requirement of section 46 that the holder of excess land execute a recordable contract binding him to the disposition of excess lands, as a condition to receiving project water for such lands, was deliberately enacted by the Congress in further pursuance of its policy designed to secure the breakup of pre-existing excess holdings benefiting from the expenditure of Federal funds and to prevent such excess landowners from reaping an unearned profit at the expense of purchasers. Solicitor Barry Opinion, 68 I.D. 372, 394 (1961), in re proposed repayment contracts for Kings and Kern River projects.

Payout is not relevant to the recordable contract requirements of section 46. Solicitor Barry Opinion 68 I.D. 372, 404 (1961) in re proposed repayment contracts for Kings and Kern River projects.

42. —Delivery to 160 acres

If desirable from a policy standpoint, the Department could agree that project water might be applied to the non-excess land of landowners in the irrigation district owning more than 160 acres, even though they had not previously entered into agreements respecting the sale of their excess lands. Solicitor White Opinion, M-36011 (September 23, 1949), in re proposed Tulare Irrigation District contract.

It has been administratively determined that in the normal situation where a recordable contract is called for under the law, the owner who refuses to sign such a contract may still obtain water for 160 irrigable acres and hold his excess acreage indefinitely, although he may not receive water supplies from Federal Reclamation works for his excess land. Letter from Commissioner Straus to Senator Joseph C. O'Mahoney, December 29, 1948.

Water legally may be furnished to non-excess lands (the "first" 160 acres) notwithstanding the failure or refusal of an owner thereof to execute a valid recordable contract for the sale of excess landholdings under section 46 of the Omnibus Adjustment Act of 1926. Memorandum of Regional Counsel Graham, August 1, 1945, reprinted in *Central Valley Project Documents,* Part 2, H.R. Doc. No. 246, 85th Cong., 1st Sess. 692 (1957).

43. —Recordable contracts

[Editor's note: For notes of opinion dealing with conveyances of land covered by recordable contracts see under Ownership of excess lands—Trusts and multiple ownerships, item 34, supra.]

The Secretary may allow recordable contracts to be executed covering land that is in excess ownership prior to the date of initial water delivery to the irrigation block in which the land lies, even though such land was purchased after the date of signing of the government repayment or water service contract and whether or not the land was in excess ownership prior to the purchase. Deputy Solicitor Weinberg Opinion, 72 I.D. 245 (1965), in re Westlands Water District contract.

The fact that urbanization is expected to replace irrigation farming within fifty years after project operations start does not suspend the recordable contract requirements of the excess land laws. Memorandum of Deputy Solicitor Weinberg to Commissioner, October 14, 1964, in re feasibility report in San Felipe division.

The Bureau of Reclamation may waive its authority to conduct a sale of excess land which has been placed under recordable contract the term of which has expired and instead approve a disposition into non-excess ownership made by the original owner. Memorandum of Deputy Solicitor Weinberg to the Regional Solicitor, Sacramento, October 28, 1965, re proposed trusts for Andersen children (Hammond Trust).

If excess lands covered by a recordable contract are sold by the owner to a corporation owned and controlled by him, the sale is not in compliance with the contract and the lands would not be eligible to receive project water. Letter from Assistant Secretary Aandahl to Senator Clinton P. Anderson, May 6, 1959.

In cases where, because of administrative laxity in enforcing the excess land limitations of reclamation law, or because projects were initiated prior to the enactment of section 46 of the 1926 Act, owners of excess lands have been receiving water therefor without having executed recordable contracts, the Secretary, in the exercise of his authority to perform all acts necessary and proper to carry the reclamation laws into full force and effect (sec. 10 of the Reclamation Act of 1902; sec. 15 of the Reclamation Project Act of 1939), may permit the continued delivery of water to such excess lands on condition that the owner, by the execution of a recordable contract, agrees to dispose of such lands within a reasonable time on

reasonable conditions. Associate Solicitor Cohen Opinion, M–34999 (October 22, 1947).

Inasmuch as section 46 of the Omnibus Adjustment Act of 1926 provides only that recordable contracts for the sale of excess lands be "under terms and conditions satisfactory to the Secretary of the Interior," and prescribes no time period within which such sales must be consummated, a ten-year period, if found to be appropriate, is legally permissible. Memorandum of Regional Solicitor Graham, August 1, 1945, reprinted in *Central Valley Project Documents,* Part 2, H.R. Doc. No. 246, 85th Cong., 1st Sess. 642 (1957).

44. —Anti-speculation

The anti-speculation provisions of section 46, which require the approval of the sale price by the Secretary, apply to all lands which are in excess after the execution of the district repayment or water service contract. Deputy Solicitor Weinberg Opinion, 72 I.D. 245 (1965), in re Westlands Water District contract.

For the purpose of determining when the requirement for Secretarial approval of the sales price of excess lands is no longer operative, the Secretary has authority to determine administratively by reasonable means the total construction charges against such land and the time at which one-half of such charges has been paid; and the contingent liability of the lands on account of possible default in payment by other lands is not part of the "construction charge" assignable to the land in question. Memorandum of Chief Counsel Fix, September 3, 1948 (attachment No. 1 to Supp. No. 1, Admin. Ltr. No. 303). [Ed. note: Other aspects of the Fix memorandum were overruled by Solicitor Bennett Opinion, 64 I.D. 273, 278 (1957), in re proposed contract with Kings River Conservation District.]

In the Circuit Court of Oregon for Malheur County the question was raised as to whether there was authority in the Secretary of the Interior to require the making of so-called "incremented value" contracts by district water users as a condition to a right to receive water from a project, these contracts having as their object the control or prevention of speculation in lands. The Circuit Court dismissed the actions on the ground that the United States was a vital and necessary party. But in the course of the opinion or the demurrers, the court discussed the question noted above by way of dictum and indicated its view that authority could be found in the Reclamation law. *Terra v. Pinney and Owyhee Irr. Dist.,* and *Pfeifer v. Greig and Owyhee Irr. Dist.,* January 27, 1937, reprinted in June and July, 1937, issues of the "Reclamation Era."

Sec. 47. [Repeal of subsections E, F, and L of section 4, Fact Finders' Act.]—Subsections E, F, and L of section 4, act approved December 5, 1924 (Forty-third Statutes at Large, page 701), are hereby repealed, except as herein otherwise provided. (44 Stat. 650)

Sec. 48. [Purpose of act.]—The purpose of this act is the rehabilitation of the several reclamation projects and the insuring of their future success by placing them upon a sound operative and business basis and the Secretary of the Interior is directed to administer this act to those ends. (44 Stat. 650; 43 U.S.C. § 423f)

Sec. 49. [Delivery of water during 1926 irrigation season notwithstanding delinquency in payment of water-right charges.]—Pending the execution of any contract under this act or the Interior Department Appropriation Act for the fiscal year 1927, or the said act of December 5, 1924, the Secretary is authorized, in his discretion and when convinced that action looking to execution of contract is being expedited in good faith, to deliver water during the irrigation season of 1926 to the irrigation district, water user's association, or water-right applicant affected, notwithstanding delinquency in the payment of water-right charges which under the law applicable would render such irrigation district, water users' association, or water-right applicant ineligible to receive water. (44 Stat. 650)

EXPLANATORY NOTES

Reference in the Text. The Interior Department Appropriation Act for the Fiscal Year 1927, referred to in the text, was approved May 10, 1926. Extracts from the Act appear herein in chronological order.

Reference in the Text. The Act of December 5, 1924, referred to in the text, is section 4 of said Act, the Fact Finders' Act. The Act appears herein in chronological order.

Sec. 50. [Adjustment of water-right charges as a final adjudication on projects and divisions named.]—The adjustments under sections 1 to 40, inclusive, of this act are declared to be an incident of the operation of the "reclamation law," a final adjudication on the projects and divisions named in such sections under the authority contained in subsection K, section 4, of the act approved December 5, 1924 (Forty-third Statutes, page 701), and shall not hereafter be construed to be the basis of reimbursement of the "reclamation fund" from the general fund of the Treasury or by the diversion to the "reclamation fund" of revenue of the United States not now required by law to be credited to such "reclamation fund." (44 Stat. 650; 43 U.S.C. § 423g)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code except for Sections 14(a–1), 40 through 46, 48 and 50.

Reference in the Text. Subsection K, section 4 of the Act of December 5, 1924 (Forty-third Statutes at Large, page 701), referred to in section 50, deals with surveys authorized to be made whenever it appears that settlers are unable to pay construction costs. The Act is the Fact Finders' Act, which appears herein in chronological order.

Legislative History. H.R. 10429, Public Law 284 in the 69th Congress. H.R. Rept. No. 617. S. Rept. No. 831.

CANCELLATION OF WATER-RIGHT CHARGES, BUFORD-TRENTON AND WILLISTON PROJECTS

An act to cancel water-right charges and release liens on the Buford-Trenton and Williston irrigation projects, North Dakota, and for other purposes. (Act of May 26, 1926, ch. 395, 44 Stat. 653)

[**Sec. 1. Secretary authorized to cancel water-right charges and release liens, Buford-Trenton and Williston projects.**]—The Secretary of the Interior is authorized to cancel water-right charges of any and every kind in connection with the Buford-Trenton and Williston irrigation projects in North Dakota constructed under the act of Congress approved June 17, 1902 (Thirty-second Statutes at Large, page 388), and acts amendatory thereof or supplementary thereto, and to release or consent to the release of any and all liens however created and now existing against lands of said projects on account of said water-right charges. (44 Stat. 653)

Sec. 2. [**Power of Secretary.**]—The Secretary of the Interior is authorized to do any and all things necessary to give full effect to the provisions of this act. (44 Stat. 653)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Sale of Property. The Interior Appropriation Act of March 3, 1925 (43 Stat. 1168), authorized the lease or sale of buildings, machinery, equipment and other property of the Williston project, North Dakota. Contract dated August 18, 1925, canceled repayment contracts of April 3, 1919, and March 1, 1921. Project buildings and property were sold effective January 1, 1926, by contract, Symbol No. Ilr-222, dated January 12, 1926, with W. S. Davidson.

Legislative History. H.R. 7819, Public Law 291 in the 69th Congress. H.R. Rept. No. 452.

APPOINTMENT OF COMMISSIONER OF RECLAMATION

An act to provide for the appointment of a Commissioner of Reclamation, and for other purposes. (Act of May 26, 1926, ch. 401, 44 Stat. 657)

[Reclamation of arid lands shall be administered by Commissioner of Reclamation—Salary.]—Under the supervision and direction of the Secretary of the Interior, the reclamation of arid lands, under the act of June 17, 1902, and acts amendatory thereof and supplementary thereto, shall be administered by a Commissioner of Reclamation who shall receive a salary of $10,000 per annum, and who shall be appointed by the President. (44 Stat. 657; 43 U.S.C. § 373a; Act of September 6, 1966, 80 Stat. 378; 5 U.S.C. § 5316)

Explanatory Notes

Commissioner's Salary. Various statutes increased the salary of the Commissioner of Reclamation over the years. At this writing, this salary is provided for in section 5316 of Title 5, United States Code. Title 5 of the Code was revised, codified and enacted into law by the Act of September 6, 1966, 80 Stat. 378, Public Law 89–554.

Legislative History. S. 1170, Public Law 297 in the 69th Congress. S. Rept. No. 51. H.R. Rept. No. 549.

REFUND EXCESS PRICE FOR LOTS IN TOWN SITE OF BOWDOIN

An act authorizing repayment of excess amounts paid by purchasers of certain lots in the town site of Bowdoin, Montana. (Act of June 8, 1926, ch. 500, 44 Stat. 708)

[**Sec. 1. Certification of excess over reappraisal.**]—The Secretary of the Interior is hereby authorized to certify to the Secretary of the Treasury the difference between the amounts paid by purchasers of the lots in the town site of Bowdoin, Montana, and the price fixed as result of reappraisal by the Secretary of the Interior of May 11, 1925, in all cases whether patents had or had not issued at the time of the reappraisal of the lots: *Provided,* That the purchasers or their legal representatives apply for repayment of such amounts within three years from the passage of this Act. (44 Stat. 708; Act of February 2, 1929, 45 Stat. 1146)

Sec. 2. [**Payment by Secretary of the Treasury.**]—Upon receipt of the certificate from the Secretary of the Interior, the Secretary of the Treasury is hereby authorized and directed to make payment to such purchasers out of the fund known as the Reclamation Fund, created by the Act of Congress approved June 17, 1902, Thirty-second Statutes, page 388. (44 Stat. 709)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1929 Amendment. The Act of February 2, 1929, extended the date for application for refund from June 8, 1928, to June 8, 1929.

Legislative History. S. 3268, Public Law 356 in the 69th Congress. S. Rept. No. 499. H.R. Rept. No. 1252.

RED BLUFF FEDERAL IRRIGATION PROJECT

An act to provide for the storage of the waters of the Pecos River. (Act of June 18, 1926, ch. 622, 44 Stat. 753)

[**Sec. 1. Secretary authorized to construct Red Bluff project, Pecos River—Area of project limited.**]—In accordance with the provisions of the act of June 17, 1902 (Thirty-second Statutes at Large, page 388), and acts amendatory thereof or supplementary thereto, except as the same are modified herein, the Secretary of the Interior is hereby authorized and empowered to construct the Red Bluff Federal irrigation project, consisting of a reservoir upon the Pecos River, sufficient in size for the irrigation of not exceeding forty thousand acres of land in the State of Texas, which reservoir shall be located at a point where it will impound the flood waters of Delaware Creek and Black River, and shall be provided with all necessary incidental works for the operation of the same. (44 Stat. 753)

Sec. 2. [**Expenditure for construction contingent upon contracts to pay United States costs incurred.**]—No expenditure for construction shall be made under this act until an appropriate contract or contracts in form approved by the Secretary of the Interior, providing for the payment to the United States as provided herein of the costs incurred on account of said project, shall have been properly executed by a district or districts organized under State law and embracing property to be benefited by said project, and such execution shall have been confirmed by a court of competent jurisdiction: *Provided,* That expenditures may be made hereunder at any time to cover necessary expenses incurred by the United States on account of preliminary investigations and negotiations in connection with the execution of the contract or contracts provided for by this section. (44 Stat. 753)

Sec. 3. [**Repayment to United States of cost of construction.**]—The total cost to the United States of the construction of said project shall be repaid to the United States in twenty annual installments, without interest, as follows: Five per centum thereof on March 1st of the second year following the year in which water becomes first available from said reservoir for irrigation, and 5 per centum thereof annually thereafter until the whole amount is paid: *Provided,* That if any installment shall not be paid when due there shall be added at once to such installment a penalty of 1 per centum thereof and thereafter on the first day of each month a like penalty so long as the default continues. (44 Stat. 753)

Sec. 4. [**Payment to United States in advance of cost of operating and maintaining project.**]—The cost to the United States of operating and maintaining said project shall be paid to the United States in advance upon annual estimates made by the Secretary of the Interior, and upon a day to be fixed by him: *Provided,* That the cost of operating and maintaining the project the year water is first available therefrom for irrigation, shall be merged with and made a part of the construction cost. If the estimate for any one year shall be

either more or less than the actual cost, an appropriate adjustment shall be made in the estimate for the next succeeding year. (44 Stat. 753)

Sec. 5. [Classification of irrigable lands and public notice as to construction charges not required; determination by Secretary of cost of project.]—No classification by the Secretary of the Interior of the irrigable lands of said project shall be required, nor shall he issue any public notice relating to construction charges against said lands: *Provided,* That the Secretary of the Interior shall determine the cost of said project, including the cost of operating and maintaining it the first season water is available therefrom for irrigation, and shall furnish a statement of such cost to the contracting district or districts. (44 Stat. 754)

Sec. 6. [Appropriation authorized limited to $2,000,000.]—There is hereby authorized to be appropriated from any moneys not otherwise appropriated, in the reclamation fund such an aggregate amount as may be necessary to carry out the purposes of this act, not exceeding the sum of $2,000,000. (44 Stat. 754)

Sec. 7. [Use of water from Pecos River in New Mexico above Avalon Dam limited—Approval by State of Texas.]—In the event that any irrigation works are constructed under the authorization contained in this act, neither the United States, the State of Texas, nor any of the parties for whose benefit said works are to be constructed shall at any time hereafter have or claim, or attempt in any manner to acquire, any right to the use in the State of Texas of any water which shall flow in the Pecos River, or any of its tributaries, in New Mexico at or above the Avalon Dam, except such of said water as may not at any time be used or diverted from or above said dam: *Provided,* That nothing in this section shall be construed to curtail the quantity of water to which present users in Texas may now be lawfully entitled: *And provided further,* That no construction under this act shall begin until the State of Texas, through legislative act, signed and approved by the governor of said State, shall have agreed to the provisions of this section. (44 Stat. 754)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Agreement of Texas. The State of Texas agreed to the provisions of section 7 by the Act of its legislature, approved February 12, 1927 (Texas Session Laws 1926–1927, page 25).

Construction. No construction was undertaken pursuant to this statute. The Red Bluff Water Power Control District of Texas, comprising seven irrigation districts, constructed the Red Bluff dam, reservoir and power plant with a Public Works Administration grant and loan. The project was completed in 1936.

Legislative History. H.R. 3862, Public Law 404 in the 69th Congress. H.R. Rept. No. 313. S. Rept. No. 411.

CANCELLATION OF CHARGES AGAINST PAIUTE INDIAN LANDS, NEWLANDS PROJECT

An act to authorize the cancellation and remittance of construction assessments against allotted Paiute Indian lands irrigated under the Newlands reclamation project in the State of Nevada and to reimburse the Truckee-Carson irrigation district for certain expenditures for the operation and maintenance of drains for said lands. (Act of June 26, 1926, ch. 694, 44 Stat. 771)

[**Reimbursement of Truckee-Carson Irrigation District—Cancellation and remittance of construction assessments against Paiute Indian lands.**]—There is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated the sum of $611.55, or so much thereof as may be necessary, to reimburse the Truckee-Carson Irrigation District, State of Nevada, for necessary expenditures incurred and to be incurred by said district during the years 1924 and 1925, in operating and maintaining irrigation drains for lands under water-right application, located within the limits of the Paiute Indian Reservation in said State. The money herein authorized to be appropriated shall be reimbursed to the Treasury of the United States under such rules and regulations promulgated by the Secretary of the Interior in accordance with provisions of the law applicable to the Indian lands benefited: *Provided,* That all charges assessed, or to be assessed for the construction of irrigation works, against approximately seven and a quarter sections of Paiute Indian lands situated in township 19 north, range 30 east, Mount Diablo meridian, Nevada, that are within the Newlands reclamation project, be and the same are hereby, remitted and canceled and said lands are hereby recognized and declared to have a water right without cost to the Indians: *Provided further,* That such lands shall be subject to their proportionate share of the annual operation and maintenance charges. (44 Stat. 771)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Expenses of Paiute Indian Lands Drainage System. The Act of February 14, 1923, 42 Stat. 1246, authorized an appropriation to be made in annual installments for the purpose of meeting the proportionate expenses of providing a drainage system for Paiute Indian lands within the Newlands project. The appropriation authorization was increased by the Act of June 7, 1924, 43 Stat. 595. The 1923 Act appears herein in chronological order.

Legislative History. S. 7, Public Law 431 in the 69th Congress. S. Rept. No. 360. H.R. Rept. No. 1323.

CREDITS FOR CHARGES ON YUMA AND YUMA AUXILIARY PROJECTS

An act to authorize credit upon the construction charges of certain water-right applicants and purchasers on the Yuma and Yuma Mesa auxiliary reclamation projects, and for other purposes. (Act of June 28, 1926, ch. 702, 44 Stat. 776)

[Credits on construction charges and on operation and maintenance charges—Yuma Indian Reservation.]—The Secretary of the Interior be, and he is hereby, authorized and directed to credit the individual water-right applicants on the Yuma reclamation project and the purchasers of water rights on the Yuma Mesa auxiliary project, on the construction charges due under their contracts with the United States under the reclamation act and acts amendatory thereof and supplementary thereto, with their proportionate part of all payments heretofore made or hereinafter to be made by the Imperial irrigation district of California under contract entered into under date of October 23, 1918, between the said district and the Secretary of the Interior: *Provided,* That lands in the Yuma Indian Reservation for which water rights have been purchased shall share pro rata in the credits so to be applied: *Provided further,* That where construction charges are paid in full said payments shall be credited on operation and maintenance charges assessed against the lands to which said payments would otherwise apply. (44 Stat. 776; Act of February 26, 1929, 45 Stat. 1321)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1929 Amendment. The Act of February 26, 1929, 45 Stat. 1321, amended the Act by adding to it its last proviso. The 1929 Act appears herein in chronological order.

Legislative History. S. 3978, Public Law 438 in the 69th Congress. S. Rept. No. 634. H.R. Rept. No. 1182.

Note of Opinion

1. Reclamation fund

The credits referred to are to be paid into the reclamation fund. Attorney General Opinion, September 16, 1919; Solicitor's decision, August 7, 1919.

EXAMINATION OF SWAMP AND OVERFLOW LANDS IN MISSISSIPPI

An act to provide for an examination and report on the condition and possible development and reclamation of the swamp lands on the Yazoo, Tallahatchie, and Coldwater Rivers in Mississippi. (Act of July 3, 1926, ch. 796, 44 Stat. 901)

[**Sec. 1. Investigation of swamp lands on Yazoo River and tributaries—Determination of cost of reclamation.**]—The Secretary of the Interior be, and he is hereby, authorized and directed to have an examination and investigation made of the swamp and overflow lands on the Yazoo, Tallahatchie, and Coldwater Rivers in the State of Mississippi, with a view to determining the area, location, and general character of the swamp and overflow lands in the valley of the Yazoo River and its said tributaries, which can be developed and reclaimed at a reasonable cost, and the character, extent, and cost of a reclamation and development system of the swamp and overflow lands along the Yazoo River and its said tributaries. (44 Stat. 901)

Sec. 2. [**Report to Congress with recommendation as to feasibility, etc.**]—The said Secretary shall report to Congress as soon as practicable the results of his examination and investigation, together with a recommendation as to the feasibility, necessity, and advisability of the undertaking, and of the participation by the United States in a plan of reclamation in connection with the development of the swamp and overflow lands in the valley of the said Yazoo River and its tributaries. (44 Stat. 901)

Sec. 3. [**Report to contain estimated cost of plan.**]—The said Secretary shall report in detail as to the character and estimated cost of the plan or plans on which he may report. (44 Stat. 902)

Sec. 4. [**Report as to extent to which United States should contribute to cost of plan proposed—Drainage districts' proportion of cost—Extent United States should control or supervise plan proposed.**]—The said Secretary shall also report as to the extent, if any, to which, in his opinion, the United States should contribute to the cost of carrying out the plan or plans which he may propose; the approximate proportion of the total cost which should be borne by the various drainage districts or other public agencies now organized or which may be organized; the manner in which their contribution should be made; to what extent and in what manner the United States should control, operate, or supervise the carrying out of the plan proposed, and what assurances he has been able to secure as to the approval of, participation in, and contribution to, the plan or plans proposed by the various contributing agencies. (44 Stat. 902)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Report to Congress. The report on the Yazoo River of Mississippi was submitted to the Congress on February 25, 1927, and printed as House Document 765, Part 2, 69th Congress.

Cross References, Other Swamp Lands Examination Authorities. The Sundry Civil Appropriation Act of 1919, approved July

1, 1918, and subsection R of section 4 of the Act of December 5, 1924, the Fact Finders' Act, both include authority for investigations by the Bureau of Reclamation of swamps and cut-over timber lands. Extracts from the 1919 Act and the complete text of the Fact Finders' Act appear herein in chronological order.

Legislative History. H.R. 11713, Public Law 517 in the 69th Congress. H.R. Rept. No. 1304.

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1928

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1928, and for other purposes. (Act of January 12, 1927, ch. 27, 44 Stat. 934)

* * * * *

[**Advances for operation and maintenance of projects.**]—Any moneys which may have been heretofore or may be hereafter advanced for operation and maintenance of any project or any division of a project shall be covered into the reclamation fund and shall be available for expenditure for the purposes for which advanced in like manner as if said funds had been specifically appropriated for said purposes. * * * (44 Stat. 957; 43 U.S.C. § 397a)

[**Restriction on use for lands in arrears.**]—No part of any sum provided for in this act for operation and maintenance of any project or division of a project by the Bureau of Reclamation shall be used for the irrigation of any lands within the boundaries of an irrigation district which has contracted with the Bureau of Reclamation and which is in arrears for more than twelve months in the payment of any charges due the United States, and no part of any sum provided for in this act for such purpose shall be used for the irrigation of any lands which have contracted with the Bureau of Reclamation and which are in arrears for more than twelve months in the payment of any charges due from said lands to the United States. (44 Stat. 958)

Explanatory Note

Provision Repeated. The same limitation on the expenditure of funds for lands in arrears was contained in each subsequent annual Interior Department Appropriation Act through fiscal year 1950. The Interior Department Appropriation Act, 1951 (General Appropriation Act, 1951), September 6, 1950, 64 Stat. 688, revised the wording but not the substance of the provision, and the revised form has been repeated in each appropriation act thereafter through the most recent act, the Public Works Appropriation Act, October 15, 1966, 80 Stat. 1009.

* * * * *

[**Minidoka project—Gravity Extension unit.**]—Minidoka project, * * * Idaho: * * * investigation and construction of gravity extension unit, $400,000: *Provided,—Repealed.* (44 Stat. 958)

Explanatory Note

Provision Repealed. The Act of August 21, 1954, 68 Stat. 762, repealed the proviso under the subheading "Minidoka project," which read as follows: "*Provided,* That none of the said sum of $400,000 shall be available for construction work until a contract or contracts shall be made with an irrigation district or districts embracing said unit which, in addition to other conditions required by law, shall require repayment of construction costs as to such lands as may be furnished supplemental water within a period not exceeding twenty years from the date water shall be available for delivery." The 1954 Act appears herein in chronological order.

NOTES OF OPINIONS

Excess lands 2
Interest 3
Project 1
Use of Milner Dam 4

1. Project

The proviso to the Minidoka project portion of the appropriation act of January 12, 1927, 44 Stat. 958, constitutes the Gravity Extension (Gooding division) of the Minidoka project, a portion of the Minidoka project proper, and section 46 of the adjustment act is therefore applicable to the gravity extension division. Solicitor Patterson Opinion, M–22401 (June 14, 1927).

2. Excess lands

The limitation intended by the reclamation law, as set forth in section 5 of the Reclamation Act of 1902, and as supported by the plain language of section 3 of the Act of August 9, 1912, relates to the area in private ownership to which water may be delivered, and not to the quantity of water. A private owner will not be supplied with water, whether a full or supplemental supply, for use upon a tract exceeding 160 acres. The language in section 2 of the Warren Act referring to "an amount sufficient to irrigate 160 acres" is not intended to change this rule. Solicitor Patterson Opinion, M–21709 (March 3, 1927), in re proposed contract concerning Gravity Extension Unit, Minidoka project.

The excess lands provision of section 46 of the Omnibus Adjustment Act apply to lands with a vested water right which receives a supplemental water supply from the Gravity Extension Unit (Gooding division) of the Minidoka project. Solicitor Patterson Opinion, M–22401 (June 14, 1927).

3. Interest

The word "contractor" in the second proviso to the appropriation item for the Minidoka project in the Act of June 5, 1924, designates any purchaser of water from the American Falls Reservoir, and not merely the contractors who were cooperating with the United States in the construction of the reservoir. Therefore, the contract governing the Gravity Extension unit, pursuant to the Act of January 12, 1927, should provide that the irrigation district shall pay interest at the rate of 6 percent on a proportionate share of the cost to the United States of the American Falls Reservoir. Solicitor Patterson Opinion, M–22401 (June 14, 1927).

4. Use of Milner Dam

The gravity extension unit (Gooding division) of the Minidoka project was constructed by the United States under a repayment contract with American Falls Reservoir District No. 2. It diverts water from the Snake River below Minidoka dam in an area of slack water caused by Milner dam, which was built in 1903 by the Twin Falls Land and Water Company, and is operated and maintained by the Twin Falls Canal Company. The latter brought suit against the American Falls Reservoir District No. 2 for a proportionate share of the costs of construction and operation of Milner dam. The suit was dismissed on the grounds: (1) that the United States, not the reservoir district, was the proper party defendant, notwithstanding a provision in the repayment contract that the district would hold the United States harmless against claims in favor of the owners of Milner dam; and (2) that the gravity diversion works were not damaging plaintiff's water rights or its use of Milner dam. *Twin Falls Canal Co.* v. *American Falls Reservoir Dist. No. 2,* 59 F. 2d 19 (9th Cir. 1932); *affirming* 49 F. 2d 632 (D. Idaho 1931); see also 45 F. 2d 649 D. Idaho 1930) overruling demurrer to amended complaint.

* * * * *

[**Newlands project—Contract for reconstruction of Truckee Canal—Drainage.**]—Newlands project, Nevada: * * * : *Provided,* That no part of this amount shall be available for the construction of the Truckee Canal unless a contract in form approved by the Secretary of the Interior shall have been made with the Truckee-Carson irrigation district providing for the payment of the reconstruction cost:

* * * * *

[**Belle-Fourche drainage construction.**]—Belle-Fourche project, South Dakota: For continuation of construction of drainage, $125,000: *Provided,* That no part of this amount shall be available unless a contract or contracts in form approved by the Secretary of the Interior shall have been made with an

irrigation district or districts organized under State law provided for payment of construction and operation and maintenance charges by such district or districts. (44 Stat. 959)

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code except for the paragraph on "Advances for operation and maintenance of projects."

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 14827, Public Law 541 in the 69th Congress. H.R. Rept. No. 1616. S. Rept. No. 1203. H.R. Rept. No. 1663 (conference report).

COLORADO RIVER FRONT WORK AND LEVEE SYSTEM

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes. (Act of January 21, 1927, ch. 47, 44 Stat. 1010)

* * * * *

[Appropriation authorization for Colorado River front work and levee system—Federal expenditures not to be deemed as recognition of United States responsibility—Local communities may be required to provide rights-of-way and maintenance—Reimbursements to be covered into the Treasury—Provisions of 1944 Act not affected.]—For the purpose of controlling the floods, improving navigation, and regulating the flow of the Colorado River, there is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the fiscal year ending June 30, 1928, and annually thereafter, such sums as may be necessary, to be spent by the Bureau of Reclamation under the direction of the Secretary of the Interior, to defray the cost of (a) operating and maintaining the Colorado River front work and levee system in Arizona, Nevada, and California; (b) constructing, improving, extending, operating, and maintaining protection and drainage works and systems along the Colorado River including such protection and drainage works and systems within a non-Federal reclamation project when need for such systems results from irrigation operations on Federal reclamation projects; (c) controlling said river, and improving, modifying, straightening, and rectifying the channel thereof; and (d) conducting investigations and studies in connection therewith: *Provided,* That the expenditure of moneys for any of the foregoing purposes shall not be deemed a recognition of any obligation or liability whatsoever on the part of the United States: *Provided further,* That, within the discretion of the Secretary of the Interior, local communities to be benefited by works constructed pursuant to this Act may be required to provide, without cost to the United States, necessary rights-of-way and maintenance of the completed works and assurance, satisfactory to him, of payment of valid claims arising out of damage caused to persons or property by reason of the construction, operation, or maintenance of any such works: *Provided further,* That any moneys received by the United States as reimbursement in accordance with contracts heretofore entered into under the authority of the Act of December 21, 1928 (45 Stat. 1057), as amended, and ratified by the Act of August 30, 1935 (49 Stat. 1028, 1039), for expenditures made under the authority of this paragraph, shall be covered into the Treasury as miscellaneous receipts. In connection with operations conducted under this paragraph, the Secretary of the Interior shall have the same authority with respect to (a) the acquisition, exchange and disposition of lands, interests in lands, water rights and other property, and the relocation thereof; (b) the utilization of lands owned or acquired by the United States; (c) construction and supply contracts; (d) the performance of necessary or proper acts; and

(e) the making of necessary or proper rules and regulations, which he has in connection with projects under the Federal reclamation laws, Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto. Nothing contained in this paragraph shall be deemed to amend, repeal, or otherwise affect the provisions contained in the First Deficiency Appropriation Act, 1944, under the caption "Department of the Interior, Bureau of Reclamation—Colorado River front work and levee system" (58 Stat. 150, 157). (44 Stat. 1021; Act of July 1, 1940, 54 Stat. 708; Act of June 28, 1946, 60 Stat. 338; Act of May 1, 1958, 72 Stat. 101)

[**Provision repealed.**]—Section 16(c), act approved March 3, 1925 (Forty-third Statutes at Large, page 1198), is hereby repealed. (44 Stat. 1021)

* * * * *

EXPLANATORY NOTES

Not Codified. Sections of this Act shown here are not codified in the U.S. Code.

1958 Amendment. The Act of May 1, 1958, amended the Act of June 28, 1946, which act was an amendment of this act, by adding in item "(b)" above after the words "Colorado River" the following: "including such protection and drainage works and systems within a non-Federal reclamation project when need for such systems results from irrigation operations on Federal reclamation projects." Both the 1946 and 1958 Acts appear herein in chronological order.

1946 Amendment. The Act of June 28, 1946, 60 Stat. 338, which appears herein in chronological order, amended this provision to read as it appears above. The provision as originally enacted read as follows:

"There is hereby authorized to be appropriated out of any moneys in the Treasury of the United States not otherwise appropriated, for the fiscal year ending June 30, 1928, and annually thereafter, the sum of $100,000, or so much thereof as may be necessary, to be spent by the Reclamation Bureau under the direction of the Secretary of the Interior, to defray the cost of operating and maintaining the Colorado River front work and levee system adjacent to the Yuma Federal irrigation project in Arizona and California."

1940 Amendment. The Act of July 1, 1940, 54 Stat. 708, amended this provision so that in addition to the work of operating and maintaining the Colorado front work and levee system adjacent to the Yuma Federal irrigation project in Arizona and California, the authorized appropriation was to be spent also "to defray the cost of other necessary protection works and systems along the Colorado River between said Yuma project and Boulder Dam." The 1940 Act appears herein in chronological order.

References in the Text. The Act of December 21, 1928 (45 Stat. 1057), as amended, referred to in the text, is the Boulder Canyon Project Act. The Act of August 30, 1935 (49 Stat. 1028, 1039), referred to in the text as ratifying the 1928 Act is the section of the Rivers and Harbors Act of 1935 which authorized the Parker Dam on the Colorado River and the Grand Coulee Dam on the Columbia River, and which ratified and validated all contracts and agreements executed in connection with these projects. Both the 1928 Act and extracts from the 1935 Act appear herein in chronological order.

Reference in the Text. The First Deficiency Appropriation Act, 1944, was approved April 1, 1944. The portion of the Act referred to in the text, i.e., "Department of the Interior, Bureau of Reclamation—Colorado River front work and levee system" (58 Stat. 150, 157), appears herein in chronological order.

Reference in the Text. Section 16(c), act approved March 3, 1925 (Forty-third Statutes at Large, page 1198), which is repealed by this act, provided an appropriation for the fiscal year ending June 30, 1927, and annually thereafter, of $35,000, or so much thereof as may be necessary, for the Colorado River front work and levee system. The provision appears herein as a note following the 1925 Act.

Supplementary Provision: Credit for Flood Protective Levee Systems. The Act of September 2, 1950, 64 Stat. 576 authorized credits for costs incurred by the Yuma project, the Yuma Auxiliary project and the Imperial Irrigation District of California, in constructing, operating and maintaining flood protective levee system

along or adjacent to the lower Colorado River in Arizona, California, and Lower California, Mexico. The 1950 Act appears herein in chronological order.

Legislative History. H.R. 11616, Public Law 560 in the 69th Congress. H.R. Rept. No. 993. S. Rept. No. 1145. H.R. Rept. No. 1727 (conference report).

COMPENSATION TO CITIZENS NEAR HATCH, N. MEX., FOR FLOOD DAMAGES

An act for the payment of damages to certain citizens of New Mexico caused by reason of artificial obstructions to the flow of the Rio Grande by an agency of the United States. (Act of February 25, 1927, ch. 213, 44 Stat. 1792)

[**Sec. 1. Survey for determination of property loss—Payment.**]—The Secretary of the Interior is authorized and directed (1) to cause a survey to be made in such manner and under such regulations as he deems necessary for the purposes of this act to determine the property loss by flood by reason of the overflow of the Rio Grande River on August 17, 1921, sustained by Lucas Trujillo, Juan Bians, Mariano P. Padillo, Bruno Perea, Juan Jose Trujillo, Miguel Trujillo, Francisco Saiz, Antonio Provencio, B. R. Carreros, Santiago Serna, Roman M. Herrera, and other property owners, who are citizens of the United States residing at or in the vicinity of Hatch and Santa Teresa, New Mexico; and (2) to pay such losses in full if the amount appropriated in section 2 of this act is sufficient or, if such amount is insufficient, to pay to each person such percentage of the amount of his property loss as the amount appropriated bears to the amount determined by the Secretary as the property loss sustained. (44 Stat. 1792)

Sec. 2. [Appropriation authorized.]—There is hereby authorized to be appropriated, out of any money in the reclamation fund of the Treasury the sum of $75,000 or so much thereof as may be necessary for the purposes of this act. (44 Stat. 1792)

EXPLANATORY NOTE

Legislative History. S. 545, Private Law 396 in the 69th Congress. S. Rept. No. 128. H.R. Rept. No. 1552.

NOTE OF OPINION

1. Flood damage claims reimbursable

Appropriations for the Hatch flood damage claims are reimbursable and are chargeable to the operation and maintenance costs of the project. Dec. Comp. Gen A–23558 (March 29, 1929).

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1929

[**Extracts from**] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1929, and for other purposes. (Act of March 7, 1928, ch. 137, 45 Stat. 200)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[**Operation of reserved works for which advance payments not made.**]—For operation and maintenance of the reserved works of a project or division of a project when irrigation districts, water-users' associations, or Warren Act contractors have contracted to pay in advance but have failed to pay their proportionate share of the cost of such operation and maintenance, to be expended under regulations to be prescribed by the Secretary of the Interior, $75,000. (45 Stat. 228)

EXPLANATORY NOTE

Provision Repeated. An appropriation item for the same purpose is contained in each subsequent annual Interior Department Appropriation Act through the Act of July 2, 1942, 56 Stat. 532.

* * * * *

[**Yuma project—Power revenues.**]—Yuma project, Arizona-California: * * * *Provided further,* That not to exceed $25,000 from the power revenues shall be available during the fiscal year 1929 for the operation and maintenance of the commercial system. (45 Stat. 228)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 780.

* * * * *

[**Minidoka project—Power revenues.**]—Minidoka project, Idaho: * * * *Provided,—Repealed.*

EXPLANATORY NOTE

Provision Repeated and Repealed. The Act of May 31, 1962, authorizing the execution of amendatory contracts between the United States and (1) the Burley Irrigation District, and (2) the Minidoka Irrigation District, repealed the provisos in the Interior Department Appropriation Act of 1940 relating to the Minidoka project. A portion of one of these provisos was initially contained in this Act and read as follows: "That not to exceed $50,000 from the power revenues shall be available during the fiscal year 1929 for the operation of the commercial system,". A similar appropriation of power revenues for operation purposes was contained in each subsequent annual Interior Department appropriation act through the Act of October 12, 1949, 63 Stat. 781. In the Act of March 24, 1929, 45 Stat. 1590, and subsequent appropriation acts through the Act of July 2, 1942, 56 Stat. 532, power revenues were also made available for "continuation of construction, south side division." The 1962 Act repealing the provisos contained in the 1940 Act appears herein in chronological order.

* * * * *

[**North Platte project—Power revenues.**]—North Platte project, Nebraska-Wyoming: Not to exceed $75,000 from the power revenues shall be available during the fiscal year 1929 for the operation and maintenance of the commercial system. (45 Stat. 229)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes, and occasionally also for betterment or rehabilitation, is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781.

* * * * *

[**Klamath project—Refunds to lessees.**]—Klamath project, Oregon-California: * * * for refunds to lessees of marginal lands, Tule Lake, which lands because of flooding could not be seeded prior to June 1, 1927, and/or June 1, 1928, $30,000; (45 Stat. 229; 43 U.S.C. § 611)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation item for refunds to lessees of marginal lands, Tule Lake, is contained in the Interior Department Appropriation Acts for 1930, 1931 and 1932. The appropriation act for fiscal year 1933, Act of April 22, 1932, 47 Stat. 116, and each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781, contain the following proviso: "*Provided,* That revenues received from the lease of marginal lands, Tule Lake division, shall be available for refunds to the lessees in such cases where it becomes necessary to make refund because of flooding or other reasons within the terms of such leases."

* * * * *

[**Riverton project—Power revenues.**]—Riverton project, Wyoming: * * * *Provided,* That not to exceed $20,000 from the power revenues shall be available during the fiscal year 1929 for the operation and maintenance of the commercial system; (45 Stat. 230)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781.

* * * * *

[**Shoshone project—Power revenues.**]—Shoshone project, Wyoming: * * * *Provided further,* That not to exceed $20,000 from the power revenues shall be available during the fiscal year 1929 for the operation and maintenance of the commercial system. (45 Stat. 230)

EXPLANATORY NOTES

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781.

Cross Reference; Additional Provisions. For additional provisions relating to the power system and power revenues of the Shoshone project, see the Act of March 4, 1929, 45 Stat. 1592, and the notes thereunder.

* * * * *

EXPLANATORY NOTES

Not Codified. Excerpts of this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 9136, Public Law 100 in the 70th Congress. H.R. Rept. No. 255. S. Rept. No. 192. H.R. Rept. No. 701 (conference report).

TAXATION OF LANDS OF HOMESTEAD AND DESERT-LAND ENTRYMEN

An act to permit taxation of lands of homestead and desert-land entrymen under the reclamation act. (Act of April 21, 1928, ch. 394, 45 Stat. 439)

[**Sec. 1. Lands of homestead entryman and of entryman on ceded Indian lands taxable by State after proof of residence, etc.**]—The lands of any homestead entryman under the act of June 17, 1902, known as the reclamation act, or any act amendatory thereof or supplementary thereto, and the lands of any entryman on ceded Indian lands within any Indian irrigation project, may, after satisfactory proof of residence, improvement, and cultivation, and acceptance of such proof by the General Land Office, be taxed by the State or political subdivision thereof in which such lands are located in the same manner and to the same extent as lands of a like character held under private ownership may be taxed. (45 Stat. 439; Act of June 13, 1930, 46 Stat. 581; 43 U.S.C. § 455)

Sec. 2. [**Lands of desert-land entryman taxable by State.**]—The lands of any desert-land entryman located within an irrigation project constructed under the reclamation act and obtaining a water supply from such project, and for whose land water has been actually available for a period of four years, may likewise be taxed by the State or political subdivision thereof in which such lands are located. (45 Stat. 439; Act of June 13, 1930, 46 Stat. 581; 43 U.S.C. § 455a)

Sec. 3. [**Taxes a lien upon, and enforceable by sale of lands.**]—All such taxes legally assessed shall be a lien upon the lands and may be enforced upon said lands by the sale thereof in the same manner and under the same proceeding whereby said taxes are enforced against lands held under private ownership; but the title or interest which the State or political subdivision thereof may convey by tax sale, tax deed, or as a result of any tax proceeding shall be subject to a prior lien reserved to the United States for all due and unpaid installments on the appraised purchase price of such lands and for all the unpaid charges authorized by law whether accrued or otherwise. The holder of such tax deed or tax title resulting from such tax shall be entitled to all the rights and privileges in the land of an assignee of such entryman on ceded Indian lands or of an assignee under the provisions of the act of June 23, 1910, as amended, or of any such entries in a Federal reclamation project constructed under said act of June 17, 1902, as supplemented or amended. (45 Stat. 439; Act of June 13, 1930, 46 Stat. 581; 43 U.S.C. § 455b)

Sec. 4. [**Extinguishment of liens in case lands revert to United States.**]—If the lands of any such entryman shall at any time revert to the United States for any reason whatever, all such liens or tax titles resulting from assessments levied after the date of this amendatory act upon such lands in favor of the State or political subdivision thereof wherein the lands are located, shall be and shall be held to have been, thereupon extinguished; and the levying of any such

assessment by such State or political subdivision shall be deemed to be an agreement on its part, in the event of such reversion, to execute and record a formal release of such lien or tax title. (Added by Act of June 13, 1930, 46 Stat. 581; 43 U.S.C. § 455c)

EXPLANATORY NOTES

1930 Amendment. The Act of June 13, 1930, 46 Stat. 581, amended the Act by: (1) adding to section 1 the words "and the lands of any entryman on ceded Indian lands within any Indian irrigation project"; (2) in section 3, changing the colon that followed the word "ownership" to a semicolon, and inserting thereafter the word "but" in place of "*Provided,* That", and inserting the language following the words "United States" in lieu of "for all the unpaid charges authorized by the said act of June 17, 1902, whether accrued or otherwise, but the holder of such tax deed or tax title resulting from such tax shall be entitled to all the rights and privileges in the land of an assignee under the provisions of the Act of June 23, 1910 (Thirty-sixth Statutes, page 592)."; and (3) adding section 4 to the Act. The 1930 Act appears herein in chronological order.

Legislative History. H.R. 475, Public Law 290 in the 70th Congress. H.R. Rept. No. 605. S. Rept. No. 753.

NOTES OF OPINIONS

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1. General

The interest of a homestead entryman in public land on a Federal irrigation project is taxable after the submission of satisfactory final proof under the ordinary provisions of the homestead law and upon acceptance thereof by the Commissioner of the General Land Office and desert land entries located within an irrigation project constructed under the Reclamation Act are subject to State taxation at any time after water from said project has been available for the irrigation of the lands in the entry for four years. General Land Office regulations, 52 L.D. 511 (1928). See C.L. 1779 and amendatory C.L. 1972, 53 I.D. 418 (1931).

2. Vesting of taxable interest

This Act authorizing States to tax lands of a desertland entryman obtaining water from irrigation project "vests" an actual taxable interest in land in entryman before he has completed requirements entitling him to patent and authorizes States and political subdivisions thereof to tax entryman's interest. *Lower Yellowstone Irr. Dist. No. 2 v. Nelson,* 2 N.W. 2d 180, 71 N.D. 439 (1942).

The interest of desertland entryman in public lands before his acquisition of a completed equitable title thereto is "real property", taxable as such under State laws. *Lower Yellowstone Irr. Dist. No. 2 v. Nelson,* 2 N.W. 2d 180, 71 N.D. 439 (1942).

Under this section lands of a homestead entryman after compliance with all requirements of homestead laws as to residence, improvement and cultivation, but before final proof of reclamation of land was made, were subject to taxation by State and political subdivisions, regardless of when homestead entry was made. *Jolley v. Minidoka County,* 106 P. 2d 865, 61 Idaho 696 (1940).

3. Indian lands

The Act of April 21, 1928, authorizing local taxation of reclamation homesteads after acceptance by the General Land Office of satisfactory proof of residence, improvements, and cultivation, is applicable to lands in the ceded Flathead Indian Reservation. The taxes may become a lien on the homestead subject to a prior lien reserved to the United States for unpaid reclamation charges. Assistant Secretary Edwards Opinion, 53 I.D. 35 (1930).

4. Excess lands

There is no *legal* objection to the acquisition of a water right by a water users association or other corporation if it is not otherwise disqualified under the excess land laws by reason of ownership of other lands on which there exist unpaid betterment and building charges. However, the Department has ruled as a matter of policy that water applications will not be accepted from corporations, Instructions, 42 L.D. 250 (1913), *Pleasant Valley Farm Co.,* 42 L.D. 253 (1913), unless the corporation acquires a patent and water right solely to protect its security in a loan transaction and with the intention of reselling it at more propitious times, *Great Western Insurance Co.,* A-16335 (February 8, 1932). Consequently, under this policy, where the Grand Valley Water Users Association has acquired sev-

eral farm units at tax sales to protect its lien, it may receive a patent to one farm unit for security purposes and may bid at tax sales for unlimited acreage for the purpose of protecting its lien and with the intent of reassigning its interest to qualified persons within a reasonable time. *James P. Balkwill,* 55 I.D. 241 (1935).

One who acquires lands of a reclamation homestead entryman at a tax sale pursuant to the Act of April 21, 1928, as amended, is subject to the provisions of reclamation law including the excess lands provisions. This result follows from the provisions of the 1928 Act that the holder of such tax deed or tax title is entitled to the rights and privileges of an assignee under the Act of June 23, 1910; and the latter Act makes the assignee "subject to the limitations, charges, terms and conditions of the reclamation act." *James P. Balkwill,* 55 I.D. 241 (1935).

5. Withdrawal

The Act of April 21, 1928, as amended, provides that the holder of a tax title on a reclamation homestead entry is entitled to the benefits of an assignee of such an entry under the act of June 23, 1910; and the privileges under the Act of June 23, 1910, which are granted to the holder of a tax title under the Act of April 21, 1928, as amended, are not extinguished by the elimination of the entry from the reclamation withdrawal after the interest of the holder of the tax title was acquired. *Ralph O. Baird,* A–26773 (November 3, 1953).

TRANSFER OF OKANOGAN PROJECT TO OKANOGAN IRRIGATION DISTRICT

An act to authorize the Secretary of the Interior to transfer the Okanogan project, in the State of Washington, to the Okanogan irrigation district upon payment of charges stated. (Act of May 25, 1928, ch. 743, 45 Stat. 739)

Repealed.—

EXPLANATORY NOTES

Repealed. The Act of May 6, 1949, 63 Stat. 62, which appears herein in chronological order, repealed this Act in its entirety. The text of the Act before repeal read as follows:

[Sec. 1. **Contract for payment of $10,000 per annum for 31 years, interest 6 per cent.**]—The Secretary of the Interior is hereby authorized to contract with the Okanogan irrigation district for the transfer of the control of the Okanogan project, in the State of Washington, constructed pursuant to the act of June 17, 1902 (Thirty-second Statutes at Large, page 388), and acts amendatory thereof or supplementary thereto, known as the reclamation law, upon the district agreeing to pay to the United States in discharge of all obligations the sum of $10,000 per annum for the period of thirty-one consecutive years, beginning with the year 1928 such installments to be due on December 1 of each year and bear interest at the rate of 6 per centum per annum after due. Upon such payments being completed, the said Secretary is authorized to convey to the district all the right, title, and interest of the United States in and to said Okanogan project. (45 Stat. 739)

Sec. 2. [**Assignment of claims by United States to district—District may operate canals during 1928.**]—The Secretary is authorized to assign to the district all claims that the United States now holds under contracts with water users and others owning land outside the boundaries of said district, or owning land within the boundaries of said district but not consenting expressly or impliedly to the modifications in their water-right contracts necessary to conform to the terms of said proposed contract between the United States and the Okanogan irrigation district. During the irrigation season of 1928, prior to the execution of such contract with the Okanogan irrigation district, the district may, at its own expense, operate the canals and other works of the Okanogan project for the delivery of water to the water users thereunder, and during such irrigation season may deliver water regardless of the restriction now imposed by the reclamation law relating to delinquency in payment of charges. (45 Stat. 739)

Sec. 3. [**United States reserves right to shut off water to enforce payment of installments—Control to be resumed when installment not paid on or before March 1 after due.**]—The contract between the United States and the said district shall reserve to the United States the power to resume control of said project at any time when necessary to shut off water to enforce payment of the annual installments provided for in the first section hereof.

The Secretary of the Interior is directed to resume control and shut off water to enforce payment whenever any such annual installment is not paid on or before March 1 after due. (45 Stat. 739)

Legislative History. S. 1661, Public Law 509 in the 70th Congress. S. Rept. No. 7. H.R. Rept. No. 237.

AMENDED CONTRACTS, RIO GRANDE PROJECT

An act extending the time of construction payments on the Rio Grande Federal irrigation project, New Mexico-Texas. (Act of May 28, 1928, ch. 815, 45 Stat. 785)

[**Sec. 1. After payment of first four installments, construction charge payable in installments of $3.60.**]—The Secretary of the Interior is hereby authorized and directed to enter into amended contracts with the Elephant Butte irrigation district, of New Mexico, and El Paso County water improvement district Numbered 1, of Texas, whereby, after the payment of the first four annual installments, as now provided for in existing contracts, upon the construction charge under the Rio Grande Federal irrigation project, New Mexico-Texas, the remaining unpaid construction charge per irrigable acre shall be payable annually in installments of $3.60. (45 Stat. 785)

Sec. 2. [**Annual payments to continue until obligation discharged.**]—These annual payments shall continue until the total construction charge against said districts is paid. (45 Stat. 786)

Sec. 3. [**Existing contracts to remain otherwise unaltered.**]—The existing contracts between the United States and Elephant Butte irrigation district, of New Mexico, and between the United States and El Paso County water improvement district Numbered 1 shall remain unaltered except as herein otherwise directed. (45 Stat. 786)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Supplementary Provision: Authority of the Secretary. Public Resolution No. 127 of March 3, 1931, 46 Stat. 1515, provides that nothing in this Act "shall be construed to deny authority to the Secretary of the Interior to enter into a contract with the Elephant Butte irrigation district of New Mexico and/or El Paso County Water Improvement District Numbered 1, of Texas, in accordance with the provisions of the Act approved May 25, 1926 (44 Stat. 636), and/or the Act approved December 5, 1924 (43 Stat. 672)." The 1926 Act referred to is the Omnibus Adjustment Act, and the 1924 Act is the Fact Finders' Act. Both Acts appear herein in chronological order.

Legislative History. H.R. 11471, Public Law 556 in the 70th Congress. H.R. Rept. No. 1589. S. Rept. No. 1181 (on S. 4167).

BOARD TO EXAMINE BOULDER DAM SITE

Joint resolution to appoint a board of engineers to examine and report upon the dam to be constructed under H.R. 5773, the Boulder Dam bill. (Pub. Res. 65, S.J. Res. 164, May 29, 1928, ch. 918, 45 Stat. 1011)

[Examination and report to be made prior to December 1, 1928—Compensation of board—Construction plans to be approved by board—President's sanction and approval essential—Expenses.]—The Secretary of the Interior is hereby authorized and directed to appoint a board of five eminent engineers and geologists, at least one of whom shall be an engineer officer of the Army on the active or retired list, to examine the proposed site of the dam to be constructed under the provisions of H.R. 5773, Seventieth Congress, first session, and review the plans and estimates made therefor, and to advise him prior to December 1, 1928, as to matters affecting the safety, the economic and engineering feasibility, and adequacy of the proposed structure and incidental works, the compensation of said board to be fixed by him for each, respectively, but not to exceed $50 per day and necessary traveling expenses, including a per diem of not to exceed $6, in lieu of subsistence, for each member of the board so employed for the time employed and actually engaged upon such work: *And provided further,* That the work of construction shall not be commenced until plans therefor are approved by said special board of engineers. No authority hereby conferred on the Secretary of the Interior shall be exercised without the President's sanction and approval. The expenses herein authorized shall be paid out of the reclamation fund established by the act of June 17, 1902. (45 Stat. 1011)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. H.R. 5773, Seventieth Congress, first session, referred to in the text, was enacted into law December 21, 1928. The Act is the Boulder Canyon Project Act, which appears herein in chronological order.

Board's Report. The report submitted by the Board appointed pursuant to this resolution, dated December 3, 1928, was published as House Document No. 446, Seventieth Congress, second session.

Legislative History. S.J. Res. 164, Public Resolution 65 in the 70th Congress.

BOULDER CANYON PROJECT ACT

An act to provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River compact, and for other purposes. (Act of December 21, 1928, ch. 42, 45 Stat. 1057)

[**Sec. 1. Dam at Black or Boulder Canyon for flood control, improving navigation, and for storage and delivery of water—Main canal to supply water for Imperial and Coachella Valleys—Power plant—All works in conformity with Colorado River compact.**]—For the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact hereinafter mentioned, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law, and shall not be paid out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however,* That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise, all lands, rights of way, and other property necessary for said purposes. (45 Stat. 1057; 43 U.S.C. § 617)

Explanatory Notes

Hoover Dam. The dam on the Colorado River in Black Canyon had been designated Hoover Dam by instructions of the Secretary of the Interior dated September 17, 1930. The dam was redesignated Boulder Dam by order of the Secretary dated May 8, 1933. The name Hoover Dam was restored by the Act of April 30, 1947, 61 Stat. 56. The Act appears herein in chronological order.

Supplementary Provision: Boulder Canyon Project Adjustment Act. The Boulder Canyon Project Act was amended and supplemented by the Boulder Canyon Project Adjustment Act of July 19, 1940, 54 Stat. 774. This Act and notes hereunder should

be considered in the light of the Adjustment Act, which appears herein in chronological order.

Reference Source. An extensive compilation and review of the Boulder Canyon Project Act, the Colorado River Compact, the Mexican Water Treaty, contracts, litigation, and other documents relating to the Colorado River is found in *Hoover Dam Documents* (Wilbur and Ely), H. Doc. No. 717, 80th Cong., 2d Sess. (1948). It brings up to date an earlier work entitled *The Hoover Dam Contracts* (Ely), U.S. Department of the Interior (1933).

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1. Constitutionality

The Boulder Canyon Project Act was passed in exercise of Congressional power to control navigable water for purposes of flood control, navigation, power generation, and other objects, and is equally sustained by power of Congress to promote the general welfare through projects for reclamation, irrigation, and other internal improvements. *Arizona v. California,* 373 U.S. 546, 587 (1963).

The Court judicially knows, from the evidence of history, that a large part of the Colorado River south of Black Canyon was formerly navigable and that the main obstacles to navigation have been accumulations of silt and irregularity in flow. *Arizona v. California,* 283 U.S. 423, 453 (1931).

Inasmuch as the grant of authority under the Boulder Canyon Project Act to build the dam and reservoir is valid as the constitutional power of Congress to improve navigation, it is not necessary to decide whether the authority might constitutionally be conferred for other purposes. *Arizona v. California,* 283 U.S. 423, 457 (1931).

2. Purpose—Generally

The whole point of the Boulder Canyon Project Act was to replace erratic, undependable, often destructive natural flow of the Colorado River with regular, dependable release of waters conserved and stored by the project, and thereunder, Congress made it clear that no one should use mainstream waters save in strict compliance with the scheme set up by the Act. *Arizona v. California,* 373 U.S. 546, 579 (1963).

3. River regulation

The release of water through the California Sluiceway at Imperial Dam in order to transport sediment load downstream is appropriate to accomplish river regulation. The United States has, under the contract with Imperial Irrigation District and within the limitations provided, a prior right to release water for this purpose as compared with the diversion of water for generation of power at Pilot Knob. Also, Mexico cannot, under the Mexican Water Treaty, insist as a matter of right that all or substantially all of the water allotted to it under the Treaty be delivered via the All-American Canal; nor can Mexico require that the United States assume responsibility either for the quality of the water delivered to it or for disposal of sediment load. Memorandum of Associate Solicitor Fisher, October 17, 1956.

4. Municipal water supplies

The Secretary of the Interior has authority under sections 1 and 5 of the Boulder Canyon Project Act to provide increased capacity in the All-American Canal to carry water to the City of San Diego for the beneficial consumptive use of the city. Solicitor Margold Opinion, 54 I.D. 414 (1934).

10. Limitations

The provision in section 1 of the Boulder Canyon Project Act empowering the Secretary of the Interior to construct a main canal connecting the Laguna Dam "or other suitable diversion dam" with the Imperial and Coachella Valleys does not authorize the building of or in any respect apply to the Parker Dam proposed to be constructed 70 miles upstream from Laguna Dam and canal without specific Congressional authorization as required by section 9 of the Act of March 3, 1899. *United States v. Arizona,* 295 U.S. 174 (1935). (Editor's Note: The Parker Dam was subsequently authorized by the Act of August 30, 1935. Extracts from both Acts, including the relevant sections, appear herein in chronological order.)

Neither the Boulder Canyon Project Act nor the Reclamation laws generally authorize the Secretary of the Interior to establish a Federal reservation, in connection with the construction of the dam and powerplant, over which the United States would have exclusive jurisdiction pursuant to a Nevada statute generally ceding jurisdiction

over lands acquired by the United States for public buildings. *Six Companies, Inc. v. DeVinney, County Assessor,* 2 F. Supp. 693 (D. Nev. 1933).

The distribution system for Coachella Valley is not an "appurtenant structure" to the main canal within the meaning of section 1 of the Boulder Canyon Project Act. Solicitor White Opinion, M–34900 (March 27, 1947) in re flood protection work in Coachella Valley.

11. State laws

Where the government has, as here, exercised its right to regulate and develop the river and has undertaken a comprehensive project for improvements of the river and for the orderly and beneficial distribution of water, there is no room for inconsistent state law. *Arizona v. California,* 373 U.S. 546, 587 (1963).

The privilege of the States through which the Colorado River flows and their inhabitants to appropriate and use the water is subject to the paramount power of the United States to control it for the purpose of improving navigation. *Arizona v. California et al.,* 298 U.S. 558, 569 (1936), rehearing denied, 299 U.S. 618 (1936).

The Secretary of the Interior is under no obligation to submit the plans and specifications for the dam and reservoir to the State Engineer as required by Arizona law because the United States may perform its functions without conforming to the police regulations of a State. *Arizona v. California,* 283 U.S. 423, 451 (1931).

12. Judicial review

All of the powers granted to the Secretary of the Interior by this Act are subject to judicial review. *Arizona v. California,* 373 U.S. 546, 584 (1963).

13. United States as party

The action of the Secretary of the Interior in reducing by ten per cent the amount of Colorado River water which irrigation and drainage district might order during the balance of 1964 was the action of the sovereign, and, the sovereign not having consented thereto, could not be enjoined, or otherwise made the subject of any court proceedings. *Yuma Mesa Irr. and Drainage Dist. v. Udall,* 253 F. Supp. 909 (D.D.C. 1965).

The United States is an indispensable party to an action by Arizona against California and the five other States of the Colorado River Basin praying for an equitable division of the unappropriated water of the river. *Arizona v. California, et al.,* 298 U.S. 558 (1936), rehearing denied, 299 U.S. 618 (1936).

14. Colorado River Compact

The declarations in sections 1, 8(a), 13 (b), and 13(c) of the Boulder Canyon Project Act that the Secretary of the Interior and the United States shall be subject to and controlled by the Colorado River Compact were made only to show that the Act and its provisions were in no way to upset, alter, or affect the Compact's congressionally approved division of water between the Upper and the Lower Basins. They were not intended to make the compact and its provisions control or affect the Act's allocation among and distribution of water within the States of the Lower Basin. *Arizona v. California,* 373 U.S. 546, 567 (1963).

In construing the Boulder Canyon Project Act, the Court would look to the Colorado River Compact for the limited purposes of interpreting compact terms specifically incorporated in the Act—such as the reference to satisfaction of "present perfected rights" in section 6, and the definition of "domestic" in section 12—and of resolving disputes between the Upper and Lower Basins. *Arizona v. California,* 373 U.S. 546, 566 (1963).

15. Costs, allocation and reimbursement of

For discussion of numerous legal problems involved in allocation and reimbursement of costs of All-American Canal and related works see Memoranda of Chief Counsel Fisher of April 1, 1953, and October 23, 1952.

Investigation costs incurred by the United States under contracts of 1918, 1920, 1929 and 1933 in connection with the All-American Canal are reimbursable by the Imperial Irrigation District. Nothing in the Kinkaid Act of May 18, 1920, or its legislative history implies that the expenses under the 1920 contract paid by the United States were to be a gift to the District, and the fact that the District contributed two-thirds the cost of the study does not imply that the one-third paid by the United States was to be nonreimbursable. Nor does the fact that study funds advanced by the District under the 1929 and 1933 contracts were later refunded imply that U.S. costs to the amount of the refunds were to be nonreimbursable. Memorandum of Chief Counsel Fisher, November 18, 1953.

16. Leases and permits

Both the National Park Service and the Bureau of Reclamation, in administering their respective areas withdrawn under the first form in connection with the Boulder Canyon project, may grant leases for land and permits to engage in business activities to private individuals without advertising for proposals or securing competitive bids

Solicitor Margold Opinion, M-28694 (October 13, 1936).

17. Excess lands

The Coachella Valley County Water District lands are subject to the excess land provisions of the Federal reclamation law. Solicitor Harper Opinion, M-33902 (May 31, 1945).

Privately-owned lands in the Imperial Valley Irrigation District, even those assumed to have vested Colorado River water rights, are subject to the excess land laws. Solicitor Barry Opinion, 71 I.D. 496 (1964), *reversing* Letter of Secretary Wilbur, February 24, 1923.

Administrative practice in failing to apply excess land laws to private lands in Imperial Irrigation District, no matter of how long standing, is not controlling where it is clearly erroneous. Solicitor Barry Opinion, 71 I.D. 496, 513–17 (1964).

Sec. 2. [(a) Colorado River Dam fund established. (b) Secretary of Treasury to advance amounts necessary up to $165,000,000. $25,000,000 to be allocated to flood control, to be repaid. (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.]—(a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this act. All revenues received in carrying out the provisions of this act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(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, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this act. If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest, during construction, upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

(d) The Secretary of the Treasury shall charge the fund as of June 30 in each year with such amount as may be necessary for the payment of interest on advances made under subdivision (b) at the rate of 4 per centum per annum accrued during the year upon the amounts so advanced and remaining unpaid, except that if the fund is insufficient to meet the payment of interest the Secretary of the Treasury may, in his discretion, defer any part of such payment, and the amount so deferred shall bear interest at the rate of 4 per centum per annum until paid.

(e) The Secretary of the Interior shall certify to the Secretary of the Treasury, at the close of each fiscal year, the amount of money in the fund in excess of the

amount necessary for construction, operation and maintenance, and payment of interest. Upon receipt of each such certificate the Secretary of the Treasury is authorized and directed to charge the fund with the amount so certified as repayment of the advances made under subdivision (b), which amount shall be covered into the Treasury to the credit of miscellaneous receipts. (45 Stat. 1057; 43 U.S.C. § 617a)

EXPLANATORY NOTE

Supplementary Provision: Interest Rate. Section 6 of the Boulder Canyon Project Adjustment Act, approved July 19, 1940, provides that: "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". The Act appears herein in chronological order.

NOTES OF OPINIONS

Advances 1
Economy Act deductions 4
Flood control 2
School purposes 3

1. Advances

Interest, at the rate of 4 percent, prescribed by section 2(d), could not be remitted on funds advanced to the Colorado River Dam fund, placed to the credit of the Interior Department but later returned to the Treasury unexpended. Dec. Comp. Gen., A–46044 (February 28, 1933).

2. Flood control

The language of section 2(b) shows clearly that Congress did not regard the $25,000,000 thereby allocated to flood control as falling within the amortization plan embodied in section 4(b). The $25,000,000 allocated to flood control must be regarded as falling outside of the words "all amounts advanced to the fund under subdivision (b) of section 2 for such works" in section 4(b). It is my opinion that the Secretary of the Interior is not required, in fixing the sale rates for power to be generated at Boulder Dam, to make provision for the amortization within the 50 years of the $25,000,000 allocated by the act to flood control. 36 Op. Atty. Gen. 121 (1929).

It does not seem reasonable to suppose that Congress intended to make the payment of interest on the $25,000,000 allocated to flood control an absolute charge during the 50 years when it left the payment of the principal to the chance that there might be excess earnings during that period. Interest should be ultimately paid on the $25,000,000 from the same source as is provided for the payment of the principal, to wit: out of 62½ per cent of the excess earnings during the 50-year period and out of 62½ per cent of the net earnings thereafter. 36 Op. Atty. Gen. 121 (1929).

3. School purposes

On September 29, 1931, the Comptroller General held that there is no authority to use the Colorado River Dam fund for the construction of school buildings, transportation of pupils, or construction of swimming pools. Upon request for reconsideration the Comptroller General, under date of October 17, 1931, stated that in view of the further representations made to the effect that the construction of the Boulder Dam was being delayed by lack of school facilities and that "the erection of school buildings is necessary to carry out the purposes of the project act", no objection would be interposed to the use of the Colorado River Dam fund for the construction of *temporary* buildings in which schools may be conducted during the current school year, provided the contractor will bear the expense of maintaining and operating the schools unless and until otherwise specifically provided for by law. Dec. Comp. Gen., A–38343 (October 17, 1931).

4. Economy Act deductions

The amount of Economy Act deductions from the total compensation of employees who are paid out of the Colorado River Dam fund is required to be advanced from appropriated funds as a part of the cost of construction in the same manner as the remainder of the compensation of the employees and is subject to 4 percent interest charges provided by section 2(b) of the Act of December 21, 1928 (45 Stat. 1057), on all advances from the general fund to the special fund. The impounding of Economy Act deductions from the total compensation of employees who are paid out of the Colorado River Dam fund should be directly from such special fund to the impounded

fund. Dec. Comp. Gen., A–42691 (February 13, 1933).

Economy deductions under sections 110 and 203 of the Act of June 30, 1932, and under section 4(d) of the Act of March 20, 1933, are a part of the construction cost of the Boulder Canyon project, and the impounding and deposit of same to the surplus fund of the Treasury do not constitute a return or repayment of these amounts within the purview of the Boulder Canyon Project Act of December 21, 1928. Interest on said amounts must continue until repayment has been made in accordance with the terms of said Act. Dec. Comp. Gen., A–56169 (July 2, 1934).

Sec. 3. [Appropriation not exceeding $165,000,000 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 $165,000,000. (45 Stat. 1058; 43 U.S.C. § 617b)

NOTES OF OPINIONS

1. Availability of appropriations

Section 320 of the Economy Act of June 30, 1932, relative to restriction on construction and rental of buildings is applicable to section 3 of the Boulder Canyon Project Act. Dec. Comp. Gen., A–42691 (July 25, 1932).

Boulder Canyon project funds may be used to purchase land title abstracts or certificates with or without insurance payment to be made under the appropriation available for the purchase price, if such abstracts or certificates are necessary to enable the Secretary of the Interior, or such of his subordinates as he may designate, to determine the validity of the title to the land to be acquired. Dec. Comp. Gen., A–39589 (January 29, 1932).

The Boulder Dam appropriation is available for payment for placing and designing of panels, tablets, and inscriptions, award to be made on competitive designs by known artists. Dec. Comp. Gen., A–61595 (May 24, 1935).

Sec. 4. (a) **[When Act effective—Ratification of Colorado River compact—Proclamation by President—Agreement by California required—Agreement authorized by Arizona, California, and Nevada—Apportionment of waters—Consumptive use of Gila River by Arizona—Water for domestic and agricultural use.]**—This act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico,

Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada. (45 Stat. 1058; 43 U.S.C. § 617c(a))

EXPLANATORY NOTES

Presidential Proclamation: Effective Date of Act. On June 25, 1929, 46 Stat. 3000, President Hoover issued the following proclamation:

"Pursuant to the provisions of section 4(a) of the Boulder Canyon project act approved December 21, 1928 (45 Stat. 1057), it is hereby declared by public proclamation:

(*a*) That the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming have not ratified the Colorado River compact mentioned in section 13(a) of said act of December 21, 1928, within 6 months from the date of the passage and approval of said act.

"(*b*) That the States of California, Colorado, Nevada, New Mexico, Utah, and

Wyoming have ratified said compact and have consented to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and that each of the States last named has approved said compact without condition, except that of six-State approval as prescribed in section 13(a) of said act of December 21, 1928.

"(*c*) That the State of California has in all things met the requirements set out in the first paragraph of section 4(a) of said act of December 21, 1928, necessary to render said act effective on six State approval of said compact.

"(*d*) All prescribed conditions having been fulfilled, the said Boulder Canyon project act approved December 21, 1928, is hereby declared to be effective this date.

"In testimony whereof I have hereunto set my hand and caused the seal of the United States of America to be affixed.

"Done at the city of Washington this 25th day of June, in the year of our Lord one thousand nine hundred and twenty-nine, and of the Independence of the United States of America the one hundred and fifty-third."

California Limitation Act. The California Limitation Act (Stats. Cal. 1929, ch. 16), was enacted by California in fulfillment of the requirement with respect to an act of its legislature set forth in the second half of subsection 4(a). The California Act provides that in consideration of the passage of the Boulder Canyon Project Act that the aggregate annual consumptive use (diversions less returns to the river) by California of the water of the Colorado River shall not exceed 4,400,000 acre-feet of the waters apportioned to the lower basin States by the Colorado River Compact, plus not more than one-half of any surplus or excess waters unapportioned by the Compact.

Notes of Opinions

Apportionment of waters 1
Desert land entries 2
State Acts 3

1. Apportionment of waters

In passing the Boulder Canyon Project Act, Congress intended to, as shown clearly by the legislative history, and did, create its own comprehensive scheme for the apportionment among California, Arizona, and Nevada of the Lower Basin's share of the mainstream waters of the Colorado River, leaving each State her own tributaries. It decided that a fair division of the first 7,500,000 acre-feet of such mainstream waters would give 4,400,000 acre-feet to California, 2,800,000 to Arizona, and 300,000 to Nevada, and that Arizona and California should each get one-half of any surplus. Congress gave the Secretary of the Interior adequate authority to accomplish this division by giving him power to make contracts for the delivery of water and by providing that no person could have water without a contract. The limitation of California to 4,400,000 acre-feet, together with the Secretary's contracts with Arizona for 2,800,000 acre-feet and with Nevada for 300,000 acre-feet, effect a valid apportionment in keeping with the Congressional plan. *Arizona v. California,* 373 U.S. 546, 564–90, 592 (1963); Decree, 376 U.S. 340 (1964).

Where Congress has exercised its constitutional power over waters, providing its own methods for allocating water to which States are entitled, courts have no power to substitute their own notions of an equitable apportionment for that chosen by Congress. *Arizona v. California,* 373 U.S. 546, 565 (1963).

The power of the Secretary of the Interior to apportion and distribute Colorado River water among and within the Lower Basin States through the execution of contracts for its use is subject to a number of standards and limits in the Boulder Canyon Project Act. These include (1) the limitation in § 4(a) of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water, leaving 3,100,000 acre-feet which the Secretary properly has apportioned by contract in the quantities of 300,000 acre-feet to Nevada and 2,800,000 to Arizona; (2) the provision in § 6 setting out in order the purposes for which the Secretary must use the dam and reservoir; (3) the § 4(b) requirement for revenue provisions in the contracts adequate to ensure the recovery of the expenses of construction, operation and maintenance of the dam and other works within 50 years after their construction; (4) the directive in § 5 that water contracts for irrigation and domestic use shall be only for "permanent service"; (5) the recognition given in § 8(a) to the Colorado River Compact, which means that the Secretary and his permittees, licensees and contractees can do nothing to upset or encroach on the Compact's allocation of water between the Upper and Lower Basins; (6) the application by § 14 of general reclamation law except as the Act otherwise provides; and (7) the protection given in

§ 6 to "present perfected rights." *Arizona v. California,* 373 U.S. 546, 583–85 (1963).

In case of a shortage of mainstream water in the Lower Basin, the Secretary is not bound to require a pro rata sharing of shortages among the Lower Basin States. He must follow the standards set out in the Act; but unless and until Congress enlarges or reduces the Secretary's power, he is free to choose among the recognized methods of apportionment or to devise reasonable methods of his own, since Congress has given him full power to control, manage and operate the Government's Colorado River works and to make contracts for the sale and delivery of water on such terms as are not prohibited by the Act. *Arizona v. California,* 373 U.S. 546, 592–94 (1963).

Section 4(a) of the Boulder Canyon Project Act, providing that the State of California shall have, each year, for beneficial consumptive use not to exceed 4,400-000 acre-feet of water from the lower basin of the Colorado River, considered in connection with Article III(a) of the Colorado River Compact, must be interpreted as forbidding the Secretary of the Interior to enter into a contract with the State of Arizona for the storage of water in the contemplated reservoir, which might, as for example in years when there is less than 7,500,000 acre-feet available, interfere with the apportionment to California of its specified annual amount. Solicitor Margold Opinion, 54 I.D. 593 (1934).

2. Desert land entries

In exercise of the discretionary authority vested in the Secretary under section 7 of the Taylor Grazing Act, as amended, public land in the Imperial Valley, California, may be classified as not proper for disposition under the Desert Land Act, 19 Stat. 377, as amended, on the grounds that it would be contrary to the public interest at this time to increase the pressure on the inadequate water supply available for use in California from the Colorado River. *Hugh S. Ritter, Thomas M. Bunn,* 72 I.D. 111 (1965). See also *Stephen H. Clarkson,* 72 I.D. 138 (1965).

By a notice of December 2, 1965, the Secretary of the Interior repealed the suspension of a large number of desert land entries in Imperial and Riverside Counties, California, that had been pending for a number of years in anticipation of obtaining irrigation water from the Colorado River. The suspensions had been granted under the decision in *Maggie L. Havens,* A–5580 (October 1, 1923). The Secretary stated in the notice that it would be contrary to the public interest to increase the pressure on the inadequate water supply available for use in California from the Colorado River by permitting additional federally owned lands to be developed under the desert land laws unless clear eligibility exists or unless clear grounds for relief are shown.

In certain circumstances desert land entries in Imperial and Riverside Counties affected by the notice of December 2, 1965, repealing the suspension under *Maggie L. Havens,* A–5580 (October 11, 1923), which have been reclaimed or are in the process of being reclaimed, will be considered in accordance with the principles of equity and justice as authorized by 43 U.S.C. § 1161, even though development was not completed within the statutory life remaining in the entry after March 4, 1952. *Clifton O. Myll,* A–29920 (Supp. II), 72 I.D. 536 (1965), *vacating* 71 I.D. 458 (1964), as supplemented by 71 I.D. 486 (1964).

3. State Acts

The Act of the California Legislature of March 4, 1929 (Stats. 1929, ch. 16) embodies the express agreement required of the State of California by the Act of December 21, 1928, with respect to the use of the waters apportioned to the lower basin States, effective when six States comply with the requirements and conditions of paragraph 2, section 4 (a) of the Act of December 21, 1928. Solicitor's Opinion, M–25151 (April 24, 1929).

The ratification of the Colorado River Compact by the State of Utah conforms to the requirements of the applicable provisions of the Boulder Canyon Project Act. Chapter 31 of the 1929 Laws of Utah, approved March 6, 1929, clearly shows that the legislature intended the ratification by that State to be "without condition save that of six-State approval." 36 Op. Atty. Gen. 72 (1929).

(b) **[Contracts required for revenues to insure payment of expenses of operation and maintenance, etc., and repayment of construction within 50 years, before any money is appropriated—Work on main canal contingent on provision to insure payment of expenses—Payments to Arizona and Nevada.]**—Before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the

provisions of this act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 for such works, together with interest thereon made reimbursable under this act.

Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona 18¾ per centum of such excess revenues and to the State of Nevada 18¾ per centum of such excess revenues. (45 Stat. 1059; 43 U.S.C. § 617c(b)).

NOTES OF OPINIONS

Conditions precedent 1
Flood control 2
Municipal water supply 3
Reclamation laws 4
Upstream projects 5

1. Conditions precedent

The Contract for Lease of Power Privilege with the City of Los Angeles, its department of water and power and the Southern California Edison Co., Ltd., is a valid agreement binding upon the city and its department to the extent to which funds are available under the provisions of the department's charter, and is in full compliance with section 4(b) of the Boulder Canyon Project Act, since the revenues which it will provide out of such funds are, in the judgment of the Secretary of the Interior, adequate to meet the requirements of that section. 36 Op. Atty. Gen. 270 (1930).

All the requirements of the said section which are made conditions precedent to the appropriation of money, the making of contracts, and the commencement of work for the construction of a dam and power plant have been fully met and performed by the Secretary of the Interior in securing contracts with the city and company. 36 Op. Atty. Gen. 270 (1930). *Accord,* Dec. Comp. Gen., A–32702 (October 10, 1930).

Inasmuch as the Coachella Valley County Water District had filed appeal in the Supreme Court of California from decision of the lower court validating the contract of Dec. 1, 1932, with the Imperial Irrigation District for the construction of the All-American Canal, no funds may be expended for construction until the contract has been found valid by the court of last resort. Dec. Comp. Gen., A–32702 (December 6, 1933). (Ed. note: By stipulation of the parties, the appeal was dismissed by the Supreme Court on February 26, 1934.)

The power of the Secretary of the Interior to apportion and distribute Colorado River water among and within the Lower Basin States through the execution of contracts for its use is subject to a number of standards and limits in the Boulder Canyon Project Act. These include (1) the limitation in § 4 (a) of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water, leaving 3,100,000 acre-feet which the Secretary properly has apportioned by contract in the quantities of 300,000 acre-feet to Nevada and 2,800,000 to Arizona; (2) the provision in § 6 setting out in order the purposes for which the Secretary must use the dam and reservoir; (3) the § 4(b) requirement for revenue provisions in the contracts adequate to ensure the recovery of the expenses of construction, operation and maintenance of the dam and other works within 50 years after their construction; (4) the directive

in § 5 that water contracts for irrigation and domestic use shall be only for "permanent service"; (5) the recognition given in § 8(a) to the Colorado River Compact, which means that the Secretary and his permittees, licensees and contractees can do nothing to upset or encroach on the Compact's allocation of water between the Upper and Lower Basins; (6) the application by § 14 of general reclamation law except as the Act otherwise provides; and (7) the protection given in § 6 to "present perfected rights." *Arizona v. California,* 373 U.S. 546, 583–85 (1963).

2. Flood control

The language of section 2(b) shows clearly that Congress did not regard the $25,000,000 thereby allocated to flood control as falling within the amortization plan embodied in section 4(b). The $25,000,000 allocated to flood control must be regarded as falling outside of the words "all amounts advanced to the fund under subdivision (b) of section 2 for such works" in section 4(b). The Secretary of the Interior is not required, in fixing the sale rates for power to be generated at Boulder Dam, to make provision for the amortization within the 50 years of the $25,000,000 allocated by the Act to flood control. 36 Op. Atty. Gen. 121 (1929).

3. Municipal water supply

The Secretary of the Interior is authorized to contract with the City of San Diego for the repayment within 40 years without interest of the costs of added capacity in the All-American Canal needed to carry water for the beneficial consumptive use of the city. Solicitor Margold Opinion, 54 I.D. 414 (1934).

4. Reclamation laws

Sections 1 and 4(b) of the Boulder Canyon Project Act which require the costs of the main canal connecting with Imperial Valley and appurtenant structures to be repaid pursuant to reclamation law, carry into effect the excess land provisions of section 46 of the Omnibus Adjustment Act of 1926. Solicitor Barry Opinion, 71 I.D. 496, 500–01 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

Advances from the general Treasury to the Colorado River Dam fund, used solely in the construction, operation, and maintenance of the All-American Canal and its diversion dam, and disbursements from the Colorado River Dam fund for such purposes, are not intended by the act to be interest bearing, but are intended to fall within the policy of the general reclamation law, *i.e.,* the Act of May 25, 1926 (44 Stat. 636), providing for a period of repayment of 40 years without interest. Solicitor's Opinion, August 3, 1929.

The omission of any mention of interest in the second paragraph of section 4(b), in contradistinction to the express mention thereof in the first paragraph, is significant, and strongly indicative of an intention of Congress that interest upon the construction cost of the All-American Canal should not be charged against lands benefited. The main canal was singled out and treated as a purely reclamation project, the expenditures for which were to be reimbursable in the same manner as those for other projects administered under the reclamation law. 36 Op. Atty. Gen. 121 (1929).

5. Upstream projects

Appropriations for the Colorado River Storage project are authorized to be expended to meet costs of deficiencies in the generation of energy at the Hoover Dam powerplant occasioned by the necessity to fill Colorado River Storage project reservoirs, if the Secretary of the Interior concludes that such a step is appropriate to maintaining a reasonable schedule in meeting the statutory payout requirements of both Hoover Dam and Glen Canyon Dam imposed by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Colorado River Storage Project Act. Memorandum of Associate Solicitor Weinberg, July 17, 1962.

If an upstream project, such as the proposed Central Arizona project and Bridge Canyon project in the Lower Colorado River Basin, interferes with the statutory responsibility of the Secretary to recover the costs of Hoover Dam by June 1, 1987, or to recover the costs of Davis and Parker Dams within a reasonable period of time, then the cost of such interference should be included as one of the "costs" of the new upstream development under section 9(a) of the Reclamation Project Act of 1939. Memorandum of Chief Counsel Fix, October 9, 1947.

Sec. 5. [Contracts for storage of water and its delivery, and for generation and sale of electrical energy—Congress to prescribe basis of charges—Revenues to be in separate fund. (a) Time limit of 50 years on contracts for electrical energy—Contracts to be made with view of returns—Readjustment of contracts upon demand. (b) Renewal of electrical energy contracts. (c) Contracts

to be made with responsible applicants for meeting revenues required—Adjustment of conflicting applications. (d) Contracting agencies for electrical energy may be required to share in benefits.]—The Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irrigation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

After the repayments to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress.

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery.

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers, and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

(b) The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such

electrical energy and not taken, resulting from the termination of the supply.

(c) Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal water power act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants.

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however,* That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision, necessary to enable the applicant to utilize such water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determined by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

(d) Any agency receiving a contract for electrical energy equivalent to one hundred thousand firm horsepower, or more, may, when deemed feasible by the said Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts hereunder for less than the equivalent of twenty-five thousand firm horsepower, upon application to the Secretary of the Interior made within sixty days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be constructed by the former for carrying such energy (not exceeding, however, one-fourth the capacity of such line) upon payment by such other agencies of a reasonable share of the cost of construction, operation, and maintenance thereof.

The use is hereby authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation and maintenance of main transmission lines to transmit said electrical energy (45 Stat. 1060; 43 U.S.C. § 617d)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Power Act, referred to in the text, is the Act of June 10, 1920, 41 Stat. 1063. The Act appears herein in chronological order.

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1. Water—Apportionment

In passing the Boulder Canyon Project Act, Congress intended to, as shown clearly by the legislative history, and did, create its own comprehensive scheme for the apportionment among California, Arizona, and Nevada of the Lower Basin's share of the mainstream waters of the Colorado River, leaving each State her own tributaries. It decided that a fair division of the first 7,500,000 acre-feet of such mainstream waters would give 4,400,000 acre-feet to California, 2,800,000 to Arizona, and 300,000 to Nevada, and that Arizona and California should each get one-half of any surplus. Congress gave the Secretary of the Interior adequate authority to accomplish this division by giving him power to make contracts for the delivery of water and by providing that no person could have water without a contract. The limitation of California to 4,400,000 acre-feet, together with the Secretary's contracts with Arizona for 2,800,000 acre-feet and with Nevada for 300,000 acre-feet, effect a valid apportionment in keeping with the Congressional plan. *Arizona v. California,* 373 U.S. 546, 564–90, 592 (1963); Decree, 376 U.S. 340 (1964).

All uses of mainstream Colorado River water within a Lower Basin State are to be charged against that State's apportionment, which, of course, includes uses by the United States. *Arizona v. California,* 373 U.S. 546, 601 (1963); Decree, 376 U.S. 340, 346 (1964).

No matter what waters are apportioned by the Colorado River Compact between the Upper and Lower Basins, the negotiations between the States and the congressional debate leading to the passage of the Boulder Canyon Project Act show that the water apportioned therein among the Lower Basin States is mainstream water, reserving to each State the exclusive use of the waters of her own tributaries. *Arizona v. California,* 373 U.S. 546, 567–75 (1963).

The Secretary may charge Arizona and Nevada with diversions from the mainstream of the Colorado River anywhere below Lee Ferry, whether above or below Hoover Dam. *Arizona v. California,* 373 U.S. 546, 590–91 (1963).

In case of a shortage of mainstream water in the Lower Basin, the Secretary is not bound to require a pro rata sharing of shortages among the Lower Basin States. He must follow the standards set out in the Act; but unless and until Congress enlarges or reduces the Secretary's power, he is free to choose among the recognized methods of apportionment or to devise reasonable methods of his own, since Congress has given him full power to control, manage and operate the Government's Colorado River works and to make contracts for the sale and delivery of water on such terms as are not prohibited by the Act. *Arizona v. California,* 373 U.S. 546, 592–94 (1963).

2. —Rights of United States

Under its broad powers to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, § 3, of the Constitution, the United States has power to reserve water rights for its reservations and its property. *Arizona v. California,* 373 U.S. 546, 597–98 (1963).

The United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreational Area, the Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge and the Gila National Forest. *Arizona v. California,* 373 U.S. 546, 601 (1963); Decree, 376 U.S. 340, 345–46 (1964).

When the United States created the Chemehuevi, Cocopah, Yuma, Colorado River and Fort Mohave Indian Reservations in Arizona, California and Nevada, or added to them, whether by Act of Congress or by Executive Order, it reserved not only the land but also the use of enough water from the Colorado River to irrigate the irrigable portions of the reserved lands. Enough water was intended to be reserved to irrigate, now or in the future, all the practicably irrigable acreage on the reservations, which the Master found to be about 1,000,000 acre-feet of water to be used on about

135,000 irrigable acres of land. These water rights, having vested before the Act became effective in 1929, are "present perfected rights" and as such are entitled to priority under the Act. *Arizona v. California,* 373 U.S. 546, 595–601 (1963); Decree, 376 U.S. 340, 343–45 (1964).

The United States is not entitled to the use, without charge against its consumption, of any Colorado River waters that would have been wasted but for salvage by the Government on its wildlife preserves. *Arizona v. California,* 373 U.S. 546, 601 (1963).

3. —Rights of others

The reservation of Colorado River water for Boulder City, as authorized by the Boulder City Act of 1958, has a priority date of May 15, 1931. Decree entered in *Arizona v. California,* 376 U.S. 340, 346 (1964).

4. —Contracts with Secretary

The power of the Secretary of the Interior to apportion and distribute Colorado River water among and within the Lower Basin States through the execution of contracts for its use is subject to a number of standards and limits in the Boulder Canyon Project Act. These include (1) the limitation in § 4(a) of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water, leaving 3,100,000 acre-feet which the Secretary properly has apportioned by contract in the quantities of 300,000 acre-feet to Nevada and 2,800,000 to Arizona; (2) the provision in § 6 setting out in order the purposes for which the Secretary must use the dam and reservoir; (3) the § 4(b) requirement for revenue provisions in the contracts adequate to ensure the recovery of the expenses of construction, operation and maintenance of the dam and other works within 50 years after their construction; (4) the directive in § 5 that water contracts for irrigation and domestic use shall be only for "permanent service"; (5) the recognition given in § 8(a) to the Colorado River Compact, which means that the Secretary and his permittees, licensees and contractees can do nothing to upset or encroach on the Compact's allocation of water between the Upper and Lower Basins; (6) the application by § 14 of general reclamation law except as the Act otherwise provides; and (7) the protection given in § 6 to "present perfected rights." *Arizona v. California,* 373 U.S. 546, 583–85 (1963).

In choosing between users within each State and in settling the terms of his contracts for the use of stored Colorado River water, the Secretary is not bound, either by section 18 of the Boulder Canyon Project Act, or by section 8 of the Reclamation Act, to follow State law. Although section 18 allows the States to do things not inconsistent with the Project Act or with Federal control of the river, as for example, regulation of the use of tributary water and protection of present perfected rights, the general saving language of section 18 cannot bind the Secretary by State law and thereby nullify the contract power expressly conferred upon him by section 5. *Arizona v. California,* 373 U.S. 546, 580–90 (1963).

The fact that the Secretary has made a contract directly with the State of Nevada, through her Colorado River Commission, for the delivery of water does not impair the Secretary's power to require Nevada water users, other than the State, to make further contracts. *Arizona v. California,* 373 U.S. 546, 591–92 (1963).

Under the Supreme Court decision in *Arizona v. California,* 373 U.S. 546, 591–2 (1963), and in the absence of specific Federal legislation providing otherwise, neither the Colorado River Commission of Nevada nor any other State agency under the contract of March 30, 1942, as amended, with the United States for the delivery to the State of not to exceed 300,000 acre-feet per year from storage in Lake Mead has authority to grant permits or to approve permits to appropriate stored water from Lake Mead. Water users in Nevada must enter into contracts directly with the United States. Letter of Assistant Secretary Holum to Mr. Ivan P. Head, December 30, 1963.

The action of the Secretary of the Interior in reducing by 10 percent the amount of Colorado River water which an irrigation district might order during the balance of 1964, and at the same time providing that additional water would be made available to meet such individual hardship cases as might develop, was within the Secretary's statutory authority and not a violation of the Secretary's contract with the district to deliver, within stated amounts, so much Colorado River water "as may reasonably be required and beneficially used" by the district. *Yuma Mesa Irr. and Drainage Dist. v. Udall,* 253 F. Supp. 909 (D. D.C. 1966).

5. —California allocation contract

The Imperial Irrigation District has authority to enter into the proposed seven-party allocation contract with the Palo Verde Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego and County of San Diego, to apportion among the parties all of the waters of the Colorado

River to which the State of California may be entitled under the Colorado River Compact, the Boulder Canyon Project Act, and other applicable legislation; and a bill of complaint to enjoin the District from entering into the compact will be dismissed. The contract is a necessary step of all parties to secure the benefit of retained or stored water, to compromise disputes over water rights, and to serve the common good. *Greeson, et al. v. Imperial Irr. Dist., et al.*, 59 F. 2d 529 (9th Cir. 1932).

6. —Municipal supplies

The Secretary of the Interior has authority under sections 1 and 5 of the Boulder Canyon Project Act to provide increased capacity in the All-American Canal to carry water to the City of San Diego for the beneficial consumptive use of the city. Solicitor Margold Opinion, 54 I.D. 414 (1934).

11. Power—General

The fixing of financial requirements and rigid examination of the financial status of competing bidders for power is not only within the Secretary's discretion but is an absolute obligation resting upon him. Solicitor Finney Opinion, 53 I.D. 1 (1930).

The Secretary is not required to accept the highest bid if that bid is in excess of the price which can be realized for the power under competitive conditions at competitive centers. The selling standard is to be "reasonable returns," not "all the traffic will bear." The phrase "shall be made with a view to obtaining reasonable returns" was in fact a specific amendment to this section (Cong. Rec. Senate, Dec. 14, 1928, p. 518), and clearly indicates the selling basis deemed to be feasible and most in line with public interest and the equitable distribution of benefits of Boulder Dam power. If the bidder can not sell his power in competition with other sources he is not a desirable source for reimbursement of the Federal expenditure. Solicitor Finney Opinion, 53 I.D. 1 (1930).

The term "public interest," used in the first paragraph of subsection 5(c) is the Government's responsibility, financial and otherwise, to all the people of the United States for the greatest good to be derived from this project; it excludes confinement of the benefits of Boulder Dam power to one locality out of the many which comprise the "region" capable of service. It is a source of broad discretionary power in the Secretary. The "public interest" requires, first, financial security of the United States, and, secondly, equality of access to Boulder Dam power by areas composing the region in proportion to the needs of the applicants. The allocation of power passes from the realm of the Secretary's discretion into the area of rigid legal rights only after apportionment among the applicants whose demands for power are equally consistent with the public interest. Solicitor Finney Opinion, 53 I.D. 1 (1930).

Public interest includes the necessity for making a good business contract which will guarantee the return of the Federal investment as required by section 4(b). The primary public interest is in the soundness of the contracts and the solvency of the contractor, not in the corporate or municipal character of that contractor. All preferences are subordinate to this public interest. Solicitor Finney Opinion, 53 I.D. 1 (1930).

12. —Preference

The preference provisions of section 5 of the Flood Control Act of 1944 must be read in *pari materia* with the preference provisions of section 5(c) of the Boulder Canyon Project Act (43 U.S.C. §617d(c)), the Tennessee Valley Authority Act (16 U.S.C. §831k), and Section 4 of the Bonneville Project Act (16 U.S.C. §832c(d)). 41 Op. Atty Gen. 236, 245 (1955), in re disposition of power from Clark Hill reservoir project.

Concerning the question whether a municipality or a State has a preference for power which it proposes to sell outside its boundaries as against a bid for power by a privately-owned public utility proposing to sell in the same area outside the boundaries, the "preference" of the municipality is a preference in consumptive right, not in merchandising advantage. Outside its own borders a State or municipal corporation, reselling power, is on a parity with any other public utility selling in that territory. If it seeks to elect, on behalf of consumers who are not its citizens, whether those consumers shall buy from it or from another company, its decision has not the dignity of a "preference" within the policy of the Federal Water Power Act (sec. 7), but has the status of a competitive offer. Solicitor Finney Opinion, 53 I.D. 1 (1930).

The States of Nevada, Arizona, and California can not claim two separate independent preference rights, one under the Federal Water Power Act (section 7), and another under the Boulder Canyon Project Act. The importance of the preference language of the project act lies in its distinction between States and municipalities, not in any distinction as to place of use. The special reference to the preference of the three lower basin States in the project act preserves the rights of Arizona and Nevada as superior to those of Los Angeles, provided both should meet the conditions of the Federal water power act. But to indicate that no greater concession from the policy of the

Federal water power act was intended, the restriction "for use within the State" was added. No distinction between the city of Los Angeles on the one hand, and other municipalities on the other, can be recognized. Solicitor Finney Opinion, 53 I.D. 1 (1930).

It appears to have been the intent of the language of section 5 (c) following the word "except" to convey a limited preference upon the three lower basin States. The preference of a State over a municipality given by the project act is intended to apply to these three States only. Solicitor Finney Opinion, 53 I.D. 1 (1930).

A State, and a municipality of another State, both presenting applications under section 7 of the Federal Water Power Act, stand on a basis of equality. If the conflict is between applications of a State and a municipality of that same State, the right of the State is superior. If the conflict is between a State and a municipality foreign to it, the Secretary may make an equitable allocation between them in accordance with the public interest and in accordance with what, in his discretion, appears the best method of conserving and utilizing the water resources of the region. Solicitor Finney Opinion, 53 I.D. 1 (1930).

Within 6 months a State presenting plans equally well adapted as those of a competing municipality (outside the State) and equally consistent with the public interest, might claim power in preference to the municipality. After six months the State reverts to the parity with outside municipalities established by the Federal Water Power Act. Solicitor Finney Opinion, 53 I.D. 1 (1930).

A preference right itself is not assignable either before or after the execution of a contract by the State. A contract obtained in exercise of this preference right is assignable, subject to all restrictions and conditions contained in the original contract, and without diminution of the State's liability to the United States and without waiver of the requirement of financial and legal capacity of the assignee. Solicitor Finney Opinion, 53 I.D. 1 (1930).

13.—Contracts

The Secretary of the Interior may not discriminate against the California Electric Power Company in the sale of power from Boulder Dam in such matters as granting a "load-building period" and lower rates for "secondary power." *California Electric Power Co. v. United States,* 60 F. Supp. 344, 104 Ct. Cl. 289 (1945).

The Citizens Utilities Company made application to purchase 5,000 kilowatts of electrical energy from the power plant at Boulder Dam for use in Arizona, and the Department, citing the contract of April 26, 1930, with the City of Los Angeles and the Southern California Edison Co. for lease of power privileges at Boulder Dam, held that the States of Arizona or Nevada must themselves contract for the Boulder Dam power allotted to them, and that any such contract made by the State of Arizona would not constitute a ratification by Arizona of the Colorado River compact, but that Arizona "would be bound by the Compact for the duration of the power contract" (Citing Sec. 8a of the Boulder Canyon Project Act.) It was also held that secondary energy which is not used by the Metropolitan Water District or the lessees and unused firm energy allocated to the district which is not taken by the lessees, may be disposed of to the Citizens Utilities Company for use in the State of Arizona, and that such energy would not constitute a part of the allotment of firm energy made to the State of Arizona. Solicitor's Opinion, M–29291 (July 13, 1937).

In view of the sufficiency of the city and company contracts to meet all requirements of the Boulder Canyon Act, the power contract executed with the Metropolitan Water District is valid notwithstanding the fact the district has not yet voted bonds to provide funds to build the aqueduct on which the power would be used. Even if the aqueduct financing were construed as being a prerequisite, the Secretary's reservation of energy for the district is within his authority under the second paragraph of section 5 (c) of the Boulder Canyon Project Act. 36 Op. Atty. Gen. 270 (1930).

14. —Renewals

Citizens Utilities Company and California Pacific Utilities Company have a statutory right under section 5(b) of the Boulder Canyon Project Act to a renewal of their contract to purchase Hoover Dam energy surplus to the needs of the Metropolitan Water District, as against the Government's contention that the statutory right of renewal extends only to those contractors who, in effect, underwrote the project by undertaking to purchase project electricity at a time when such promises were a condition precedent to the appropriation of money for the project, and even though the Government in the meantime had entered into contracts purporting to sell the energy to which plaintiff's right of renewal would extend. *Citizens Utilities Co. v. United States,* 137 Ct. Cl. 547, 149 F. Supp. 158 (1957), *cert. denied,* 355 U.S. 892 (1957).

15. —Rights-of-way

The Secretary may make a reasonable charge (a) for rights-of-way for oil pipe lines over the public land granted pursuant to section 28 of the act of Feb. 25, 1920 (41 Stat. 437, 449), as amended, but not (b) for right-of-way for transmission line under section 5 (d) of the Boulder Canyon Project Act (45 Stat. 1057). Solicitor's Opinion, 57 ID 31 (1939).

Sec. 6. [**River regulation, improvement of navigation, flood control—Irrigation and domestic use—Power—Title of dam to remain in United States—Contracts of lease of a unit or units of Government-built plant with right to generate electrical energy—Rules and regulations regarding maintenance of works to be in conformity with Federal water power act—Issuance of power permits or licenses.**]—The dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as herein otherwise provided: *Provided, however,* That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal water power act, so far as applicable, respecting maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits, recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this act or penalizing failure to comply with such regulations or with the provisions of this act. He shall also conform with other provisions of the Federal water power act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer.

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal water power act upon or affecting the Colorado River or any of its tributaries, except the Gila River, in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this act shall become effective as provided in section 4 herein. (45 Stat. 1061; 43 U.S.C. § 617e)

EXPLANATORY NOTE

Reference in the Text. The Federal Water Power Act, referred to in the text, is the Act of June 10, 1920, 41 Stat. 1063. The Act appears herein in chronological order.

NOTES OF OPINIONS

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1. River regulation

The release of water through the California Sluiceway at Imperial Dam in order to transport sediment load downstream is appropriate to accomplish river regulation. The United States has, under the contract with Imperial Irrigation District and within the limitations provided, a prior right to release water for this purpose as compared with the diversion of water for generation of power at Pilot Knob. Also, Mexico cannot, under the Mexican Water Treaty, insist as a matter of right that all or substantially all of the water allotted to it under the Treaty be delivered via the All-American Canal; nor can Mexico require that the United States assume responsibility either for the quality of the water delivered to it or for disposal of sediment load. Memorandum of Associate Solicitor Fisher, October 17, 1956.

2. Water uses

The power of the Secretary of the Interior to apportion and distribute Colorado River water among and within the Lower Basin States through the execution of contracts for its use is subject to a number of standards and limits in the Boulder Canyon Project Act. These include (1) the limitation in § 4(a) of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water, leaving 3,100,000 acre-feet which the Secretary properly has apportioned by contract in the quantities of 300,000 acre-feet to Nevada and 2,800,000 to Arizona; (2) the provision in § 6 setting out in order the purposes for which the Secretary must use the dam and reservoir; (3) the § 4(b) requirement for revenue provisions in the contracts adequate to ensure the recovery of the expenses of construction, operation and maintenance of the dam and other works within 50 years after their construction; (4) the directive in § 5 that water contracts for irrigation and domestic use shall be only for "permanent service"; (5) the recognition given in § 8(a) to the Colorado River Compact, which means that the Secretary and his permittees, licensees and contractees can do nothing to upset or encroach on the Compact's allocation of water between the Upper and Lower Basins; (6) the application by § 14 of general reclamation law except as the Act otherwise provides; and (7) the protection given in § 6 to "present perfected rights." *Arizona v. California,* 373 U.S. 546, 583–85 (1963).

In construing the Boulder Canyon Project Act, the Court would look to the Colorado River Compact for the limited purposes of interpreting compact terms specifically incorporated in the Act—such as the reference to satisfaction of "present perfected rights" in section 6, and the definition of "domestic" in section 12—and of resolving disputes between the Upper and Lower Basins. *Arizona v. California,* 373 U.S. 546, 566 (1963).

Congress did not intend that the power of the Secretary of Interior to contract with water users under the Boulder Canyon Project Act was to be controlled by law of prior appropriation. *Arizona v. California,* 373 U.S. 546 (1963).

3. Power

The authority conferred on the Secretary of the Interior by section 6 of the Boulder Canyon Project Act to prescribe and enforce rules and regulations conforming with the requirements of the Federal water power act respecting "control of rates and service" of companies purchasing Hoover power, was superseded and repealed by Part II of the Federal Power Act of 1935 with respect to resales of electric energy from Hoover dam at wholesale in interstate commerce, and therefore the Federal Power Commission has jurisdiction over the rates at which Southern California Edison Company sells power, including energy from Hoover and Davis dams, to the City of Colton, California. *F.P.C. v. Southern California Edison Co.,* 376 U.S. 205, 216–20 (1964).

Sec. 7. [Title to main canal—Utilization of power possibilities by participating agencies—Revenues.]—The Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may

be acceptable to him. The said districts or other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost of construction thereof. (45 Stat. 1062; 43 U.S.C. § 617f)

NOTES OF OPINIONS

1. "Net proceeds"

The Public Works Administration and the Rural Electrification Administration proposed to make loans aggregating $3,460,000 to the Imperial Irrigation District for financing the construction of an electric power production, transmission and distribution system in the Imperial Valley, Calif., and in construing the nature and extent of the security of the United States for repayment of the construction cost of the All-American canal under its contract of Dec. 1, 1932, as amended, with the Imperial Irrigation District, the Acting Solicitor held that the payments of principal and interest on the PWA and REA bonds and the one-year reserves for such payments may be deducted in determining the amount of "net proceeds" payable into the Colorado River dam fund except that the so-called "second lien" of the REA bonds on the PWA revenues would be ineffective as against the prior right of the United States under Sec. 17 of the Boulder Canyon project act and Article 35 of the All-American canal contract, in the event that the right of the United States to net proceeds should be held to be limited to those from generation of energy alone. Acting Solicitor Kirgis Opinion, 56 I.D. 116 (1937).

It is clear that under section 7 of the Boulder Canyon Project Act, the "net proceeds" from any power development on the All-American Canal are required to be paid into the Colorado River Dam Fund and credited to the various districts until the construction, operation and maintenance costs have been paid. However, section 7 does not specify when this payment is to be made. With respect to Coachella Valley County Water District's share of the net proceeds from power facilities on the canal operated by the Imperial Irrigation District, the requirements of the law will be met if:

(1) the net proceeds for 1954 and subsequent years are paid directly by Imperial into the Colorado River Dam Fund; and

(2) the $490,366.02 in net proceeds paid by Imperial directly to Coachella for the years 1945 through 1953, which Coachella used to purchase U.S. Government bonds, is paid to the Fund as the bonds mature. Dec. Comp. Gen. B–124783 (September 2, 1955).

Sec. 8. [(a) Colorado River compact to control in use of water. (b) Use of water also governed by compact among States of the lower division.]—(a) The United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appro-

priation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided,* That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress. (45 Stat. 1062; 43 U.S.C. § 617g)

NOTES OF OPINIONS

1. Colorado River Compact

The declarations in sections 1, 8(a), 13 (b), and 13(c) of the Boulder Canyon Project Act that the Secretary of the Interior and the United States shall be subject to and controlled by the Colorado River Compact, were made only to show that the Act and its provisions were in no way to upset, alter, or affect the Compact's congressionally approved division of water between the Upper and Lower Basins. They were not intended to make the compact and its provisions control or affect the Act's allocation among and distribution of water within the States of the Lower Basin. *Arizona v. California,* 373 U.S. 546, 567 (1963).

The power of the Secretary of the Interior to apportion and distribute Colorado River water among and within the Lower Basin States through the execution of contracts for its use is subject to a number of standards and limits in the Boulder Canyon Project Act. These include (1) the limitation in § 4(a) of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water, leaving 3,100,000 acre-feet which the Secretary properly has apportioned by contract in the quantities of 300,000 acre-feet to Nevada and 2,800,000 to Arizona; (2) the provision in § 6 setting out in order the purposes for which the Secretary must use the dam and reservoir; (3) the § 4(b) requirement for revenue provisions in the contracts adequate to ensure the recovery of the expenses of construction, operation and maintenance of the dam and other works within 50 years after their construction; (4) the directive in § 5 that water contracts for irrigation and domestic use shall be only for "permanent service"; (5) the recognition given in § 8(a) to the Colorado River Compact, which means that the Secretary and his permittees, licensees and contractees can do nothing to upset or encroach on the Compact's allocation of water between the Upper and Lower Basins; (6) the application by § 14 of general reclamation law except as the Act otherwise provides; and (7) the protection given in § 6 to "present perfected rights." *Arizona v. California,* 373 U.S. 546, 583–85 (1963).

Apportionment of the Lower Basin waters of the Colorado River is not controlled by doctrine of equitable apportionment or by the Colorado River Compact. *Arizona v. California,* 373 U.S. 546 (1963).

As Congress intended to apportion only the Colorado River mainstream, the Secretary of Interior cannot reduce water deliveries thereunder to Arizona and Nevada by the amount of their uses from tributaries above Lake Mead, though the Secretary may charge them for their diversions from the mainstream above the lower basin. *Arizona v. California,* 373 U.S. 546 (1963).

Sec. 9. **[Withdrawal of all irrigable lands—Entry under reclamation law—Preference in entry to soldiers.]**—All lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the

irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute revenue from said project and be covered into the fund herein provided for: *Provided,* That all persons who served in the United States Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4 of the Act of December 5, 1924 (43 Stat. 672, 702; 43 U.S.C., sec. 433); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this act: *Provided further,* That the above exclusive preference rights shall apply to veteran settlers on lands watered from the Gila canal in Arizona the same as to veteran settlers on lands watered from the All-American canal in California: *Provided further,* That in the event such an entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be open to entry, subject to the preference in this section provided. (45 Stat. 1063; Act of March 6, 1946, 60 Stat. 36; 43 U.S.C. § 617h)

Explanatory Notes

1946 Amendment. The Act of March 6, 1946, 60 Stat. 36, amended section 9 by (1) adding the words "Coast Guard" and "World War II" in the first proviso, (2) by changing "Navy" before the word "Reserve" to "Naval" in the same proviso, and (3) adding the extra second proviso. The effect of these amendments is to extend the veteran's preference to veterans of World War II and extend such preference to lands watered from the Gila Canal in Arizona. The 1946 Act appears herein in chronological order.

Reference in the Text. Subsection (c) of section 4 of the Act of December 5, 1924 (43 Stat. 672, 702; 43 U.S.C., sec. 433), referred to in the text, deals with the qualifications of applicants for entry. The Act is the Fact Finders' Act, which appears herein in chronological order.

Notes of Opinions

Practicability of irrigation 1
Veterans preference 2

1. Practicability of irrigation

When it appears that a commitment in a contract between the United States and an irrigation district with respect to the opening of an area of public lands within the district to entry was based upon a mutual mistake of fact concerning the irrigability of such lands and the practicability of irrigating them, the commitment is voidable, and should be disaffirmed, to the extent that the Secretary of the Interior finds that the lands are not in fact "practicable of irrigation and reclamation." Solicitor White Opinion, M–35090 (March 18, 1949), in

re East Mesa Lands, Imperial Irrigation District.

The Secretary of the Interior is authorized by section 9 of the Boulder Canyon Project Act to open for entry under the reclamation laws only those public lands which he finds are "practicable of irrigation and reclamation" by the irrigation works authorized in the Act. Whether a particular area of public land is "practicable of irrigation and reclamation" is a question of fact to be decided by the Secretary, and a mistaken determination made by one Secretary that the area is "practicable of irrigation and of reclamation" does not prevent a subsequent Secretary from reversing the earlier finding on the basis of later and more adequate data. Solicitor White Opinion, M-35090 (March 18, 1949), in re East Mesa Lands, Imperial Irrigation District.

2. Veterans preference

The veterans preference provision of section 9 of the Boulder Canyon Project Act was not adopted by the Interior Department Appropriation Act for 1938, approved August 9, 1937, for the Gila project ("Gila project, Arizona, $700,000; said Gila project * * * to be subject to the provisions of the Boulder Canyon Project Act * * *"), and the lands in the Gila project are not subject thereto. Acting Solicitor Kirgis Opinion, 57 I.D. 177 (1940).

Sec. 10. [Contract with Imperial Irrigation District not modified—Additional contracts.]—Nothing in this act shall be construed as modifying in any manner the existing contract, dated October 23, 1918, between the United States and the Imperial Irrigation District, providing for a connection with Laguna Dam; but the Secretary of the Interior is authorized to enter into contract or contracts with the said district or other districts, persons, or agencies for the construction, in accordance with this act, of said canal and appurtenant structures, and also for the operation and maintenance thereof, with the consent of the other users. (45 Stat. 1063; 43 U.S.C. § 617i)

Sec. 11. [Studies and investigations of Parker-Gila Valley project—Report by December 10, 1931.]—The Secretary of the Interior is hereby authorized to make such studies, surveys, investigations, and do such engineering as may be necessary to determine the lands in the State of Arizona that should be embraced within the boundaries of a reclamation project, heretofore commonly known and hereafter to be known as the Parker-Gila Valley reclamation project, and to recommend the most practicable and feasible method of irrigating lands within said project, or units thereof, and the cost of the same; and the appropriation of such sums of money as may be necessary for the aforesaid purposes from time to time is hereby authorized. The Secretary shall report to Congress as soon as practicable, and not later than December 10, 1931, his findings, conclusions, and recommendations regarding such project. (45 Stat. 1063)

EXPLANATORY NOTE

Codification. This section originally was codified as section 617j of title 43 of the U.S. Code, but is no longer shown thereunder.

Sec. 12. [Definitions of terminology employed.]—"Political subdivision" or "political subdivisions" as used in this act shall be understood to include any State, irrigation or other district, municipality, or other governmental organization.

"Reclamation law" as used in this act shall be understood to mean that certain act of the Congress of the United States approved June 17, 1902, entitled "An Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the rec-

lamation of arid lands", and the acts amendatory thereof and supplemental thereto.

"Maintenance" as used herein shall be deemed to include in each instance provision for keeping the works in good operating condition.

"The Federal water power act", as used in this act, shall be understood to mean that certain act of Congress of the United States approved June 10, 1920, entitled "An act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the river and harbor appropriation act, approved August 8, 1917, and for other purposes", and the acts amendatory thereof and supplemental thereto.

"Domestic" whenever employed in this act shall include water uses defined as "domestic" in said Colorado River compact. (45 Stat. 1064; 43 U.S.C. § 617k).

EXPLANATORY NOTE

Reference in the Text. Extracts from the Federal Water Power Act, approved June 10, 1920, referred to in the text, appear herein in chronological order.

NOTE OF OPINION

1. Domestic uses

In construing the Boulder Canyon Project Act, the Court would look to the Colorado River Compact for the limited purposes of interpreting compact terms specifically incorporated in the Act—such as the reference to satisfaction of "present perfected rights" in section 6, and the definition of "domestic" in section 12—and of resolving disputes between the Upper and Lower Basins. *Arizona v. California,* 373 U.S. 546, 566 (1963).

Sec. 13. [(a) Approval of Colorado River compact by Congress—(b) Rights of United States and of all parties claiming under United States—(c) All patents, contracts, grants, etc., subject to compact—(d) All conditions and covenants to run with the land.]—(a) The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.

(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority,

necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this act, the Federal water power act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.

(d) The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right of way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries. (45 Stat. 1064; 43 U.S.C. § 617*l*)

NOTE OF OPINION

1. Colorado River Compact

The declarations in sections 1, 8(a), 13(b), and 13(c) of the Boulder Canyon Project Act that the Secretary of the Interior and the United States shall be subject to and controlled by the Colorado River Compact, were made only to show that the Act and its provisions were in no way to upset, alter, or affect the Compact's congressionally approved division of water between the Upper and the Lower Basins. They were not intended to make the compact and its provisions control or affect the Act's allocation among and distribution of water within the States of the Lower Basin. *Arizona v. California,* 373 U.S. 546, 567 (1963).

Sec. 14. [This act a supplement to the reclamation law.]—This act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided. (45 Stat. 1065; 43 U.S.C. § 617m)

NOTES OF OPINIONS

Excess lands 2
General 1
Interchange of funds 3

1. General

The general structure of the Boulder Canyon project act indicates that it was not meant to exist independently but rather as a part of the legislative scheme embodied in the Federal reclamation law. Solicitor Harper Opinion, M-33902 (May 31, 1945), in re applicability of excess land provisions to Coachella Valley lands.

The power of the Secretary of the Interior to apportion and distribute Colorado River water among and within the Lower Basin States through the execution of contracts for its use is subject to a number of standards and limits in the Boulder Canyon Project Act. These include (1) the limitation in § 4(a) of 4,400,000 acre-feet on California's consumptive uses out of the first 7,500,000 acre-feet of mainstream water, leaving 3,100,000 acre-feet which the Secretary properly has apportioned by contract in the quantities of 300,000 acre-feet to Nevada and 2,800,000 to Arizona; (2) the provision in § 6 setting out in order the purposes for which the Secretary must use the dam and reservoir; (3) the § 4(b) requirement for revenue provisions in the contracts adequate to ensure the recovery of the expenses of construction, operation and maintenance of the dam and other

works within 50 years after their construction; (4) the directive in § 5 that water contracts for irrigation and domestic use shall be only for "permanent service"; (5) the recognition given in § 8(a) to the Colorado River Compact, which means that the Secretary and his permittees, licensees and contractees can do nothing to upset or encroach on the Compact's allocation of water between the Upper and Lower Basins; (6) the application by § 14 of general reclamation law except as the Act otherwise provides; and (7) the protection given in § 6 to "present perfected rights." *Arizona v. California,* 373 U.S. 546, 583–85 (1963).

2. Excess lands

The provision of section 14 of the Boulder Canyon Project Act declaring it to be a supplement to the Federal reclamation law incorporates the 160-acre limitation into the Project Act. Solicitor Harper Opinion, M–33902, at 6 (May 31, 1945), in re applicability of excess-land provisions to Coachella Valley lands.

Where a Federal statute provides that the reclamation laws shall govern the construction, operation, and management of project works, the excess land provisions of the reclamation laws are thereby carried into effect unless the terms of the statute provide otherwise. Solicitor Barry Opinion, 71 I.D. 496, 501–08 (1964), in re application of excess land laws to private lands in Imperial Irrigation District.

3. Interchange of funds

This section was construed in Comptroller General's decision A–41637, dated June 14, 1932, in connection with the Boulder Canyon Project item in the Appropriation Act for fiscal year 1932.

Sec. 15. [Investigations and reports regarding use of water—Appropriation of $250,000 authorized.]—The Secretary of the Interior is authorized and directed to make investigation and public reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said States and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colorado River and its tributaries. The sum of $250,000 is hereby authorized to be appropriated from said Colorado River Dam fund, created by section 2 of this act, for such purposes. (45 Stat. 1065; 43 U.S.C. § 617n)

Sec. 16. [Cooperation of commissions or commissioners with Secretary of Interior—Access to records.]—In furtherance of any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system and to the end that the project authorized by this act may constitute and be administered as a unit in such control, improvement, and utilization, any commission or commissioner duly authorized under the law of any ratifying State in that behalf shall have the right to act in an advisory capacity to and in cooperation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4, 5, and 14 of this act, and shall have at all times access to records of all Federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request. (45 Stat. 1065; 43 U.S.C. § 617o)

EXPLANATORY NOTE

Colorado River Commission. Arizona, California, Nevada, and Utah enacted laws creating a Colorado River Commission: 1929 Arizona Sess. Laws, p. 6; 1927 California Sess. Laws, p. 1031, amended by 1929 California Sess. Laws, p. 691; 1928–1929 Nevada Sess. Laws, p. 194; and 1929 Utah Sess. Laws, p. 187.

NOTE OF OPINION

1. General

Section 16 is to be construed with section 15, which provides for formulation of comprehensive plans for development of the Colorado River and its tributaries. The purpose of the two sections is to provide liaison between the present undertaking, administered by the Secretary of the Interior, and future development of the river during formulation of plans for such developments. It is not the intention of section 16 to superimpose upon the authority and discretion of the Secretary of the Interior, everywhere else made the basis of administration, the control and supervision of a group of commissioners whose number, place, and time of meeting, responsibility and authority, are unprovided for. The commissioners may tender the Secretary advice but he is in nowise obliged to act thereon contrary to his judgment. Solicitor Finney Opinion, 53 I.D. 1 (1930).

Sec. 17. [Claims of the United States arising from any contract authorized by this act.]—Claims of the United States arising out of any contract authorized by this act shall have priority over all others, secured or unsecured. (45 Stat. 1065; 43 U.S.C. § 617p)

NOTE OF OPINION

1. General

The provision in section 17 of the Boulder Canyon Project Act that "claims of the United States arising out of any contract authorized by this act shall have priority over all others" entitles the United States thereto only so long as the net proceeds from power development of the All American Canal are in the hands of the irrigation district. Acting Solicitor Kirgis Opinion, 56 I.D. 116 (1937).

Sec. 18. [Rights of States to waters within their borders.]—Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement. (45 Stat. 1065; 43 U.S.C. § 617q)

NOTES OF OPINIONS

1. State laws

Where the government has, as here, exercised its right to regulate and develop the river and has undertaken a comprehensive project for improvements of the river and for the orderly and beneficial distribution of water, there is no room for inconsistent state law. *Arizona v. California,* 373 U.S. 546, 587 (1963).

In choosing between users within each State and in settling the terms of his contracts for the use of stored Colorado River water, the Secretary is not bound, either by section 18 of the Boulder Canyon Project Act, or by section 8 of the Reclamation Act, to follow State law. Although section 18 allows the States to do things not inconsistent with the Project Act or with Federal control of the river, as for example, regulation of the use of tributary water and protection of present perfected rights, the general saving language of section 18 cannot bind the Secretary by state law and thereby nullify the contract power expressly conferred upon him by section 5. *Arizona v. California,* 373 U.S. 546, 580–90 (1963).

Sec. 19. [Consent of Congress given to basin States to enter into compacts regarding use of water—Representative of United States to cooperate in formulation of compacts—Approval by legislatures and by Congress.]—The consent of Congress is hereby given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this act for a comprehensive plan for the

development of the Colorado River and providing for the storage, diversion, and use of the waters of said river. Any such compact or agreement may provide for the construction of dams, headworks, and other diversion works or structures for flood control, reclamation, improvement of navigation, division of water, or other purposes and/or the construction of power houses or other structures for the purpose of the development of water power and the financing of the same; and for such purposes may authorize the creation of interstate commissions and/or the creation of corporations, authorities, or other instrumentalities.

(a) Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into.

(b) No such compact or agreement shall be binding or obligatory upon any of such States unless and until it has been approved by the legislature of each of such States and by the Congress of the United States. (45 Stat. 1065; 43 U.S.C. § 617r)

EXPLANATORY NOTE

Cross Reference, Upper Colorado River Basin Compact. The Act of April 6, 1949, grants the consent of Congress to the Upper Colorado River Basin Compact. The Act, which contains the text of the compact, appears herein in chronological order.

Sec. 20. [Right of Mexico to waters of Colorado River system not affected by this act.]—Nothing in this act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system. (45 Stat. 1066; 43 U.S.C. § 617s)

Sec. 21. [Short title.]—The short title of this act shall be "Boulder Canyon Project Act." (45 Stat. 1066; 43 U.S.C. § 617t)

EXPLANATORY NOTE

Legislative History. H.R. 5773, Public Law 642 in the 70th Congress. H.R. Rept. No. 918, Parts 1, 2, and 3. S. Rept. No. 592 (on S. 728).

COLORADO RIVER COMPACT
SIGNED AT SANTA FE, N. MEX., NOVEMBER 24, 1922

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, p. 171), and the acts of the legislatures of the said states, have through their Governors appointed as their commissioners: W. S. Norviel, for the State of Arizona; W. F. McClure, for the State of California; Delph E. Carpenter, for the State of Colorado; J. G. Scrugham, for the State of Nevada; Stephen B. Davis, Jr., for the State of New Mexico; R. E. Caldwell, for the State of Utah; Frank C. Emerson, for the State of Wyoming; who, after negotiations participated in by Herbert Hoover, appointed by the President as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Article II

As used in this Compact:—

(*a*) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(*b*) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(*c*) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(*d*) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(*e*) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(*f*) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.

(*g*) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(*h*) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

Note of Opinion

1. Transbasin diversions

The Colorado River Compact authorizes the transmountain diversion of waters of the Colorado River from their natural watersheds to other watersheds within the Basin States, but not to States outside the Basin. Solicitor Margold Opinion, M–28389 (April 4, 1936).

ARTICLE III

(*a*) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(*b*) In addition to the apportionment in paragraph (*a*), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(*c*) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (*a*) and (*b*); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (*d*).

(*d*) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years reckoned in continuing progressive series beginning with the 1st day of October next succeeding the ratification of this compact.

(*e*) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(*f*) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (*a*), (*b*), and (*c*) may be made in the manner provided in paragraph (*g*) at any time after October 1, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (*a*) and (*b*).

(*g*) In the event of a desire for further apportionment as provided in paragraph (*f*) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governors of the signatory States and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (*f*), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(*a*) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be sub-

servient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(*b*) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(*c*) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use and distribution of water.

Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey, shall cooperate, ex officio:

(*a*) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(*b*) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(*c*) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

Article VI

Should any claim or controversy arise between any two or more of the signatory States: (*a*) With respect to the waters of the Colorado River System not covered by the terms of this compact; (*b*) over the meaning or performance of any of the terms of this compact; (*c*) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (*d*) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (*e*) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected upon the request of one of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In witness whereof the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. NORVIEL.
W. F. MCCLURE.
DELPH E. CARPENTER.
J. G. SCRUGHAM.
STEPHEN B. DAVIS, Jr.
R. E. CALDWELL.
FRANK C. EMERSON.

Approved:
HERBERT HOOVER.

EXPLANATORY NOTE

Approval of the Compact. By section 13(a) of the Boulder Canyon Project Act approved December 21, 1928, the Colorado River Compact was approved by Congress and the provisions of the first paragraph of Article XI of the Compact making said Compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, were waived, the approval to become effective when the State of California and at least five of the other States mentioned shall have approved or may thereafter approve said Compact and shall consent to such waiver. The President proclaimed on June 25, 1929, 46 Stat. 3000, that the necessary ratifications had taken place.

AMEND CREDITS FOR CHARGES ON YUMA AND YUMA AUXILIARY PROJECTS ACT

An act to amend the act entitled "An act to authorize credit upon the construction charges of certain water-right applicants and purchasers on the Yuma and Yuma Mesa auxiliary projects, and for other purposes." (Act of February 26, 1929, ch. 339, 45 Stat. 1321)

[Act of June 28, 1926, amended—Credits on construction charges and on operation and maintenance charges—Yuma Indian Reservation.]—The act entitled "An act to authorize credit upon the construction charges of certain water-right applicants and purchasers on the Yuma and Yuma Mesa auxiliary projects and for other purposes," approved June 28, 1926, [is] amended so as to read as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to credit the individual water-right applicants on the Yuma reclamation project and the purchasers of water rights on the Yuma Mesa auxiliary project, on the construction charges due under their contracts with the United States under the reclamation act and acts amendatory thereof and supplementary thereto, with their proportionate part of all payments heretofore made or hereinafter to be made by the Imperial irrigation district of California under contract entered into under date of October 23, 1918, between the said district and the Secretary of the Interior: *Provided,* That lands in the Yuma Indian Reservation for which water rights have been purchased shall share pro rata in the credits so to be applied: *Provided further,* That where construction charges are paid in full said payments shall be credited on operation and maintenance charges assessed against the lands to which said payments would otherwise apply." (45 Stat. 1321)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of June 28, 1926.

Legislative History. H.R. 15918, Public Law 825 in the 70th Congress. H.R. Rept. No. 2115. S. Rept. No. 1839.

CONSULTING ENGINEERS, GEOLOGISTS, AND ECONOMISTS ON IMPORTANT RECLAMATION WORK

An act authorizing the Secretary of the Interior to employ engineers and economists for consultation purposes on important reclamation work. (Act of February 28, 1929, ch. 374, 45 Stat. 1406)

[**Sec. 1. Employment of consulting engineers, etc.; compensation limited to $50 a day, and to $5,000 a year—Retired Army and Navy officers eligible—Retired Interior Department personnel eligible.**]—The Secretary of the Interior is authorized, in his judgment and discretion, to employ for consultation purposes on important reclamation work ten consulting engineers, geologists, appraisers, and economists, at rates of compensation to be fixed by him, but not to exceed $50 per day for any engineer, geologist, appraiser, or economist so employed: *Provided,* That the total compensation paid to any engineer, geologist, appraiser, or economist during any fiscal year shall not exceed $5,000: *Provided further,* That notwithstanding the provisions of any other Act, retired officers of the Army or Navy may be employed by the Secretary of the Interior as consulting engineers in accordance with the provisions of this Act. (45 Stat. 1406; Act of April 22, 1940, 54 Stat. 148; Act of December 23, 1944, 58 Stat. 915; § 8, Act of September 6, 1966, 80 Stat. 652; 43 U.S.C. § 411b)

EXPLANATORY NOTES

1966 Amendment. Section 8 of the Act of September 6, 1966, 80 Stat. 652, amended the Act by repealing the last proviso of section 1 which had been added to the section by the 1944 Amendment explained in the note following this note. The 1966 Act is a recodification of title 5 of the United States Code. Section 8 of the Act repeals a long list of provisions of law no longer required because of the recodification. Section 8 of the 1966 Act reads as follows: "Sec. 8. (a) The laws specified in the following schedule are repealed except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act and except as provided by section 7 of this Act.

"(b) The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal of the law conferring the right.

"(c) The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal."

1944 Amendment. The Act of December 23, 1944, 58 Stat. 915, amended the Act by adding to section 1 a proviso that was repealed in 1966 and which read as follows: "*Provided further,* That, notwithstanding the provisions of any other Act, retired personnel of the Department of the Interior may be employed by the Secretary of the Interior as consultants in accordance with the provisions of this Act, without deductions from compensation for retirement, without loss of or redetermination of retirement status, and without loss or reduction of retirement annuity or other benefits by reason of such employment, except that there shall be deducted from the compensation otherwise payable to any such retired employee sums equal to the retirement annuity or benefit allocable to the days of actual employment hereunder." The 1944 Act appears herein in chronological order.

1940 Amendment. The Act of April 22, 1940, 54 Stat. 148, amended section 1 by providing for the employment of appraisers, and by increasing the number of persons authorized to be employed from five to ten. The 1940 Act appears herein in chronological order.

Sec. 2. [**Joint resolution of June 28, 1926, repealed.**]—The joint resolution approved June 28, 1926, authorizing the Secretary of the Interior to employ en-

gineers for consultation in connection with the construction of dams for irrigation purposes, is hereby repealed. (45 Stat. 1406)

EXPLANATORY NOTES

Cross Reference, Employment of Experts and Consultants. In recent years most experts and consultants have been hired under the authority of section 15 of the Act of August 2, 1946, 60 Stat. 806, 810, Public Law 600 in the 79th Congress, 5 U.S.C. § 3109, and general provisions in the annual appropriation acts (see, for example, section 506 of the Public Works Appropriation Act, 1967, 80 Stat. 1015) because of the higher per diem rates allowed and the absence of a limit on the number of such persons employed.

Legislative History. S. 4528, Public Law 851 in the 70th Congress. H.R. Rept. No. 2143.

NOTES OF OPINIONS

Application 3
Construction with other laws 1
Dual compensation 2

1. Construction with other laws

The restrictions of Act of February 28, 1929, apply only to employment under that act. New positions may be established and payment made from Public Works funds but such new employment must be in conformity with the executive order of November 18, 1933, or the Classification Act of 1923 as amended. Solicitor Margold Opinion, 54 I.D. 411 (1934).

2. Dual compensation

The temporary employment by the War Department at any rate of compensation of a consulting engineer holding an appointment under the Act of February 28, 1929, in the Bureau of Reclamation at $50 a day when actually employed, would, notwithstanding the fact that the employee was in a nonpay status on the rolls of the bureau and would not receive compensation from the bureau and the War Department covering the same period of time, nevertheless be in contravention of the Act of May 10, 1916, as amended by the Act of August 29, 1916 (39 Stat. 120, 582), which prohibits the payment of more than one salary when the combined rate of such payment exceeds $2,000 per annum. Comp. Gen. Dec. A–30788 (Mar. 24, 1930)

Employees appointed pursuant to the Act of February 28, 1929, 45 Stat. 1406, which limits the aggregate that may be paid to any one person to $5,000 per year, and to whom it is not practical to apply section 101 (b) of the Economy Act of June 30, 1932, 47 Stat. 400, are subject to 8⅓ percent reduction prescribed by section 105 (d) of that Act for persons whose rate of compensation is between $1,000 and $10,000. As the rate of pay of the positions authorized by this statute will exceed $3,000 per annum, such employees would not be entitled, during the present fiscal year, to receive any pay as retired Army officers unless the retired pay amounts to $3,000 or more, in which case they may elect to receive either the civilian or the retired pay. Dec. Comp. Gen., A–44084 (August 23, 1932).

3. Application

Where the services involved in a consulting engineer's appointment, under the above act, are not for performance at any fixed place and the appointment contemplates travel at Government expense between his home and the various places where his services might be required, the employee is considered as actually employed and entitled to salary per diem as well as per diem in lieu of subsistence whenever necessarily absent from his place of residence for purposes of consultation on reclamation projects, including necessary travel time and intervening Saturday afternoons, Sundays, and holidays. His compensation is subject to reduction required by the Economy Act of June 30, 1932, and its amendments, and to the fiscal year limitation. Dec. Comp. Gen., A–47819 (April 6, 1933).

The words "important reclamation work" are used in the act in a collective sense and refer to the reclamation work of the Department as a whole; they are not restricted to any one project; and only five engineers, five geologists and five economists may be employed by the Department at any one time on important reclamation work. Dec. Comp. Gen.; B–6069 (October 4, 1939).

CONVEYANCE OF WATER RIGHTS, BOISE PROJECT

An act to authorize the Secretary of the Interior to convey or transfer certain water rights in connection with the Boise reclamation project. (Act of February 28, 1929, ch. 382, 45 Stat. 1410)

[Sec. 1. Authority to relinquish interest in Ridenbaugh or Nampa and Meridian irrigation district water rights.]—The Secretary of the Interior is hereby authorized to relinquish to the board of control of the Arrowrock division, Boise irrigation project, all the right, title, and interest of the United States in or to certain Ridenbaugh or Nampa and Meridian irrigation district water rights, not heretofore disposed of, obtained when land with appurtenant water rights was purchased by the United States for the Deer Flat Reservoir. (45 Stat. 1410)

Sec. 2. [Water to be used by board of control of Arrowrock division.]—The Secretary of the Interior is authorized to permit the water to which the United States is entitled under the said Ridenbaugh rights to be taken into and distributed through the canal system of the Arrowrock division of the Boise project by the board of control and used or disposed of by the said board of control for the benefit of the said Arrowrock division. (45 Stat. 1410)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 11360, Public Law 859 in the 70th Congress. H.R. Rept. No. 865. S. Rept. No. 1642.

UNPLATTED PORTIONS OF TOWN SITES

An act to authorize the disposition of unplatted portions of Government town sites on irrigation projects under the reclamation act of June 17, 1902, and for other purposes. (Act of March 2, 1929, ch. 541, 45 Stat. 1522)

[**Sec. 1. Authority to appraise and sell unplatted portions of town sites created under Act of April 16, 1906—Patents.**]—The Secretary of the Interior is hereby authorized, in his discretion, to appraise, and sell, at public auction, to the highest bidder, from time to time, under such terms as to time of payment as he may require, but in no event for any longer period than 5 years, any or all of the unplatted portions of Government town sites created under the act of April 16, 1906 (34 Stat. 116), on any irrigation project constructed under the act of June 17, 1902 (32 Stat. 388), or acts amendatory thereof or supplementary thereto: *Provided,* That any land so offered for sale and not disposed of may afterwards be sold, at not less than the appraised value, at private sale, under such regulations as the Secretary of the Interior may prescribe. Patents made in pursuance of such sale shall convey all the right, title, and interest of the United States in or to the land so sold. (45 Stat. 1522; Act of February 14, 1931, 46 Stat. 1107; 43 U.S.C. § 571)

Explanatory Notes

1931 Amendment. The Act of February 14, 1931, 46 Stat. 1107, amended section 1 by deleting the words "for cash" which followed the phrase "from time to time," and by inserting in lieu thereof the words "under such terms as to time of payment as he may require, but in no event for any longer period than 5 years". The 1931 Act appears herein in chronological order.

Reference in the Text. The Act of April 16, 1906 (34 Stat. 116), referred to which appears herein in chronological order.

Sec. 2. [**Proceeds of sales to be disposed of in accordance with Act of December 5, 1924.**]—The net proceeds of such sales after deducting all expenditures on account of such lands, and the project construction charge, for the irrigable area of the lands so sold where irrigation or drainage works have been constructed or are proposed to be constructed, shall be disposed of as provided in Subsection I of section 4 of the act of December 5, 1924 (Forty-third Statutes, page 672). Where the project construction charge shall not have been fixed at the date of any such sale, same shall be estimated by the Secretary of the Interior. (45 Stat. 1522; 43 U.S.C. § 572)

Explanatory Note

Reference in the Text. Subsection I of section 4 of the Act of December 5, 1924 (Forty-third Statutes, page 672), referred to in the text, deals with the distribution of the profits from projects taken over by the water users. The Act is the Fact Finder's Act, which appears herein in chronological order.

Sec. 3. [**Reclamation funds to be appropriated for expenses of appraisement and sale—Secretary to make rules and regulations.**]—Reclamation funds are authorized to be appropriated for use in defraying the necessary expenses of ap-

praisement and sale of the lands herein authorized to be sold, and the Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations as, in his opinion, may be necessary and proper for carrying out the purposes of this act. (45 Stat. 1522; 43 U.S.C. § 573)

EXPLANATORY NOTE

Legislative History. H.R. 16082, Public Law 967 in the 70th Congress. H.R. Rept. No. 2264. S. Rept. No. 1857 (on S. 5482).

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1930

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1930, and for other purposes. (Act of March 4, 1929, ch. 705, 45 Stat. 1562)

* * * * *

[Boise project—Application of revenues from operation of Black Canyon power plant.]—* * * *Provided,—Repealed.*

EXPLANATORY NOTE

Proviso Repealed. Section 3 of the Act of August 24, 1954, 68 Stat. 794, repealed the proviso in the item relating to the Boise project, which read as follows: *"Provided,* That all net revenues derived from the operation of the Black Canyon power plant shall be applied to the repayment of the construction cost: First, of the Deadwood Reservoir; second, the Black Canyon power plant and power system; and third, one-half the cost of the Black Canyon Dam, until the United States shall have been reimbursed for all expenditures made incident thereto. Thereafter all net revenues shall be covered into the reclamation fund unless and until otherwise directed by Congress. No charge shall be made against any irrigation district for the cost of construction of the said Deadwood Reservoir, the Black Canyon power plant and power system, or more than one-half of the cost of the Black Canyon Dam." Additionally, the 1954 Act repealed the last three provisos to the portion of the Act of June 5, 1924, relating to the Boise project. Extracts from the 1924 Act, including the portion relating to the Boise project, and the full text of the 1954 Act, appear herein in chronological order.

* * * * *

[Sun River project—Control by water users.]—Sun River project, Montana: * * * *Provided further,* That on or before July 1, 1929, notice shall be given by the Secretary of the Interior requiring the water users to assume the control of the constructed works on January 1, 1931, and to commence payment of construction charges in accordance with the contract of June 22, 1926, between the United States and the Greenfields irrigation district. (45 Stat. 1591)

* * * * *

[Newlands project—Test wells in Truckee Meadows.]—Newlands project, Nevada: That such portion as may be necessary of the unexpended balance of the appropriation of $50,000 for the survey and examination of water storage reservoir sites on the headwaters of the Truckee and Carson Rivers, made available under the provisions of the second deficiency act, 1928 (Public, Numbered 563, Session Laws, first session, Seventieth Congress, page 902, Newlands project, Nevada), shall also be available for the boring of test wells in the Truckee Meadows, Washoe County, near the city of Reno, Nevada. (45 Stat. 1591)

[Carlsbad project—Avalon Reservoir—Contract with A. T. and S. F. Ry.]—Carlsbad project, New Mexico: * * * *Provided,* That no part of the appropriation of $250,000 contained in the act of May 29, 1928 (45 Stat., p. 902), for beginning the enlargement of Avalon Reservoir shall be available until contract is entered into between the Secretary of the Interior and the Atchison, Topeka and Santa Fe Railway System, whereby said system agrees to pay one-half of the

cost of relocating the tracks and right of way of said system where made necessary by said enlargement of the reservoir. (45 Stat. 1591)

* * * * *

[**Shoshone project—Application of net revenues from Shoshone power plant.**]—Shoshone project, Wyoming: * * * *Provided further,* That the net revenues from the operation of the Shoshone power plant shall be applied, first, to the repayment of the construction cost of the power system; second, to the repayment of the construction cost of the Shoshone Dam; and third, thereafter such net revenues shall be covered into the reclamation fund. (45 Stat. 1592)

EXPLANATORY NOTES

1938, 1949 and 1954 Modifications. The Act of April 9, 1938, 52 Stat. 210, section 3 of the Act of October 27, 1949, 63 Stat. 941, 942, and the Act of July 14, 1954, 68 Stat. 471, modify these provisions for the application of Shoshone project power revenues. These Acts appear herein in chronological order.

Cross Reference, Annual Appropriation Acts. For a number of years the annual appropriation acts made funds from power revenues of the Shoshone project available for operation and maintenance of the commercial system, as explained in the note under the Act of March 7, 1928, 45 Stat. 230.

Cross Reference, Sale of Facilities. The Act of May 14, 1930, 46 Stat. 309, authorizes the sale of power facilities no longer needed for the Shoshone project. The Act appears herein in chronological order.

NOTES OF OPINIONS

1. Disposition of power revenues

The Act of March 4, 1929, prevents the Department from applying any of the net power revenues of the Shoshone power plant to a reduction of the annual charges due from the Shoshone Irrigation District to the United States in accordance with the provisions of subsection I of the Fact Finders' Act of December 5, 1924. Solicitor Finney Opinion, 53 I.D. 427 (1931).

The Act of March 4, 1929, relating to the disposition of Shoshone power revenues, is clearly within the constitutional power of Congress to enact. If the Act impairs any contract rights of the plaintiff under a prior contract, its remedy for recovery is in recourse to the Court of Claims. An action for a writ of mandamus to compel the Secretary of the Interior to determine and credit to the plaintiff annually a portion of the power revenues will not lie, both because this is in the nature of a suit for specific performance of a contract to which the United States has not given its consent, and because the matter is so completely within the discretion of the Secretary as to forbid interference by writ of mandamus. *United States ex rel. Shoshone Irr. Dist. v. Ickes,* 70 F. 2d 771 (D.C. Cir. 1934), *cert. denied* 293 U.S. 571 (1934).

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts from this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 15089, Public Law 1033 in the 70th Congress. H.R. Rept No. 1938. S. Rept. No. 1355. H.R. Rept No. 2025 (conference report).

DELIVER WATER, UNCOMPAHGRE PROJECT

Joint resolution to authorize the Secretary of the Interior to deliver water during the irrigation season of 1930 on the Uncompahgre project, Colorado. (Pub. Res. No. 62 [S.J. Res. 151], April 12, 1930, ch. 143, 46 Stat. 163)

[Economic study on Uncompahgre project—Delivery of water to those paying one annual installment of construction charge and current operation and maintenance charges.]—Whereas an economic study is now in progress on the Uncompahgre project, Colorado, constructed and operated under the act of June 17, 1902 (Thirty-second Statutes at Large, page 388), and acts amendatory thereof or supplementary thereto, looking to the adjustment of water-right charges and the execution of a new contract with the water users of that project, and

Whereas the necessary action cannot be completed before the beginning of the irrigation season of 1930; Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized to deliver water during the irrigation season of 1930 to any water user on the Uncompahgre project, Colorado, who pays or causes to be paid, in the manner and at the time prescribed by said Secretary, one regular annual installment of construction charge and the current operation and maintenance charges, notwithstanding any delinquencies. (46 Stat. 163)

Explanatory Notes

Not Codified. This Public Resolution is not codified in the U.S. Code.

Legislative History. S.J. Res. 151, Public Resolution 62 in the 71st Congress. H.R. Rept. No. 953.

AMEND SECTION 43, OMNIBUS ADJUSTMENT ACT

An act to amend section 43 of the act of May 25, 1926, entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes." (Act of April 23, 1930, ch. 205, 46 Stat. 249)

[Suspension of construction charges against areas temporarily unproductive—Payments made credited to construction charge—Credits—Delivery of water—Permanently unproductive lands.]—Section 43 of the act of May 25, 1926, entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes" (Forty-fourth Statutes, page 636) be, and the same is hereby, amended to read as follows:

"SEC. 43. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior shall declare them to be possessed of sufficient productive power properly to be placed in a paying class, whereupon payment of construction charges against such areas shall be resumed or shall begin, as the case may be. Any payments made on such areas shall be credited to the unpaid balance of the construction charge on the productive area of each unit. Such credit shall be applied on and after the passage and approval of this act, which shall not be construed to require revision of accounts heretofore adjusted under the provisions of this section as originally enacted. While said lands so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges, or such other charges as may be fixed by the Secretary of the Interior the advance payment of which may be required, in the discretion of the said Secretary. Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands as provided in this act except that no refund shall be made of the construction charges paid on such unproductive areas and applied as a credit on productive areas as herein authorized." (46 Stat. 249; 43 U.S.C. § 423b)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 43 of the Act of May 25, 1926 (the Omnibus Adjustment Act).

Legislative History. H.R. 4291, Public Law 161 in the 71st Congress. H.R. Rept. No. 118. S. Rept. No. 404.

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1931

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1931, and for other purposes. (Act of May 14, 1930, ch. 273, 46 Stat. 279)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[Salt Lake Basin project—Repayment contract required.]—Salt Lake Basin project, Utah, second division: For commencement of construction, $300,000: *Provided,* That no part of this sum shall be available for construction work until a contract or contracts shall be made as required by the reclamation laws with an irrigation district or districts or water users' association or associations for the payment to the United States of the cost of such second division. (46 Stat. 308; Act of April 22, 1932, 47 Stat. 116)

EXPLANATORY NOTES

1932 Amendment. The Interior Department Appropriation Act for 1933, April 22, 1932, 47 Stat. 116, revised the proviso as shown above.

Original Text. As originally enacted in 1930, the proviso read as follows:

"*Provided,* That no part of this sum shall be available for construction work until a contract or contracts shall be made with an irrigation district or districts embracing said division, which, in addition to other conditions required by law, shall require payment of construction costs within a period not exceeding thirty years from the date water shall be available for delivery, as to lands now under production, tributary to canals and laterals already constructed, and for the irrigation of which a supplementary water supply is to be furnished."

* * * * *

[Yakima project, Kennewick Highlands unit—Prosser Dam title, etc.—Application of power revenues—Power-plant title to remain in United States.]—Yakima project (Kennewick Highlands unit), Washington: For construction, $640,000, to be immediately available: *Provided,* That no part of the funds hereby appropriated shall be expended for construction purposes until there shall have been conveyed to the United States title to the Prosser Dam and the right-of-way for the Prosser-Chandler Power Canal free of all prior lien and satisfactory to the Secretary of the Interior: *Provided further,* That all net revenues received from the disposition of power not required for pumping water for irrigation of lands in the Kennewick irrigation district shall be applied, first, to the payment of the construction cost incurred by the United States in connection with the Kennewick Highlands unit, including the power plant and appurtenances, until said construction cost is fully paid, and thereafter to retire the obligations incurred by the said district in the purchase of the said dam and right-of-way: *And provided further,* That title to and the legal and equitable ownership of the power plant and appurtenances constructed by the United States pursuant to this appropriation shall be and remain in the United States, and all net reve-

nues therefrom shall go to the reclamation fund after payment of aforesaid construction cost and retirement of said obligations. (46 Stat. 308)

NOTES OF OPINIONS

District bonds 1
Sale of surplus power 2

1. District bonds

The provision in the second proviso that power revenues will be used "to retire the obligations incurred by the said district in the purchase of the said dam and right-of-way" does not amount to a double payment for the dam and power canal because under normal reclamation law the use and benefit of the facilities would pass to the district after repayment of all costs of the United States. Here, however, the intention is that control of the property will remain permanently in the United States; therefore, it is appropriate to use power revenues to repay the bonds issued by the district after all costs of the United States have been repaid. Solicitor Finney Opinion, M-26043 (July 2, 1930).

2. Sale of surplus power

Under date of December 15, 1930, the First Assistant Secretary of the Interior held in connection with the second proviso of the above item, that it was necessary to advertise for competitive bids for the sale by the United States of surplus power generated at the proposed plant to be constructed for the Kennewick Highlands unit, Yakima project.

[**Riverton project—Restriction on funds for Pilot Butte division—Contract—Sugar factory—Branch railroad.**]—Riverton project, Wyoming: * * * *Provided further,* That no part of the funds hereby appropriated for construction purposes shall be available for expenditure on the distribution system, Pilot Butte division, during the fiscal year 1931 until the following conditions have been met

(1) Contract satisfactory to the Secretary of the Interior shall have been executed by the Midvale Irrigation District for repayment of project investments

(2) A sugar factory shall have been constructed on or in the vicinity of the project or definite arrangements made for such construction at an early date; and

(3) A branch railroad shall have been constructed or initiated either from Bonneville or some other suitable point on the Chicago, Burlington & Quincy Railroad, or from Shoshone or some other suitable point on the Chicago & North Western Railway to Pavillion, Wyoming, or other suitable point in this vicinity (46 Stat. 308)

EXPLANATORY NOTE

Implementation. No branch railroad nor sugar factory was built in the fiscal year 1931, but a repayment contract, dated February 12, 1931, was executed with the Midvale Irrigation District.

[**Shoshone project—Sale of power facilities.**]—Shoshone project, Wyoming: * * * *Provided further,* That the Secretary of the Interior is authorized to sell at not less than the appraised valuation transmission lines, substations, and so forth, no longer needed for construction, operation, and maintenance of the project. (46 Stat. 309)

EXPLANATORY NOTE

Cross Reference, Additional Provisions. For additional provisions relating to the power system and power revenues of the Shoshone project, see the Act of March 4 1929, 45 Stat. 1592, and the notes thereunder.

* * * * *

EXPLANATORY NOTES

Not Codified. Extracts from this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 6564, Public Law 217 in the 71st Congress. H.R. Rept. No. 25. S. Rept. No. 371. H.R. Rept. No. 1394 (conference report).

SALE OF UNPRODUCTIVE PUBLIC LAND

An act to authorize the disposal of public land classified as temporarily or permanently unproductive on Federal irrigation projects. (Act of May 16, 1930, ch. 292, 46 Stat. 367)

[**Sec. 1. Secretary authorized to dispose of vacant public lands.**]—The Secretary of the Interior, hereinafter styled the Secretary, is authorized in connection with Federal irrigation projects to dispose of vacant public lands designated under the act of May 25, 1926, as temporarily unproductive or permanently unproductive to resident farm owners and resident entrymen on Federal irrigation projects, in accordance with the provisions of this act. (46 Stat. 367; 43 U.S.C. § 424)

NOTES OF OPINIONS

1. Resident

For purposes of the Act of May 16, 1930, a "resident farm owner" means "a farm owner who is actually residing on the farm he owns" and the nature of the residence required is "personal presence and physical occupation of the premises as a home." Solicitor Gardner Opinion, 58 I.D. 409 (1943), in re Dove; Solicitor Gardner Opinion, M–33218 (July 27, 1943), in re Schmitt.

Sec. 2. [**Independent appraisal—Limit on area allowed to purchasers—Tracts insufficient to support family.**]—That the Secretary is authorized to sell such lands to resident farm owners or resident entrymen, on the project upon which such land is located, at prices not less than that fixed by independent appraisal approved by the Secretary, and upon such terms and at private sale or at public auction as he may prescribe: *Provided,* That no such resident farm owner or resident entryman shall be permitted to purchase under this act more than one hundred and sixty acres of such land, or an area which, together with land already owned on such Federal irrigation project, shall exceed three hundred and twenty acres: *And provided further,* That the authority given hereunder shall apply not only to tracts wholly classified as temporarily or permanently unproductive, but also to all tracts of public lands within Federal irrigation projects which by reason of the inclusion of lands classified as temporarily or permanently unproductive are found by the Secretary to be insufficient to support a family and to pay water charges. (46 Stat. 367; 43 U.S.C. § 424a)

Sec. 3. [**Secs. 41 and 43 of Adjustment Act applicable to land sold—Sec. 44 not applicable.**]—All "permanently unproductive" and "temporarily unproductive" land now or hereafter designated under the act of May 25, 1926, shall, when sold, remain subject to sections 41 and 43 of the said act. The exchange provisions of section 44 of said act of May 25, 1926, shall not be applicable to the land purchased under this act. (46 Stat. 367; 43 U.S.C. § 424b)

Sec. 4. [**Patent, recital in—Lien for water charges.**]—After the purchaser has paid to the United States all amounts due on the purchase price of said land, a patent shall issue which shall recite that the lands so patented have been classified in whole or in part as temporarily or permanently unproductive, as the case

may be, under the adjustment act of May 25, 1926. Such patents shall also contain a reservation of a lien for water charges when deemed appropriate by the Secretary and reservations of coal or other mineral rights to the same extent as patents issued under the homestead laws. (46 Stat. 367; 43 U.S.C. § 424c)

Sec. 5. [Disposition of funds derived from sale of lands and from water rentals.]—In the absence of a contrary requirement in the contracts between the United States and the water users organization or district assuming liability for the payment of project construction charges, all sums collected hereunder from the sale of lands, from the payment of project construction charges on "temporarily unproductive" or "permanently unproductive" lands so sold, and (except as stated in this section) from water rentals, shall inure to the reclamation fund as a credit to the construction charge now payable by the water users under their present contracts, to the extent of the additional expense, if any, incurred by such water users in furnishing water to the unproductive area, while still in that status, as approved by the Commissioner of Reclamation and the balance as a credit to the sums heretofore written off in accordance with said act of May 25, 1926. Where water rental collections hereunder are in excess of the current operation and maintenance charges, the excess as determined by the Secretary, shall, in the absence of such contrary contract provision, inure to the reclamation fund as above provided, but in all other cases the water rentals collected under this act shall be turned over to or retained by the operating district or association, where the project or part of the project from which the water rentals were collected is being operated and maintained by an irrigation district or water users association under contract with the United States. (46 Stat. 368; 43 U.S.C. § 424d)

Sec. 6. [General authority.]—The Secretary of the Interior is authorized to perform any and all acts and to make all rules and regulations necessary and proper for carrying out the purposes of this act. (46 Stat. 368; 43 U.S.C. § 424e)

Explanatory Notes

Reference in the Text. The Act of May 25, 1926, referred to in the text, is the Omnibus Adjustment Act. The Act appears herein in chronological order.

Legislative History. H.R. 156, Public Law 232 in the 71st Congress. H.R. Rept. No. 68. S. Rept. No. 580.

Note of Opinion

1. Application

The Act of May 16, 1930, 46 Stat. 367, authorizing the sale of vacant lands which are classified as temporarily or permanently unproductive, does not apply to ceded Crow Indian lands on the Huntley Irrigation project which were withdrawn for reclamation purposes pursuant to the Act of April 27, 1904, 33 Stat. 352. Solicitor White Opinion, M–34393 (March 26, 1947).

SIZE OF FARM UNITS ON DESERT-LAND ENTRIES

An act to amend section 5 of the act of June 27, 1906, conferring authority upon the Secretary of the Interior to fix the size of farm units on desert-land entries when included within national reclamation projects. (Act of June 6, 1930, ch. 405, 46 Stat. 502)

[**Proviso of section 5, act of June 27, 1906, amended.**]—The proviso to section 5 of the act of June 27, 1906, chapter 3359, Thirty-fourth Statutes, page 520, [is] amended so as to read as follows:

"*Provided,* That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements theretofore made on any such desert-land entry of which proof has been or may be filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry the entryman shall thereupon comply with all the provisions of the aforesaid action of June 17, 1902, and shall relinquish within a reasonable time after notice as the Secretary may prescribe and not less than two years all land embraced within his desert-land entry in excess of one farm unit, as determined by the Secretary of the Interior, and as to such retained farm unit he shall be entitled to make final proof and obtain patent upon compliance with the regulations of said Secretary applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in said act of June 17, 1902, and not otherwise. But nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act." (46 Stat. 502; 43 U.S.C. § 448)

Explanatory Notes

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 5 of the Act of June 27, 1906.

Legislative History. H.R. 1186, Public Law 309 in the 71st Congress. H.R. Rept. No. 580 and H.R. Rept. No. 947. S. Rept. No. 749.

CREDIT COLLECTIONS FROM DEFAULTING CONTRACTORS TO RECLAMATION FUND

An act providing for depositing certain moneys into the reclamation fund. (Act of June 6, 1930, ch. 410, 46 Stat. 522)

[**Amounts collected to be covered into reclamation fund.**]—Any amounts collected from defaulting contractors or their sureties, including collections heretofore made, in connection with contracts entered into under the reclamation law, either collected in cash or by deduction from amounts otherwise due such contractors, shall be covered into the reclamation fund and shall be credited to the project or operation for or on account of which such contract was made. (46 Stat. 522; 43 U.S.C. § 401)

EXPLANATORY NOTES

Background. Under the former rulings of the Comptroller General damages collected from defaulting contractors were deposited to the credit of miscellaneous receipts in the Treasury, and not to the reclamation fund.

Legislative History. H.R. 5662, Public Law 314 in the 71st Congress. H.R. Rept. No. 1010. S. Rept. No. 750.

AMEND TAXATION OF LANDS OF HOMESTEAD AND DESERT-LAND ENTRYMEN ACT

An act to amend the act entitled "An act to permit taxation of lands of homestead and desert-land entrymen under the reclamation act," approved April 21, 1928, so as to include ceded lands under Indian irrigation projects. (Act of June 13, 1930, ch. 477, 46 Stat. 581)

[**Sec. 1. Lands of homestead entryman and of entryman on ceded Indian lands taxable by State after proof of residence, etc.**]—The act entitled "An act to permit taxation of lands of homestead and desert-land entrymen under the Reclamation Act," approved April 21, 1928, is amended to read as follows: "That the lands of any homestead entryman under the act of June 17, 1902, known as the Reclamation Act, or any act amendatory thereof or supplementary thereto, and the lands of any entryman on ceded Indian lands within any Indian irrigation project, may, after satisfactory proof of residence, improvement, and cultivation, and acceptance of such proof by the General Land Office, be taxed by the State or political subdivision thereof in which such lands are located in the same manner and to the same extent as lands of a like character held under private ownership may be taxed. (46 Stat. 581; 43 U.S.C. § 455)

"**Sec. 2.** [**Lands of desert-land entryman taxable by State.**]—The lands of any desert-land entryman located within an irrigation project constructed under the Reclamation Act and obtaining a water supply from such project, and for whose land water has been actually available for a period of four years, may likewise be taxed by the State or political subdivision thereof in which such lands are located. (46 Stat. 581; 43 U.S.C. § 455a)

"**Sec. 3.** [**Taxes a lien upon, and enforceable by sale of lands.**]—All such taxes legally assessed shall be a lien upon the lands and may be enforced upon said lands by the sale thereof in the same manner and under the same proceeding whereby said taxes are enforced against lands held under private ownership; but the title or interest which the State or political subdivision thereof may convey by tax sale, tax deed, or as a result of any tax proceeding shall be subject to a prior lien reserved to the United States for all due and unpaid installments on the appraised purchase price of such lands and for all the unpaid charges authorized by law whether accrued or otherwise. The holder of such tax deed or tax title resulting from such tax shall be entitled to all the rights and privileges in the land of an assignee of such entryman on ceded Indian lands or of an assignee under the provisions of the act of June 23, 1910, as amended, or of any such entries in a Federal reclamation project constructed under said act of June 17, 1902, as supplemented or amended. (46 Stat. 581; 43 U.S.C. § 455b)

"**Sec. 4.** [**Extinguishment of liens in case lands revert to United States.**]—If the lands of any such entryman shall at any time revert to the United States for any reason whatever, all such liens or tax titles resulting from assessments levied after the date of this amendatory act upon such lands in favor of the State or political subdivision thereof wherein the lands are located, shall be and shall

be held to have been, thereupon extinguished; and the levying of any such assessment by such State or political subdivision shall be deemed to be an agreement on its part, in the event of such reversion to execute and record a formal release of such lien or tax title." (46 Stat. 581; 43 U.S.C. § 455c)

EXPLANATORY NOTES

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of April 21, 1928.

Legislative History. S. 4318, Public Law 349 in the 71st Congress. S. Rept. No. 818. H.R. Rept. No. 12288.

TEMPORARY RIO GRANDE COMPACT

An act giving the consent and approval of Congress to the Rio Grande compact signed at Santa Fe, New Mexico, on February 12, 1929. (Act of June 17, 1930, ch. 506, 46 Stat. 767)

[**Approval of Congress.**]—The consent and approval of Congress is hereby given to the compact signed by the commissioners for the States of Colorado, New Mexico, and Texas at Santa Fe, New Mexico, on the 12th day of February, 1929, and thereafter approved by the Legislature of the State of Colorado by act approved April 19, 1929, by the Legislature of the State of New Mexico by act approved March 9, 1929, and by the Legislature of the State of Texas by act approved May 22, 1929, which compact reads as follows:

"RIO GRANDE COMPACT

"The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, have resolved to conclude a compact for the attainment of these purposes, and to that end, through their respective governors, have named as their respective commissioners Delph E. Carpenter for the State of Colorado, Francis C. Wilson for the State of New Mexico, and T. H. McGregor for the State of Texas, who, after negotiations participated in by William J. Donovan, appointed by the President as the representative of the United States of America, have agreed upon the following articles, to wit:

"ARTICLE I

"(*a*) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America are hereinafter designated 'Colorado,' 'New Mexico,' 'Texas,' and the 'United States,' respectively.

"(*b*) The term 'Rio Grande Basin' means all of the territory drained by the Rio Grande and its tributaries in Colorado, New Mexico, and Texas above Fort Quitman, Texas.

"(*c*) The term 'tributary' means any water course the waters of which naturally flow into the channel of the Rio Grande.

"(*d*) The 'Closed Basin' means that part of the San Luis Valley in Colorado where the streams and waters naturally flow and drain into the San Luis Lakes and adjacent territory, and the waters of which are not tributary to the Rio Grande.

"(*e*) 'Domestic' use of the water has the significance which attaches to the word 'domestic' in that sense at common law. 'Municipal' use means the use of

water by or through water works serving the public. 'Agricultural' use means the use of water for the irrigation of land.

"(*f*) The term 'power' as applied to the use of water means all uses of water, direct or indirect, for the generation of energy.

"(*g*) 'Spill' or waste of water at a reservoir means the flowage of water over the spillway, or the release of water through outlet structures other than for domestic, municipal, or agricultural uses, and losses incident thereto.

"The provisions hereof binding each signatory State shall include and bind its citizens, agents, and corporations, and all others engaged in, or interested in, the diversion, storage, or use of the waters of the Rio Grande in Colorado or New Mexico, or in Texas above Fort Quitman.

"ARTICLE II

"The States of Colorado, New Mexico, and Texas hereby declare:

"(*a*) That they recognize the paramount right and duty of the United States, in the interests of international peace and harmony, to determine and settle international controversies and claims by treaty, and that when those purposes are accomplished by that means the treaty becomes the supreme law of the Nation;

"(*b*) That since the benefits which flow from the wise exercise of that authority and the just performance of that duty accrue to all the people, it follows as a corollary that the Nation should defray the cost of the discharge of any obligation thus assumed;

"(*c*) That with respect to the Rio Grande, the United States, without obligation imposed by international law and 'being moved by considerations of international comity,' entered into a treaty dated May 21, 1906 (Thirty-fourth Statutes, page 2953), with the United States of Mexico which obligated the United States of America to deliver from the Rio Grande to the United States of Mexico sixty thousand acre-feet of water annually and forever, whereby in order to fulfill that promise the United States of America, in effect, drew upon the States of Colorado, New Mexico, and Texas a draft worth to them many millions of dollars, and thereby there was cast upon them an obligation which should be borne by the Nation;

"(*d*) That for the economic development and conservation of the waters of the Rio Grande Basin and for the fullest realization of the purposes recited in the preamble to this compact it is of primary importance that the area in Colorado known as the Closed Basin be drained and the water thus recovered be added to the flow of the river, and that a reservoir be constructed in Colorado upon the river at or near the site generally described as the State Line Reservoir site. The installation of the drain will materially augment the flow of the river, and the construction of the reservoir will so regulate the flow as to remove forever the principal causes of the difficulties between the States signatory hereto; and

"(*e*) That in alleviation of the heavy burden so placed upon them it is the earnest conviction of these States that without cost to them the United States

should construct the Closed Basin Drain and the State Line Reservoir described in paragraph (d).

"The signatory States agree that approval by Congress of this compact shall not be construed as constituting an acceptance or approval, directly, indirectly, or impliedly, of any statement or conclusion appearing in this article.

EXPLANATORY NOTE

Reference in the Text. The Treaty dated May 21, 1906 (Thirty-fourth Statutes, page 2953), with the United States of Mexico, referred to in the text, appears herein in chronological order.

"ARTICLE III

"(*a*) Colorado, under the direction and administration of its State engineer, shall cause to be maintained and operated an automatic recording stream-gauging station at each of the following points, to wit:

"(1) On the Rio Grande near Del Norte at the station now maintained, known and designated herein as the Del Norte gauging station (the water records from this station to include the flow diverted into the canal of the Del Norte irrigation system):

"(2) On the Rio Conejos near Mogote, a station known and designated herein as the Mogote gauging station;

"(3) On the Rio Grande at or near the Colorado-New Mexico interstate line, a station known and designated herein as the Interstate gauging station; and

"(4) Such other station or stations as may be necessary to comply with the provisions of this compact.

"(*b*) New Mexico, under the direction and administration of its State engineer, shall cause to be maintained and operated an automatic stream-gauging station at each of the following points, to wit:

"(1) On the Rio Grande at the station known as Buckman;

"(2) On the Rio Grande at San Marcial;

"(3) On the Rio Grande at the Elephant Butte Reservoir outlet; and

"(4) Such other station or stations as may be necessary to comply with the provisions of this compact.

"(*c*) Texas, under the direction and administration of its duly constituted official, shall cause to be maintained and operated an automatic stream-gauging station at each of the following points, to wit:

"(1) On the Rio Grande at Courchesne;

"(2) On the Rio Grande at Tornillo; and

"(3) On the Rio Grande at Fort Quitman.

"(*d*) New Mexico and Texas shall establish and maintain such other gauging station or stations as may be necessary for ascertaining and recording the release, flow, distribution, waste, and other disposition of water at all points between the Elephant Butte Reservoir and the lower end of the Rio Grande project, both inclusive: *Provided, however,* That when the United States shall maintain and operate, through any of its agencies, an automatic gauging station at any of the points herein designated it shall not be necessary for the State within which

said station is located to maintain a duplicate gauging station at such point whenever the records of such Government stations are available to the authorities of the several States.

"(*e*) The officials in charge of all of the gauging stations herein provided for shall exchange records and data obtained at such stations for monthly periods through the operation thereof, or at such other intervals as they may jointly determine, and said officials shall provide for check ratings and such other hydrographic work at the designated stations as may be necessary for the accuracy of the records obtained at such stations and to that end may establish rules and regulations from time to time.

"ARTICLE IV

"The State engineer of Colorado, the State engineer of New Mexico, and such officer of Texas as the governor thereof may designate shall constitute a committee which may employ such engineering and clerical aid as may be authorized by the respective State legislatures, and the jurisdiction of the committee shall extend only to the ascertainment of the flow of the river and to the prevention of waste of water, and to findings of fact reached only by unanimous agreement. It shall communicate its findings of fact to the officers of the respective States charged with the performance of duties under this compact. Its findings of fact shall not be conclusive in any court or other tribunal which may be called upon to interpret or enforce this compact. Annual reports compiled for each calendar year shall be made by the committee and transmitted to the governors of the signatory States on or before February 1 following the year covered by such report.

"ARTICLE V

"It is agreed that to and until the construction of the Closed Basin Drain and the State Line Reservoir herein described, but not subsequent to June 1, 1935, or such other date as the signatory States may hereafter fix by acts of their respective State legislatures, Colorado will not cause or suffer the water supply at the interstate gauging station to be impaired by new or increased diversions or storage within the limits of Colorado unless and until such depletion is offset by increase of drainage return.

"ARTICLE VI

"To the end that the maximum use of the waters of the Rio Grande may be made it is agreed that at such times as the State engineer of New Mexico, under the supervision and control of the committee, shall find that spill at Elephant Butte Dam is anticipated he shall forthwith give notice to Colorado and New Mexico of the estimated amount of such spill, and of the time at which water may be impounded or diverted above San Marcial, and thereupon Colorado and New Mexico may use in equal portions the amount of such estimated spill so found by the State engineer of New Mexico; and on notice from the said State engineer of New Mexico that the period of said spill, or estimated spill, is terminated, Colorado and New Mexico shall desist from such increased use.

"ARTICLE VII

"(*a*) On or before the completion of the Closed Basin Drain and the State Line Reservoir, and in any event not later than June 1, 1935, a commission of three members shall be constituted, to which the governor of each of the signatory States shall appoint a commissioner, for the purpose of concluding a compact among the signatory States and providing for the equitable apportionment of the use of the waters of the Rio Grande among said States. The governors of said States shall request the President of the United States to name a representative to sit with said commission.

"(*b*) The commission so named shall equitably apportion the waters of the Rio Grande as of conditions obtaining on the river and within the Rio Grande Basin at the time of the signing of this compact, and no advantage or right shall accrue or be asserted by reason of construction of works, reclamation of land, or other change in conditions or in use of water within the Rio Grande Basin or the Closed Basin during the time intervening between the signing of this compact and the concluding of such subsequent compact to the end that the rights and equities of each State may be preserved unimpaired: *Provided, however,* That Colorado shall not be denied the right to divert, store, and/or use water in additional amounts equivalent to the flow into the river from the drain from the Closed Basin.

"(*c*) Any compact concluded by said commission shall be of no force or effect until ratified by the legislature of each of the signatory States and approved by the Congress of the United States.

"ARTICLE VIII

"(*a*) Subject to the provisions of this article Colorado consents to the construction and use of a reservoir by the United States and/or New Mexico, and/or Texas, as the case may be, by the erection of a dam across the channel of the Rio Grande at a suitable point in the canyon below the lower State bridge, and grants to the United States and/or to said States, or either thereof, the right to acquire by purchase, prescription, or to exercise of eminent domain such rights of way, easements, and/or lands as may be necessary or convenient for the construction, maintenance, and operation of said reservoir and the storage and release of waters.

"(*b*) Said reservoir shall be so constructed and operated that the storage and release of waters therefrom and the flowage of water over the spillway shall not impede or interfere with the operation, maintenance, and uninterrupted use of drainage works in the San Luis Valley in Colorado or with the flow and discharge of waters therefrom.

"(*c*) The construction and/or operation of said reservoir and the storage and regulation of flow of waters thereby for beneficial uses or otherwise shall not become the basis or hereafter give rise to any claim of appropriation of waters or of any prior, preferred, or superior right to the use of any such waters. The purpose of said reservoir shall be to store and regulate the flow of the river.

"(*d*) The United States, or the signatory States, as the case may be, shall

control the storage and release of water from said reservoir and the management and operation thereof, subject to a compact between the signatory States.

"(*e*) Colorado reserves jurisdiction and control over said reservoir for game, fish, and all other purposes not herein relinquished.

"(*f*) Colorado waives rights of taxation of said reservoir and appurtenant structures and all lands by it occupied.

"ARTICLE IX

"Nothing in this compact shall be construed as affecting the obligations of the United States of America to the United States of Mexico, or to the Indian tribes, or as impairing the rights of the Indian tribes.

"ARTICLE X

"It is declared by the States signatory hereto to be the policy of all parties hereto to avoid waste of waters, and to that end the officials charged with the performance of duties hereunder shall use their utmost efforts to prevent wastage of waters.

"ARTICLE XI

"Subject to the provisions of this compact water of the Rio Grande or any of its tributaries may be impounded and used for the generation of power, but such impounding and use shall always be subservient to the use and consumption of such waters for domestic, municipal, and agricultural purposes. Water shall not be stored, detained, nor discharged so as to prevent or impair use for such dominant purposes.

"ARTICLE XII

"New Mexico agrees with Texas, with the understanding that prior vested rights above and below Elephant Butte Reservoir shall never be impaired hereby, that she will not cause or suffer the water supply of the Elephant Butte Reservoir to be impaired by new or increased diversion or storage within the limits of New Mexico unless and until such depletion is offset by increase of drainage return.

"ARTICLE XIII

"The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this compact, and none of the signatory States admits that any provision herein contained establishes any general principle of precedent applicable to other interstate streams.

"ARTICLE XIV

"This compact may be terminated or extended at any time by the unanimous legislative action of all of the signatory States, and in that event all rights established under it shall remain and continue unimpaired.

"ARTICLE XV

"Nothing herein contained shall prevent the adjustment or settlement of any claim or controversy between these States by direct legislative action of the interested States nor shall anything herein contained be construed to limit the right of any State to invoke the jurisdiction of any court of competent jurisdiction for the protection of any right secured to such State by the provisions of this compact, or to enforce any provision thereof.

"ARTICLE XVI

"Nothing in this compact shall be considered or construed as recognizing, establishing, or fixing any status of the river or the accuracy of any data or records or the rights or equities of any of the signatories or as a recognition, acceptance, or acknowledgement of any plan or principle or of any claim or assertion made or advanced by either of the signatories or hereafter construed as in any manner establishing any principle or precedent as regards future equitable apportionment of the waters of the Rio Grande. The signatories agree that the plan herein adopted for administration of the waters of the Rio Grande is merely a temporary expedient to be applied during the period of time in this compact specified, is a compromise temporary in nature and shall have no other force or interpretation, and that the plan adopted as a basis therefore is not to be construed as in any manner establishing, acknowledging, or defining any status, condition, or principle at this or any other time.

"ARTICLE XVII

"The signatories consent and agree to the extension of time for construction of reservoirs on sites covered by approved applications during the time of this compact and for a reasonable time thereafter.

"ARTICLE XVIII

"This compact shall become operative when approved by the legislature of each of the signatory States and by the Congress of the United States. Notice of approval shall be given by the governor of each State to the governors of the other States and to the President of the United States, and the President of the United States is requested to give notice to the governors of each of the signatory States of its approval by the Congress of the United States.

"In witness whereof, the commissioners have signed this compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the governor of each of the signatory States.

"Done at the city of Santa Fe, in the State of New Mexico, on the 12th day of February, in the year of our Lord one thousand nine hundred and twenty-nine.

"DELPH E. CARPENTER.
"FRANCIS C. WILSON.
"T. H. MCGREGOR.

"Approved:
"WILLIAM J. DONOVAN."

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Consent to Negotiate Compact. The Act of March 2, 1929, 45 Stat. 1502, granted the consent of Congress to the negotiation of a compact between the States of Colorado, New Mexico and Texas with respect to the waters of the Rio Grande River.

Extension of Life of Compact. The extension of this temporary compact was authorized for a period of two years, or until June 1, 1937, by Act of the Legislature of New Mexico of February 25, 1935, by Act of the Legislature of Colorado of April 13, 1935, and by Act of the Legislature of Texas of April 18, 1935. The approval of Congress to the extension of the compact was given by the Act of June 5, 1935, 49 Stat. 325.

Cross Reference, Permanent Rio Grande Compact. The Act of May 31, 1939, 53 Stat. 785, granted the consent of Congress to the permanent compact between the States of Colorado, New Mexico and Texas with respect to the waters of the Rio Grande River above Fort Quitman, Texas. The 1939 Act, including the text of the Compact, appears herein in chronological order.

Legislative History. S. 3386, Public Law 370 in the 71st Congress. S. Rept. No. 581. H.R. Rept. No. 1754.

PAYMENTS FOR PAIUTE INDIAN LANDS, NEWLANDS PROJECT

An Act to provide for the payment of benefits received by the Paiute Indian Reservation lands within the Newlands irrigation project, Nevada, and for other purposes. (Act of June 27, 1930, ch. 637, 46 Stat. 820)

[**Authorization for appropriation to pay Truckee-Carson irrigation district for benefits received by Indian lands.**]—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $6,000, or so much thereof as may be necessary, for paying the Truckee-Carson irrigation district, Fallon, Nevada, in sixty semiannual installments, as equally as may be, the proportionate share of the benefits received by four thousand eight hundred and seventy-seven and three-tenths irrigable acres of Paiute Indian lands within the Newlands irrigation project, for necessary repairs to the Truckee Canal to restore said canal to its original capacity, said payments to be made at the same time and at the same rate per irrigable acre as that paid to the Reclamation Bureau by said district for other irrigable lands located therein. (46 Stat. 820)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 135, Public Law 451 in the 71st Congress. S. Rept. No. 532. H.R. Rept. No. 1691.

REHABILITATION OF BITTER ROOT PROJECT

An act for the rehabilitation of the Bitter Root irrigation project, Montana. (Act of July 3, 1930, ch. 833, 46 Stat. 852)

Repealed.—

EXPLANATORY NOTE

Repealed. The Act of May 6, 1949, 63 Stat. 62, repealed this Act and its supplementary Act, the Act of August 26, 1935, 49 Stat. 799. Both the 1935 and 1949 Acts appear herein in chronological order. The text of the Act before repeal read as follows:

[**Sec. 1. Appropriation authorized.**]—There is hereby authorized to be appropriated from the reclamation fund established by the act of June 17, 1902 (Thirty-second Statutes, page 388), the sum of $750,000, or as much thereof as may be necessary to be used for the rehabilitation of the Bitter Root irrigation project in Montana. (46 Stat. 852)

Sec. 2. [Liquidation of indebtedness—Construction, betterment, or repair work—Loan to irrigation district.]—The Secretary of the Interior, hereinafter styled the Secretary, is authorized to use money thus appropriated for the following purposes:

(1) For liquidating bonded and other outstanding indebtedness of such irrigation project on such basis of valuation as the Secretary may regard as equitable, not exceeding 75 per centum of the principal and accrued interest, no portion of such outstanding indebtedness to be liquidated except a total outstanding indebtedness of such project is so liquidated;

(2) For doing or causing to be done under his supervision any construction, betterment, or repair work necessary to place the irrigation system of such project in good operating condition, and as provided for in the contract hereinafter required;

(3) For loaning to such irrigation district, hereinafter provided for, such funds as in the opinion of the Secretary are necessary for any construction, betterment, or repair work to place the irrigation system of such project in good operating condition. (46 Stat. 852)

NOTES OF OPINIONS

Liquidation of indebtedness 1
Reimbursement 2

1. Liquidation of indebtedness

The Bitter Root irrigation district, in negotiations with its creditors, pursuant to the requirement of subsection 1, section 2 of this act, located and deposited all except five bonds of $500 each. The Comptroller General, in decision A–34571 dated May 18, 1931, interpreting the last 20 words of this subsection, beginning with "no portion of", stated that substantial compliance with the law would be accomplished if the amount necessary to retire the five bonds on the same basis that the other indebtedness of the irrigation district are to be liquidated under the act of July 3, 1930, is set aside and remains unexpended in the appropriation to take care of such bonds in the event the owners present the same and, in addition to this there be procured a bond of indemnity or such other security as will guarantee that neither the Government nor the irrigation district will ever have to pay any greater amount on account of said five bonds than 75 percent of principal and accrued interest if now paid with the other bonds now being liquidated.

Comptroller General's decision A–34571 of July 23, 1931, outlines the procedure to be followed in connection with loans under the act of July 3, 1930. Form of deposit agreement to be executed by the creditors of the Bitter Root irrigation district was approved by the Comptroller General under date of February 13, 1931. A further decision dated March 18, 1932, was rendered by the Comptroller General regarding evidence to be submitted to the General Accounting Office of payments to the creditors.

2. Reimbursement

The Comptroller General in decision B–27425 dated August 7, 1942, held that the Bitter Root Irrigation District may be reimbursed after expenditures incurred for protective measures taken by it at the request of the Bureau.

In decision A–34571 dated June 21, 1932, the Comptroller General authorized reimbursement to the Bitter Root irrigation district of an amount advanced by the district for construction, betterment and repair, notwithstanding the provision of article 2 of

the contract with the district that no expenditures would be made by the United States until settlement has been made with the creditors of the district.

Sec. 3. [Funds advanced to be repaid in not more than 40 years.—Contracts by irrigation district for repayment.]—All funds so used or advanced shall be repaid to the United States within a period, to be fixed by the Secretary of not more than forty years, with interest at the rate of 4 per centum per annum on the funds so used or advanced from the date of such use or advancement until repaid. Before any funds are so used or advanced a contract or contracts satisfactory to the Secretary shall be executed by an irrigation district, formed under State law, obligating such district to repay the funds so used or advanced as required by this act. Any contract so executed with such district shall require a lien on the land and on the irrigation systems of such project. The operation and maintenance of such project shall be continued by the authorities in charge under the supervision of the Secretary, so far as necessary to effectuate the purposes of this act. (46 Stat. 852)

Sec. 4. [Penalty in case of default in payment—Enforcement of contract—Control of project—Delivery of water withheld.]—In case of default in the payment when due of any interest or other charges under any contract executed as herein provided there shall be added to the amount unpaid a penalty of one-half of 1 per centum of the amount unpaid on the 1st day of each month thereafter so long as such default shall continue, such penalties being in addition to the interest provided in section 3. The provisions of any contract executed hereunder may be enforced by suit or by the foreclosure of any lien in the manner authorized by the State laws applicable in similar cases. In addition to other remedies the Secretary, in any contract executed hereunder, may provide that in case of default for more than twelve months in the payment of any installment, the control, operation, and maintenance of the project may, in the discretion of the Secretary, be assumed by the United States and the delivery of water withheld until payments are duly made in accordance with the contract requirements. (46 Stat. 852)

Sec. 5. [Examination and investigation of project—Report of finding to Congress.]—No funds shall be appropriated for the purposes herein authorized until investigation and examination shall have been made of all pertinent conditions surrounding such project and until the Secretary has made a report of his finding in writing to Congress that in his opinion by the action proposed the project can and will be placed upon a sound basis from a financial and economic standpoint so that the funds so used and advanced will be returned to the United States. (46 Stat. 853)

Sec. 6. [Powers of Secretary.]—The Secretary is authorized to perform any and all acts to make and enforce all needful rules and regulations for effectuating the purposes of this act. (46 Stat. 853)

EXPLANATORY NOTE

Legislative History. H.R. 9990, Public Law 506 in the 71st Congress. H.R. Rept. No. 1086. S. Rept. No. 1034.

SECOND DEFICIENCY APPROPRIATION ACT, 1930

[Extracts from] An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1930, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1930, and June 30, 1931, and for other purposes. (Act of July 3, 1930, ch. 846, 46 Stat. 860)

* * * * *

BUREAU OF RECLAMATION

[Boulder Canyon project.]—Boulder Canyon project: For the commencement of construction of a dam and incidental works in the main stream of the Colorado River at Black Canyon, to create a storage reservoir, and of a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from such reservoir; to acquire by proceedings in eminent domain, or otherwise, all lands, rights of way and other property necessary for such purposes; and for incidental operations; as authorized by the Boulder Canyon Project Act, approved December 21, 1928 (U.S.C., supp. III, title 33, ch. 15A); $10,660,000 to remain available until advanced to the Colorado River Dam fund, * * * (46 Stat. 877)

EXPLANATORY NOTE

Provision Repeated. The same language, except for the name of the dam itself, is contained in most of the succeeding acts appropriating funds for the Boulder Canyon project through the Act of October 12, 1949, 63 Stat. 782.

* * * * *

Sec. 5. [Short title.]—This Act may be cited as the "Second Deficiency Act, fiscal year 1930." (46 Stat. 918)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Reference in the Text. The Boulder Canyon Project is now codified in Title 43, U.S.C., Chapter 12A.

Legislative History. H.R. 12902, Public Law No. 519 in the 71st Congress. House Report 1876; Senate Report 1078 (pts. 1 and 2); House Reports 2050 and 2066 (conference reports).

ADJUSTMENT OF CHARGES, MILK RIVER PROJECT

An act to amend the act of May 25, 1926, entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes." (Act of July 3, 1930, ch. 857, 46 Stat. 1010)

[Sec. 1. Deduction from total cost of construction cost against permanently unproductive land—Suspension of payments against temporarily unproductive and other lands—Contracts to be executed.]—The act of May 25, 1926 (Forty-fourth Statutes at Large, page 636) is hereby amended by adding after section 20 of said act sections 20–A and 20–B, as follows:

"SEC. 20–A. There shall be deducted from the total cost chargeable to the Chinook division of this project the following sum:

"(1) Twenty-one thousand six hundred and eighty-four dollars and fifty-eight cents, or such amount as represents the construction cost as found by the Secretary of the Interior against the following lands:

"(a) One thousand seven hundred and seventy and seventeen one-hundredths acres permanently unproductive because of nonagricultural character.

"SEC. 20–B. All payments upon construction charges shall be suspended against the following lands in the Chinook division:

"(a) Twelve thousand six hundred and seventeeen and sixty-four one-hundredths acres temporarily unproductive because of heavy soil and seepage; (b) eleven thousand three hundred and seven acres for which no canal system has been constructed, all as shown by the land classification of the Chinook division made under the direction of the Secretary of the Interior and approved by him under date of January —, 1930. The Secretary of the Interior, as a condition precedent to the allowance of the benefits offered under sections 20–A and 20–B, shall require each irrigation district within the Chinook division to execute a contract providing for repayment of the construction charges as hereby adjusted within forty years and upon a schedule satisfactory to said Secretary; and no water from the Saint Mary River watershed shall be furnished for the irrigation of lands within any district after the irrigation season of 1930 until the required contract has been duly executed." (46 Stat. 1010)

Sec. 2. [Contracts to be uniform.]—All contracts with the Government touching the project shall be uniform as to time of payment and charge for the construction of the Saint Mary diversion. (46 Stat. 1011)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of May 25, 1926.

Legislative History. H.R. 8296, Public Law 530 in the 71st Congress. H.R. Rept. No. 119. S. Rept. No. 405 and S. Rept. No. 588.

AMENDED CONTRACT, UNCOMPAHGRE PROJECT

An act for the relief of the Uncompahgre reclamation project, Colorado. (Act of January 31, 1931, ch. 93, 46 Stat. 1974)

[**Sec. 1. Amendatory contract authorized on certain conditions—O. and M. charges, construction charge made part of supplemental construction charge—Drainage system—Payment of project supplemental charge—Stock assessment.**]—If the Uncompahgre Valley Water Users' Association shall, under the contract of April 8, 1927, between the United States and the association, on or before January 1, 1932, take over the operation, maintenance, and control of the entire Uncompahgre reclamation project, Colorado, the Secretary of the association which shall provide as follows:

Interior is hereby authorized to enter into an amendatory contract with the said

First. All construction and operation and maintenance charges (exclusive of any operation and maintenance charges required to be paid by the association for the operation and maintenance of the project for the calendar year 1930) that were or shall be due and unpaid under said contract of 1927 on December 31, 1930, including the then unpaid deferred charges under articles 17 (b) and (d) of said contract (without interest and penalties on such deferred accounts) and the construction charge that becomes due on December 1, 1931, under said contract, may be included in and made payable as part of the project supplemental construction charge hereinafter mentioned. Interest and penalties heretofore paid on deferred charges under articles 17 (b) and (d) shall be remitted and credited against the association's obligation for supplemental construction.

Second. During each of the years 1932 to 1937, both inclusive, the association shall have the right to expend for the construction of a drainage system such portion of the construction charge payable to the United States under said contract of 1927, as said association may consider necessary and as may be provided for by plans prepared by the association and approved by or on behalf of the Secretary of the Interior, the moneys so expended to be secured from construction charge assessments to be made to meet the regular construction charge installments that become due and payable under the said contract of 1927 on December 1 of the years 1931 to 1936 inclusive. The amounts so expended by the association for drainage each calendar year from December 1 to November 30, for six years, beginning with December 1, 1931, shall be credited to the annual construction charge that becomes due annually on December 1 of each year during the period of 1932 to 1937, both inclusive, the payment of the construction charges for which it is so substituted being in each case postponed to be paid later as a part of the supplemental construction charges authorized in item 3 hereof. Should the amounts so expended and credited annually be less than the annual construction charge for the years 1932 to 1937, both inclusive, the balance of each year's charge shall be payable to the United States in accordance with the contract of 1927.

Third. The amount so expended and credited, the amounts postponed under the provisions of item 1 hereof, and any amounts of primary construction charges applicable to productive lands that shall not have become due and payable by the association under the contract of 1927, on or before December 1, 1961, shall be considered and defined as the project supplemental construction charge and shall be made payable by the association in annual installments of $85,000, the first installment of such supplemental construction charges to be payable on December 1, 1962, and a like installment on December 1 of each subsequent year until the total of the supplemental construction charge indebtedness is reduced to $85,000 or less, which remaining amount shall then be made payable as the last installment on December 1 of the calendar year next following the year in which the indebtedness is so reduced; and

Fourth. No stock assessment levied by the association to raise payments due the Government on construction need be increased more than 15 per centum of the normal yearly per irrigable acre construction installment as provided in section 17 of the contract of April 8, 1927, to meet deficits or estimated deficits due to the failure of some of the association's stockholders to pay their assessments when due, any resulting delinquencies as established after foreclosure of maximum assessment liens in meeting installments of charges due the United States from the association to be paid as a part of the supplemental construction charge authorized in item (3) hereof. (46 Stat. 1974)

Sec. 2. [Contract to terminate unless certain course is taken.]—It shall be provided as a condition subsequent that said contract shall terminate and be annulled unless (1) the General Assembly of the State of Colorado at its twenty-eighth session enacts legislation, which becomes effective (a) authorizing a water user's association to be incorporated for a term of at least seventy-five years, and (b) amending chapter 76 of Colorado Session Laws, 1929, so as to permit the decree in proceedings to confirm a contract between such association and the United States to constitute as against parties defendant, including owners, lienors, and mortgagees of land in the district, an amendment of existing water-right contracts with individual landowners in the district, so far as the contract confirmed is inconsistent with such individual contracts; (2) the Uncompahgre Valley Water Users' Association thereupon extends its term of incorporation for at least seventy-five years from the date of such amendment of its articles; and (3) the association secures promptly a confirmatory decree, confirming such proposed contract with the United States under said amendment of chapter 76 of the Session Laws of Colorado, 1929. (46 Stat. 1974)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1932 Amendment. Section 3 of the Act of April 1, 1932, 47 Stat. 75, 76, amended the Act to extend for one year from and after January 1, 1932, the time for beginning construction of the drainage system upon the Uncompahgre project, and provided that any and all construction charges accruing upon or for said project for or during the year 1932, were to be deferred and included in and made payable as a part of the project supplemental construction charge provided for in this act. The provisions of section 3 of the 1932 Act were extended and modified by the Acts of March 3, 1933, 47 Stat. 1427; March 27, 1934, 48 Stat. 500; June 13, 1935, 49 Stat. 337; and April 14, 1936, 49 Stat. 1206. Each of these Acts appears herein in chronological order.

Cross References, Delivery of Water. The Act of April 12, 1930, 46 Stat. 163, authorized the delivery of water during the irrigation season 1930 to any water user of the Uncompahgre project who paid or caused to be paid one annual installment of construction charges and the then current operation and maintenance charges, notwithstanding any delinquencies. The 1930 Act appears herein in chronological order.

Cross Reference, Approval of Repayment Contract. The Act of May 6, 1949, authorized the execution of a repayment contract dated December 13, 1948. The Act appears herein in chronological order.

Legislative History. H.R. 14916, Private Law 300 in the 71st Congress. H.R. Rept. 2215. S. Rept. No. 1299 (on S. 5245).

NOTE OF OPINION

1. Drainage work

Congress by Act of January 31, 1931, authorized the Uncompahgre Water Users' Association to use their construction charges for 6 years for drainage works estimated to cost about $500,000, the construction charges for the 6-year period to be deferred and repaid at the end of the regular repayment period, and a contract on these terms was made with the association. Owing to the moratoria acts there were no construction charges to commence this work. An allotment of $500,000 for this drainage was made by the Federal Emergency Administrator of Public Works. The Comptroller General ruled that the Uncompahgre project was eligible for funds for drainage work from the Public Works Administration, and that it was permissible to amend the contract of August 4, 1931, with the association to permit the use of the allotted funds, repayment to be made in six yearly installments, the first installment payable in 1962. Decision of Comptroller General, A-66802 (January 14, 1936.)

SUSPENSION FOR TWO YEARS OF ANNUAL PAYMENTS FROM RECLAMATION FUND TO TREASURY

[**Extracts from**] An act making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1931, and for prior fiscal years, to provide urgent supplemental appropriations for the fiscal year ending June 30, 1931, and for other purposes. (Act of February 6, 1931, ch. 111, 46 Stat. 1064)

* * * * *

BUREAU OF RECLAMATION

[**Payments from reclamation fund suspended.**]—The annual payments required to be made from the reclamation fund to the general funds in the Treasury, as reimbursement for advances made in accordance with the provisions of the act entitled "An act to authorize advances to the 'reclamation fund,' and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes," approved June 25, 1910, as amended, are hereby suspended for a period of two years, beginning with the fiscal year ending June 30, 1931. (46 Stat. 1069)

* * * * *

Sec. 5. [**Short title.**]—This act may be cited as the "First Deficiency Act, fiscal year 1931." (46 Stat. 1083)

EXPLANATORY NOTES

Not Codified. The extracts of this act shown here are not codified in the U.S. Code.

Reference in the Text. The Act of June 25, 1910, referred to in the text, authorizes the Secretary of the Treasury, upon request by the Secretary of the Interior, and the approval of the President, to make advances to the reclamation fund. The Act appears herein in chronological order.

Reimbursement to the Treasury. A complete reimbursement to the Treasury of funds advanced to the reclamation fund under the provisions of the Act of June 25, 1910, referred to in the text, and the Act of March 3, 1931, as amended, was effected by the Act of May 9, 1938, 52 Stat. 291, 322. The 1910 and 1931 Acts and extracts from the 1938 Act, including the provision with respect to the reclamation fund, appear herein in chronological order.

Additional Postponements of Annual Payments to the Treasury. The annual payments to the Treasury were further postponed by section 10 of the Act of April 1, 1932, 47 Stat. 75; by section 2 of the Act of March 3, 1933, 47 Stat. 1427; and by the Act of June 22, 1936, 49 Stat. 1757, 1784. The last act set July 1, 1938, as the date on which payments were to begin. The 1932 and 1933 Acts appear herein in chronological order.

Legislative History. H.R. 15592, Public Law 612 in the 71st Congress. H.R. Rept. No. 2178. S. Rept. No. 1324. H.R. Rept. No. 2478 (conference report).

AMEND DISPOSAL OF UNPLATTED PORTIONS OF TOWN SITES ACT

An act to amend the act approved March 2, 1929, entitled "An act to authorize the disposition of unplatted portions of Government town sites on irrigation projects under the reclamation act of June 17, 1902, and for other purposes." (Act of February 14, 1931, ch. 176, 46 Stat. 1107)

[Act of March 2, 1929, amended to permit sale of unplatted portions of Government town sites on terms required by bidder, but not to exceed five years.]—Section 1 of the act of March 2, 1929, entitled "An act to authorize the disposition of unplatted portions of Government town sites on irrigation projects under the reclamation act of June 17, 1902, and for other purposes" (45 Stat. L. 1522; U.S.C., Supp. III, title 43, sec. 571), [is] amended to read:

"That the Secretary of the Interior is hereby authorized, in his discretion, to appraise and sell, at public auction, to the highest bidder, from time to time, under such terms as to time of payment as he may require, but in no event for any longer period than five years, any or all of the unplatted portions of Government town sites created under the act of April 16, 1906 (34 Stat. 116), on any irrigation project constructed under the act of June 17, 1902 (32 Stat. 388), or acts amendatory thereof or supplementary thereto: *Provided,* That any land so offered for sale and not disposed of may afterwards be sold, at not less than the appraised value, at private sale, under such regulations as the Secretary of the Interior may prescribe. Patents made in pursuance of such sale shall convey all the right, title, and interest of the United States in or to the land so sold." (46 Stat. 1107; 43 U.S.C. § 571)

Explanatory Notes

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of March 2, 1929.

Legislative History. H.R. 14056, Public Law 655 in the 71st Congress. H.R. Rept. No. 2118. S. Rept. No. 1529.

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1932

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1932, and for other purposes. (Act of February 14, 1931, ch. 187, 46 Stat. 1115)

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BUREAU OF RECLAMATION

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[Cleaning up Jackson Lake Reservoir.]—Minidoka project, Idaho: . . . for cleaning up Jackson Lake Reservoir in Wyoming, in cooperation with the National Park Service, $50,000, either by direct expenditure or by transfer to the National Park Service to be available until expended: *Provided,* That the expenditure from the reclamation fund for such clean-up shall not be charged as a part of the construction or operation and maintenance cost payable by the water users under the project, but shall be offset and recouped from revenues from the rentals of storage from the reservoir: . . . (46 Stat. 1143)

* * * * *

[Giving information and advice to settlers.]—Giving information to settlers: For the purpose of giving information and advice to settlers on reclamation projects in the selection of lands, equipment, and livestock, the preparation of land for irrigation, the selection of crops, methods of irrigation and agricultural practice, and general farm management, $25,000, which shall be charged to the general reclamation fund and shall not be charged as a part of the construction or operation and maintenance cost payable by the water users under the projects. (46 Stat. 1145)

EXPLANATORY NOTE

Provision Repeated. This provision is contained in each subsequent annual Interior Department Appropriation Act through the Appropriation Act for fiscal year 1945, Act of June 28, 1944, 58 Stat. 488, and thereafter it is incorporated by reference to the Appropriation Act for 1945 in each subsequent appropriation act through the most recent Public Works Appropriation Act, 1967, Act of October 15, 1966, 80 Stat. 1009.

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NATIONAL PARK SERVICE

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[Cleaning up Jackson Lake Reservoir.]—Grand Teton National Park, Wyoming: For administration, protection, and maintenance, . . . including not exceeding $50,000 for cleaning up Jackson Lake in cooperation with the Bureau of Reclamation either by direct expenditure or by transfer to the reclamation fund, for expenditure under the direction of the commissioner of reclamation for the purposes for which appropriated, said amount for such clean up to remain available until expended, $76,100; for construction of physical improvements, $650; in all $76,750. (46 Stat. 1150)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 14675, Public Law 666 in the 71st Congress. H.R. Rept. No. 2073. S. Rept. No. 1182. H.R. Rept. No. 2426. S. Doc. 268 and H.R. Rept. No. 2550 (conference report).

SALE OF SURPLUS POWER DEVELOPED UNDER GRAND VALLEY PROJECT

An act authorizing the sale of surplus power developed under the Grand Valley reclamation project, Colorado. (Act of February 21, 1931, ch. 266, 46 Stat. 1202)

[Grand Valley Water Users' Association authorized to enter into contracts for development of power.]—Whenever a development of power is necessary for the irrigation of lands under the Grand Valley reclamation project, Colorado, or an opportunity is afforded for the development of power under said project, such development of power to be without expenditure of money from the reclamation fund or from the Treasury of the United States, the Grand Valley Water Users' Association, with the approval of the Secretary of the Interior, is authorized to enter into a contract or contracts for a period of not exceeding twenty-five years for the sale or development of any surplus power or power privileges in said Grand Valley reclamation project, Colorado. (46 Stat. 1202)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Cross References, Construction Charges Deferred. Section 3 of the Act of April 1, 1932, 47 Stat. 76, provided for the deferral of the construction charges of the Grand Valley project accruing during the year 1932. The provisions of the 1932 Act were extended by the Acts of March 3, 1933, 47 Stat. 1427; March 27, 1934, 48 Stat. 500; June 13, 1935, 49 Stat. 337; and April 14, 1936, 49 Stat. 1206. Each of these Acts appears herein in chronological order.

Cross Reference, Extension of Power Contract. The Act of July 12, 1960, authorized the execution of a power contract for an additional 25-year term. The Act appears herein in chronological order.

Legislative History. H.R. 16215, Public Law 708 in the 71st Congress. H.R. Rept. No. 2446. S. Rept. No. 1566 (on S. 5981).

Note of Opinion

1. Power revenues

The Act of February 21, 1931, under which the Bureau of Reclamation constructed a power plant at the Grand Valley project with private funds advanced by the Public Service Company of Colorado and turned the plant over to the utility company to operate for 25 years, is silent with respect to the disposition of power revenues at the end of the 25-year period. Subsection I, section 4 of the Act of December 5, 1924, does not apply because the power plant will not be taken over by the water users. Consequently, the applicable law is section 5 of the Act of April 16, 1906, 34 Stat. 117, 43 U.S.C. § 522, as amended by the Hayden-O'Mahoney amendment of 1938, under which the net power revenues after the 25-year period of company operation will be applied first to repay project operation and maintenance costs and construction charges until all construction charges have been repaid, and thereafter the net power revenues shall be covered into the General Treasury as miscellaneous receipts. Solicitor Harper Opinion, M–33504 (September 26, 1944).

FIVE MILLION DOLLAR ADVANCE TO RECLAMATION FUND

An act to authorize advances to the reclamation fund, and for other purposes. (Act of March 3, 1931, ch. 435, 46 Stat. 1507)

[**Sec. 1. Advance authorized from Treasury upon request of Secretary and approval of President, for projects already under way.**]—The Secretary of the Treasury is authorized, upon request of the Secretary of the Interior and upon approval of the President, to transfer from time to time to the credit of the reclamation fund created by the Act of June 17, 1902 (32 Stat. L. 388), such sum or sums, not exceeding in the aggregate $5,000,000, as the Secretary of the Interior may deem necessary for the construction and operation of reclamation projects authorized under said act of June 17, 1902, and now under way, and acts amendatory thereof or supplementary thereto. (46 Stat. 1507; 43 U.S.C. § 391a)

Explanatory Note

Appropriation. The Second Deficiency Appropriation Act of 1931, approved March 4, 1931, 46 Stat. 1552, appropriated the $5,000,000 authorized to be appropriated by section 1.

Sec. 2. [**Reimbursement of $1,000,000 annually beginning July 1, 1933.**]—Reimbursement of the moneys so advanced under the provisions of this act shall be made by transfer annually, of the sum of $1,000,000 from the reclamation fund to the general funds in the Treasury, beginning July 1, 1933. (46 Stat. 1507; 43 U.S.C. § 391b)

Explanatory Notes

1932, 1933 and 1936 Amendments. Section 2 was amended by section 10 of the Act of April 1, 1932, 47 Stat. 78, so as to provide for repayment beginning July 1, 1934. Section 10 of the 1932 Act was in turn amended by section 2 of the Act of March 3, 1933, 47 Stat. 1427, extending the commencement of repayment to July 1, 1936. A further postponement to July 1, 1938, was granted by the act of June 22, 1936, 49 Stat. 1757, 1784. The 1932 and 1933 Acts appear herein in chronological order.

Cross Reference, Suspension of Payments from Reclamation Fund. The Act of February 6, 1931, 46 Stat. 1064, 1069, provided for a two-year suspension of annual payments from the reclamation fund to the Treasury. Extracts from the Act, including the provision referred to, appear herein in chronological order.

Reimbursement to the Treasury. A complete reimbursement to the Treasury of funds advanced to the Reclamation Fund under the provisions of the Act of June 25, 1910, referred to in the text, and the Act of March 3, 1931, as amended, was effected by the Act of May 9, 1938, 52 Stat. 291, 322. The 1910 and 1931 Acts and extracts from the 1938 Act, including the provision with respect to the reclamation fund, appear herein in chronological order.

Legislative History. S. 6046, Public Law 822 in the 71st Congress. S. Rept. No. 1576. H.R. Rept. No. 2669.

SECOND DEFICIENCY APPROPRIATION ACT FOR 1931

[**Extract from**] An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1931, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1931, and June 30, 1932, and for other purposes. (Act of March 4, 1931, ch. 522, 46 Stat. 1552)

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BUREAU OF RECLAMATION

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[**North Platte project power transmission lines.**]—North Platte project, Nebraska-Wyoming: For the purpose of enabling the Secretary of the Interior to construct rural trunk transmission lines, including necessary transformers, into farm settlements, communities, and municipalities within the North Platte irrigation project, the inhabitants of which are able to finance feeder or distribution systems and to guarantee to the power system a fair measure of profit, not to exceed $30,000 shall be available from the power revenues of the Lingle and Guernsey power plants, North Platte irrigation project. (46 Stat. 1569)

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EXPLANATORY NOTES

Not Codified. The extract of this Act shown here is not codified in the U.S. Code.

Legislative History. H.R. 17163, Public Law 869 in the 71st Congress. H.R. Rept. No. 2712. S. Rept. No. 1743. H.R. Rept. No. 2925 and H.R. Rept. No. 2943 (conference reports).

SMITH MEMORIAL TABLET AT ELEPHANT BUTTE DAM

An act authorizing the William Robert Smith Memorial Association of El Paso, Texas, to construct a memorial in honor of William Robert Smith, former Member of Congress from the Sixteenth District of Texas. (Act of February 23, 1932, ch. 53, 47 Stat. 53)

[**Tablet authorized to be constructed without cost to United States.**]—The William Robert Smith Memorial Association of El Paso, Texas, is hereby authorized to construct without cost to the United States a memorial tablet at or near the site of Elephant Butte Dam, New Mexico, in honor of the work of William Robert Smith, former Member of Congress from the Sixteenth District of Texas, in behalf of the Elephant Butte project and of irrigation in the Southwest. (47 Stat. 53)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2286, Public Law 40 in the 72nd Congress. S. Rept. No. 89. H.R. Rept. No. 271.

MORATORIUM ON CONSTRUCTION CHARGES FOR 1931 AND 1932

An act for the temporary relief of water users on irrigation projects constructed and operated under the reclamation law. (Act of April 1, 1932, ch. 95, 47 Stat. 75)

[**Sec. 1. Construction charges for 1931 suspended; for 1932, 50 percent of amount payable suspended—Interest and penalty—Rate for sale of power, season of 1931.**]—Any irrigation district, water-users' association, or other water-users organization under contract with the United States for payment of construction charges under the act of June 17, 1902 (32 Stat. 388), or acts amendatory thereof or supplementary thereto, including the act of February 21, 1911 (36 Stat. 925) (upon acceptance of this act by resolution of its board of directors or corresponding body), shall be required to make no payment on the regular construction charge for the calendar year 1931, and in lieu of the regular installment of construction charge provided for under existing contracts, may pay for the calendar year 1932 on the basis of 50 per centum of the amount which, but for this act, would be payable under said contracts such amount to be computed and determined for that year in the manner provided in said contracts and the law applicable thereto. Interest and penalty as now provided by law and contracts for nonpayments when due shall apply on all charges for 1932 adjusted as herein authorized; and otherwise the deferred payments herein authorized shall bear interest until paid at such rate, and shall be paid at such times, as the Secretary of the Interior shall determine: *Provided,* That in determining the rate for the sale of power during the irrigation season of 1931 to irrigation districts from any power plant operated by the Bureau of Reclamation, interest on the cost of the power system shall not be included as an element, but interest at the rate of 2½ per centum per annum shall be included as an element of such rate for the sale of power to such districts during the irrigation season of 1932: *And provided further,* That the payments for construction charges and interest payments on the cost of the power systems referred to in this Act shall not be deemed waived, but only deferred, and shall be paid as provided in this Act. (47 Stat. 75)

Explanatory Notes

Supplemental Provision: Interest on Deferred Payments. Section 1 of the Act of March 3, 1933, which appears herein in chronological order, provides that deferred charges under the Act of April 1, 1932, shall bear interest at the rate of 3 percent per annum, which shall be paid at the same time as the principal is paid. The Secretary originally had fixed the interest rate at 5 percent. C.L. 1995; Assistant Secretary Edwards Opinion, 54 I.D. 86 (1932).

References in the Text. The Act of June 17, 1902 (32 Stat. 388), referred to in the text, is the Reclamation Act. The Act of February 21, 1911 (36 Stat. 925), also referred to in the text, is the Warren Act, which authorizes the Government to contract for impounding, storing and carrying water, and in cooperation with water users' associations, irrigation districts, etc., to construct and use reservoirs, canals, etc., when advantageous to the Government and the water users' associations, irrigation districts, and other entities. Both Acts appear herein in chronological order.

NOTES OF OPINIONS

Application 1
Power revenues 3
Time of payment 2

1. Application

Under its contract of October 23, 1918 with the United States, the Imperial irrigation district received the right to use the Laguna Dam constructed with the Yuma project, agreeing to pay therefor the sum of $1,600,000. The Department held that this was a construction charge to which the 1932 Relief Act is applicable. Letter from Secretary to Hon. L. W. Douglas, M.C., April 15, 1932.

The Secretary is without legal authority to grant the request of the Westland irrigation district, McKay Reservoir, Umatilla project that the payment made by the district for water rental during 1931 be considered a construction charge payment made for 1931 within the meaning of section 1 of the 1932 Relief Act. Memorandum of July 15, 1932, to Commissioner, in re Westland District, Umatilla project.

2. Time of payment

The Department denied the petition of the Gem irrigation district, Owyhee project, that the charges to be deferred under the act be set over for repayment at the end of the 40-year period provided in the contract of October 14, 1926, relative to repayment of the district's proportionate share of the cost of the project, and ruled that the deferred charges shall be paid over a term of 5 years after the last installment shall become due under the existing contract for furnishing electrical energy. Memorandum of July 25, 1932 to Commissioner.

On June 1, 1933, the Salt River Valley Water Users' Association was notified that pursuant to the Acts of Congress of April 1, 1932 and March 3, 1933, and their acceptance of the provisions of these Acts by resolution dated April 1, 1933, the Association's regular construction charges for the years 1931, 1932, and 1933 were extended to the years 1952, 1953 and 1954.

3. Power revenues

Under the provisions of sections 1 and 8, there must be a determination of the new power revenues obtained by the Salt River Valley Water Users' Association from the operation of the power plants constructed by the United States and turned over to the association in 1917. If an estimate of net power revenues from the Government-constructed plants can be made that is satisfactory to the association and to the Secretary of the Interior, the extension can be granted. If this cannot be accomplished, the application must be rejected on the theory that the act involves conditions impossible of performance. Solicitor's Opinions, M–27184 (August 29, 1932).

Sec. 2. [Individuals granted same relief as organizations, where no organization on project.]—On projects or divisions of projects where no irrigation district, water-users' association, or other water-users' organization has assumed joint obligation for payment of construction charges individual water-right applicants or entrymen upon acceptance of this act in a manner satisfactory to the Secretary of the Interior, shall be required to make no payment on the regular construction charge for the calendar year 1931, and in lieu of the installments payable under existing contracts, may pay their regular installments of construction charges for the calendar year 1932 on the same basis as that authorized in section 1 hereof for districts, associations, and other water-users' organizations. (47 Stat. 76)

NOTE OF OPINION

1. Nonconsenting landowners

The benefits of the 1932 moratorium act should be extended to nonconsenting landowners and entrymen, such as those on the Garland division of the Shoshone project, who elect to remain under their individual water-right applications rather than consenting to the contract with the irrigation district. Solicitor Finney Opinion, 54 I.D. 13 (1932).

Sec. 3. [Uncompahgre project relief act of 1931, and Grand Valley project 1931 act relating to development of power amended.]—The act of Congress approved January 31, 1931, entitled "An act for the relief of the Uncompahgre

reclamation project, Colorado" (Private Numbered 300, Seventy-first Congress), is hereby amended to extend for one year from and after January 1, 1932, the time for beginning construction of drainage system upon the Uncompahgre project, and any and all construction charges accruing upon or for said project for or during the year 1932, shall be deferred and included in and made payable as a part of the project supplemental construction charge provided for in said act of January 31, 1931; and in order to afford opportunity to complete the construction authorized by the act of Congress approved February 21, 1931 (Public Numbered 708), relating to the Grand Valley reclamation project, Colorado, any and all construction charges, accruing upon or for said project for or during the year 1932 shall be deferred and shall be included in and made payable as project supplemental construction charges under the terms as provided in this act. (47 Stat. 76)

EXPLANATORY NOTES

Cross References, Extension of Provisions. The provisions of section 3 of the Act were extended and modified by the Acts of March 3, 1933, 47 Stat. 1427; March 27, 1934, 48 Stat. 500; June 13, 1935, 49 Stat. 337; and April 14, 1936, 49 Stat. 1206. The 1936 Act included the following proviso: *"Provided,* however, That where the construction charge for the Calendar Year 1936 is payable in two installments, the sum hereby extended shall be the amount due as the first of such installments. If payable in one installment, the due date for the 50 percent to be paid shall not be changed." Each of these Acts appears herein in chronological order.

References in the Text. The Act of January 31, 1931, relating to the Uncompahgre project, and the Act of February 21, 1931, relating to the Grand Valley project's power development, referred to in the text, appear herein in chronological order.

Sec. 4. [Resumption of payment of charges—Contracts pursuant to Warren Act, Extension Act, Adjustment Act, subsection F, section 4, Fact Finders' Act.]—At the expiration of the period for which deferment of charges is made under this act, all districts, water-users' associations, or other water-users' organizations, and all individuals accepting the provisions hereof shall resume payment of charges on the basis of and in accordance with existing contracts and shall continue payments thereafter until the entire indebtedness of said districts, water-users' associations, or other water-users' organizations, and individuals to the United States shall have been fully paid. In the case of a district, water-users' association, or other water-users' organization, or individual having contracts executed pursuant to the act of February 21, 1911 (36 Stat. 925), the act of August 13, 1914 (38 Stat. 686), or the act of May 25, 1926 (44 Stat. 636), or any special act the deferred construction installment or installments for the calendar year 1931, and that portion of the 1932 installment or installments deferred, together with the installment or installments of deferred construction and/or operation and maintenance for 1931 and 50 per centum of the installment and/or installments of such deferred charges for 1932, shall be paid as an additional installment to be due and payable one year after the date the last installment under existing contracts shall become due, except in those cases in which the Secretary of the Interior, whose decision shall be final, shall find necessary additional installments, which he is hereby authorized to fix. In the case of any district, water-users' association, or other water-users' organization, or individual under contract for payment of construction charges pursuant to

subsection F, section 4, act of December 5, 1924 (43 Stat. 702), construction payments shall be continued on the basis of existing contracts until the entire indebtedness to the United States, including all charges deferred pursuant to this act, shall have been fully paid. Installments so carried over shall be subjected to the reductions provided for in section 8 hereof. (47 Stat. 76)

EXPLANATORY NOTES

References in the Text. The Act of February 21, 1911 (36 Stat. 925), referred to in the text, is the Warren Act. The Act of August 13, 1914 (38 Stat. 686), referred to in the text, is the Reclamation Extension Act. The Act of May 25, 1926 (44 Stat. 636), also referred to in the text, is the Omnibus Adjustment Act. Each of these Acts appears herein in chronological order.

Reference in the Text. Subsection F, section 4, of the Act of December 5, 1924 (43 Stat. 702), referred to in the text, provides for construction charges to be paid in annual installments based on the productive power of the land. The Act is the Fact Finders' Act, which appears herein in chronological order.

Cross Reference, Interest Rate. The Act of March 3, 1933, 47 Stat. 1427, provides that the deferred charges shall bear interest at the rate of 3 per centum per annum for the years specified in the Act, as amended by the said 1933 Act, which interest shall be paid at the same time the principal deferred is paid.

NOTE OF OPINION

1. Time of payment

The language "shall be paid" means "shall at the latest be paid". In other words, there is nothing in the statute which prohibits an earlier payment of such deferred amounts. Letter from the First Assistant Secretary to Senator Frederick Steiwer, April 11, 1932.

Sec. 5. [Secretary may permit adjustment of charges.]—The Secretary of the Interior, in his discretion, and upon acceptance of the provisions of this section by the water users affected, in the manner provided in sections 1 and 2 hereof, may permit adjustment of construction and/or operation and maintenance charges heretofore deferred by contracts made pursuant to existing law to be made for the years 1931 and 1932 on the basis authorized in sections 1 and 2 hereof or on such other basis as the Secretary may find to be required in each case. (47 Stat. 77)

Sec. 6. [Deferment of 1930 construction and O. and M. charges.]—The Secretary of the Interior, in his discretion, is further authorized to defer the payment to the United States from any water users' organization, as defined in section 1 hereof and from any individual water-right applicant or entryman of construction charges and installments of deferred construction and/or deferred operation and maintenance charges for the calendar year 1930 and prior thereto. Such deferred charges, together with penalty or interest to December 31, 1931, under existing laws and contracts shall be paid in such annual installments as the Secretary of the Interior may fix. (47 Stat. 77)

Sec. 7. [Delivery of water by water users' organization to water users in arrears in payment of charges.]—Any irrigation district, water-users' association, or other water users' organization which has contracted to pay construction charges and which is not in arrears for more than one calendar year in the payment of any construction, operation, and maintenance, or other charge due by it to the United States may, at its option, deliver or authorize the delivery of water during the years 1932 and 1933 to water users who may be more than

one year in arrears in the payment of charges or assessments due from such landowner or water user to the district or association. (47 Stat. 77)

NOTE OF OPINION

1. Application

The Relief Act of March 27, 1934, in extending temporary relief on water charges, also extended relief from punishment for nonpayment of charges. Section 7 of the moratorium act of April 1, 1932, must be considered in granting moratorium under the relief act of March 27, 1934. Opinion of Acting Solicitor Fahey, April 17, 1934.

Sec. 8. [Credits on account of power profits under subsections I and J, Fact Finders' Act, or other act.]—In the case of any irrigation district, water-users' organization, or individual, receiving credits on account of power profits or other revenues under the provisions of subsections I and/or J, section 4, act of December 5, 1924 (43 Stat. 703), or any other act of Congress, when any extension is granted as provided in section 1, 2, or 4 the amount of such credits shall be deducted from the amount of any payment so extended: *Provided,* That the provisions of this section shall not apply to power profits or other revenues derived from works not constructed at the expense of the United States. The credits, if any, in excess of the payment so extended shall be applied as now provided by law and contract. Acceptance of the provisions of this act shall operate as a waiver of any law and/or contract providing for application of credits different from that in this section prescribed. (47 Stat. 77)

EXPLANATORY NOTE

Reference in the Text. Section 4 of the Act of December 5, 1924 (43 Stat. 703), referred to in the text, is the Fact Finders Act. The Act appears herein in chronological order.

NOTE OF OPINION

1. Power revenues

Under the provisions of sections 1 and 8, there must be a determination of the new power revenues obtained by the Salt River Valley Water Users' Association from the operation of the power plants constructed by the United States and turned over to the association in 1917. If an estimate of net power revenues from the Government-constructed plants can be made that is satisfactory to the association and to the Secretary of the Interior, the extension can be granted. If this cannot be accomplished, the application must be rejected on the theory that the act involves conditions impossible of performance. Solicitor's Opinion, M-27184 (August 29, 1932).

Sec. 9. [Collection of charges for 1931 to be credited upon succeeding payments as they become due.]—Collections of construction charges for the calendar year 1931 (which charges are subject to adjustment and are adjusted under sections 1, 2, and 4 of this act) and penalties and interest, if any, from water-users' organizations and individual water-right applications or landowners, heretofore made under existing contracts, shall be credited upon the succeeding payments as they become due, including operation and maintenance charges. (47 Stat. 78)

NOTES OF OPINIONS

Application 1
Succeeding payments 2

1. Application

In cases where the 1931 construction charges have been fully paid, it is optional with the water users whether deferment under the Act of April 1, 1932, shall cover both the 1931 construction charge and one-half of the 1932 construction charge, or one-half of the 1932 construction charge only. Memorandum to Commissioner, August 5, 1932, in re Imperial Irrigation district.

2. Succeeding payments

The words "succeeding payments" mean payments succeeding the collection date of the 1931 payments, whether before or after April 1, 1932. Memorandum of April 1, 1932, to Commissioner, in re Yakima project.

Sec. 10. [Advances authorized by act of June 25, 1910, and act of March 3, 1931, to be repaid beginning July 1, 1934.]—That the act of June 25, 1910, entitled "An act to authorize advances to the reclamation fund, and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes", as amended, and the act of March 3, 1931 (46 Stat. 1507), are hereby amended so as to provide that payments in reimbursement of moneys so advanced under these acts and not heretofore repaid shall be made by transfer annually from the reclamation fund to the general funds of the Treasury beginning July 1, 1938. (47 Stat. 78)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

1933 and 1936 Amendments. Section 2 of the Act of March 3, 1933, amended the last line of the above section by substituting "1936" for "1934". The Act of June 22, 1936, further amended this section by substituting "1938" for "1936." A complete reimbursement to the Treasury of funds advanced to the Reclamation Fund under the provisions of Acts of June 25, 1910, and March 3, 1931, as amended, was effected by the Act of May 9, 1938, 52 Stat. 291, 322. Each of these provisions, except that in the 1936 Act, appears herein in chronological order.

Reimbursement to the Treasury. A complete reimbursement to the Treasury of funds advanced to the Reclamation Fund under the provisions of the Acts of June 25, 1910, and March 3, 1931, referred to in the text, was effected by the Act of May 9, 1938, 52 Stat. 291, 322. The 1910 and 1931 Acts and extracts from the 1938 Act, including the provision with respect to the reclamation fund, appear herein in chronological order.

Legislative History. S. 3706, Public Law 70 in the 72nd Congress. S. Rept. No. 262. H.R. Rept. No. 656. H.R. Rept. No. 313 (on H.R. 8638). H.R. Rept. No. 379 (on H.R. 9489). H.R. Rept. No. 690 (on H. Res. 165).

INTERIOR DEPARTMENT APPROPRIATION ACT FOR 1933

[**Extracts from**] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1933, and for other purposes. (Act of April 22, 1932, ch. 125, 47 Stat. 91)

* * * * *

BUREAU OF RECLAMATION

The following sums are appropriated out of the special fund in the Treasury of the United States created by the act of June 17, 1902, and therein designated "the reclamation fund", to be available immediately:

* * * * *

[**Salt Lake Basin project—Repayment contract.**]—Salt Lake Basin project, Utah, second division: The unexpended balance of the appropriation for the fiscal year 1932, originally made in the appropriation act of May 14, 1930 (46 Stat. 308), for the Interior Department for the fiscal year ending June 30, 1931, and continued available for the fiscal year 1932 by the act of February 14, 1931 (46 Stat. 1115), shall remain available for the same purposes for the fiscal year 1933, the proviso to said original appropriation for said second division being hereby amended so as to read as follows: "*Provided,* That no part of this sum shall be available for construction work until a contract or contracts shall be made as required by the reclamation laws with an irrigation district or districts or water-users' association or associations for the payment to the United States of the cost of such second division." (47 Stat. 116)

EXPLANATORY NOTES

Provision Repeated. The same provision is contained in the Interior Department Appropriation Act for 1934, Act of February 17, 1933, 47 Stat. 844.

Reference in the Text. Extracts from the Appropriation Act of May 14, 1930 (46 Stat. 308), for the Interior Department for the fiscal year ending June 30, 1931, referred to in the text, including the Salt Lake Basin project item, appear herein in chronological order. Extracts from the Act of February 14, 1931 (46 Stat. 1115), also referred to in the text, appear herein in chronological order, but do not include the Salt Lake Basin project item.

* * * * *

[**Contribution to cost of investigation requested by non-Federal interests.**]—For cooperative and general investigations, . . . *Provided further,* That beginning January 1, 1933, the expenditure of any sums from this appropriation for investigations of any nature requested by States, municipalities, or other interests shall be upon the basis of the State, municipality, or other interest advancing at least 50 per centum of the estimated cost of such investigation. (47 Stat. 117)

EXPLANATORY NOTE

Provision Repeated. A similar provision is contained in each subsequent Interior Department Appropriation Act through fiscal year 1955, and each Public Works Appropriation Act thereafter through the most recent one, the Act of October 15, 1966,

80 Stat. 1009, with the modification that in the Interior Department Appropriations Act, 1955, Act of July 1, 1954, 68 Stat. 365, and subsequent acts it is revised to read as follows: "*Provided,* That none of this appropriation shall be used for more than one-half of the cost of an investigation requested by a State, municipality, or other interest."

* * * * *

[**Boulder Canyon project—School building, equipment and employees.**]—Boulder Canyon project: . . . *Provided,* That of this fund not to exceed $70,000 shall be available for the erection, operation, and maintenance of necessary school buildings and appurtenances on the Boulder Canyon project Federal reservation, and for the purchase and repair of required desks, furnishings, and other suitable facilities; for payment of compensation to teachers and other employees necessary for the efficient conduct and operation of schools on said reservation. (47 Stat. 118)

EXPLANATORY NOTES

Provision Repeated. The same provision is carried in the Interior Department Appropriation Act for 1934, Act of February 17, 1933, 47 Stat. 845, with the addition of specific authority for the purchase of "maps, globes, stationery, books, schoolroom equipment."

Cross Reference, Schoolhouse in Boulder City. The Interior Department Appropriation Act for 1938, Act of August 9, 1937, 50 Stat. 596, includes $50,000 for the construction of a schoolhouse in Boulder City. The Interior Department Appropriation Act for 1940, Act of May 10, 1939, 53 Stat. 718, and certain subsequent acts appropriate money for payments to the Boulder City School District. See notes thereunder.

Not Codified. Extracts from this Act shown here are not codified in the U.S. Code.

Editor's Note. Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 8397, Public Law 95 in the 72nd Congress. H.R. Rept. No. 273. S. Rept. No. 353 and S. Rept. No. 514.

VACATION OF WITHDRAWALS OF PUBLIC LANDS CONTAINING MINERALS

An act authorizing the Secretary of the Interior to vacate withdrawals of public lands under the reclamation law, with reservation of rights, ways, and easements. (Act of April 23, 1932, ch. 134, 47 Stat. 136)

[**Sec. 1. Conditional restoration of lands to mineral entry.**]—Where public lands of the United States have been withdrawn for possible use for construction purposes under the Federal reclamation laws, and are known or believed to be valuable for minerals, and would, if not so withdrawn, be subject to location and patent under the general mining laws, the Secretary of the Interior, when in his opinion the rights of the United States will not be prejudiced thereby, may in his discretion, open the land to location, entry, and patent under the general mining laws, reserving such ways, rights, and easements over or to such lands as may be prescribed by him and as may be deemed necessary or appropriate, including the right to take and remove from such lands construction materials for use in the construction of irrigation works, and/or the said Secretary may require the execution of a contract by the intending locator or entryman as a condition precedent to the vesting of any rights in him when in the opinion of the Secretary same may be necessary for the protection of the irrigation interests. Such reservations or contract rights may be in favor of the United States or irrigation concerns cooperating or contracting with the United States and operating in the vicinity of such lands. The Secretary may prescribe the form of such contract which shall be executed and acknowledged and recorded in the county records and the United States local land office by any locator or entryman of such land before any rights in their favor attach thereto, and the locator or entryman executing such contract shall undertake such indemnifying covenants and shall grant such rights over such lands as in the opinion of the Secretary may be necessary for the protection of Federal or private irrigation in the vicinity. Notice of such reservation or of the necessity of executing such prescribed contract shall be filed in the General Land Office and in the appropriate local land office, and notations thereof shall be made upon the appropriate tract books, and any location or entry thereafter made upon or for such lands, and any patent therefor shall be subject to the terms of such contract and/or to such reserved ways, rights, or easements and such entry or patent shall contain a reference thereto. (47 Stat. 136; 43 U.S.C. § 154)

Sec. 2. [**Rules and regulations.**]—The Secretary of the Interior may prescribe such rules and regulations as may be necessary to enable him to enforce the provisions of this act. (47 Stat. 136; 43 U.S.C. § 154)

Explanatory Notes

Legislative History. H.R. 8087, Public Law 104 in the 72nd Congress. H.R. Rept. No. 349. S. Rept. No. 502.

NOTES OF OPINIONS

Application 1
Delegations 2

1. Application

Reclamation withdrawn land sought to be opened for location under the mining laws must be known, or believed to be valuable, for minerals. Each 10-acre subdivision of land must be shown to be mineral in character; however, it is not essential that each acre be found to be mineral in character before the 10-acre tract can be opened to mining location. Once a 10-acre legal subdivision is opened to location, there would be no legal bar to including a non-mineral portion thereof in a mill site. *Rex N.* and *Mildred B. Anderson*, A-29881, 71 I.D. 140 (1964).

The Act of April 23, 1932, gives the Secretary affirmative authority to control mineral entry irrespective of the "form of withdrawal". Associate Solicitor Fisher Opinion, M-36433 (April 12, 1957), *dictum.*

Lands dedicated for public park purposes under section 3 of the Gila Project Act of July 30, 1947, subject to a mineral reservation to the United States, remain subject to the reclamation withdrawal, and the Department may properly decline, under the Act of April 23, 1932, to open them to mineral location. *M. W. Bobo, et al.*, A-26613 (July 13, 1953).

2. Delegations

The Bureau of Land Management is without authority to impose conditions and terms upon its own motion in conditional restoration orders issued under the authority of the Act of April 23, 1932, because the powers and duties of final approval of such terms and conditions of restoration have been specifically delegated to the Bureau of Reclamation by 43 CFR 185.36 (c), (d) (1954). Acting Associate Solicitor McPhillamey Opinion, M-36404 (January 7 1957).

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA RIGHT-OF-WAY FOR AQUEDUCT

An act granting to the Metropolitan Water District of Southern California certain public and reserved lands of the United States in the counties of Los Angeles, Riverside, and San Bernardino, in the State of California. (Act of June 18, 1932, ch. 270, 47 Stat. 324)

[**Sec. 1. Grant to district of lands for rights-of-way and other purposes—Subject to filing of maps—Payment for lands conveyed other than for rights-of-way for aqueduct—Compensation for Indian lands—Locations, width, extent.**]—Subject to the reservation, until their disposition is hereafter expressly directed by law, of all mineral except earth, stone, sand, gravel, and other materials of like character, there is hereby granted to the Metropolitan Water District of Southern California, a public corporation of the State of California, all lands belonging to the United States, situate in the counties of Los Angeles, Riverside, and San Bernardino, in the State of California, including trust or restricted Indian allotments in any Indian reservation or lands reserved for any purpose in connection with the Indian Service, which have not been conveyed to any allottee with full power of alienation, which may be necessary, as found by the Secretary of the Interior, for any or all of the following purposes: Rights-of-way; buildings and structures; construction and maintenance camps; dumping grounds; flowage; diverting or storage dams; pumping plants; power plants, canals, ditches, pipes, and pipe lines; flumes, tunnels, and conduits for conveying water for domestic, irrigation, power, and other useful purposes; poles, towers, and lines for the conveyance and distribution of electrical energy; poles and lines for telephone and telegraph purposes; roads, trails, bridges, tramways, railroads, and other means of locomotion, transmission, or communication; for obtaining stone, earth, gravel, and other materials of like character; or any other necessary purposes of said district, together with the right to take for its own use, free of cost, from any public lands, within such limits as the Secretary of the Interior may determine, stone, earth, gravel, sand, and other materials of like character necessary or useful in the construction, operation, and maintenance of aqueducts, reservoirs, dams, pumping plants, electric plants, and transmission, telephone, and telegraph lines, roads, trails, bridges, tramways, railroads, and other means of locomotion, transmission, and communication, or any other necessary purposes of said district. This grant shall be effective upon (1) the filing by said grantee at any time after the passage of this act with the register of the United States local land office in the district where said lands are situated, of a map or maps showing the boundaries, locations, and extent of said lands and of said rights-of-way for the purposes hereinabove set forth; (2) the approval of such map or maps by the Secretary of the Interior with such reservations or modifications as he may deem appropriate; (3) the payment of $1.25 per acre for all Government lands conveyed under this act other than for the right-of-way for the aqueduct, and (4) for all lands conveyed

in Indian reservations or in Indian allotments which have not been conveyed to the allottee with full power of alienation, the district shall pay for the benefit of the Indians such just compensation as may be determined by the Secretary of the Interior: *Provided,* That said lands for rights-of-way shall be along such locations and of such width, not to exceed two hundred and fifty feet, as in the judgment of the Secretary of the Interior may be required for the purposes of this act: *And provided further,* That said lands for any of said purposes other than for rights-of-way for the aqueduct may be of such width or extent as may be determined by the Secretary of the Interior as necessary for such purposes. (47 Stat. 324)

Sec. 2. [Maps filed by district in connection with previous applications, still pending or which have been granted.]—Whenever the lands or the rights-of-way are the same as are designated on any map heretofore filed by said district or by the city of Los Angeles in connection with any application for a right-of-way under any statute of the United States, which said application is still pending, or has been granted, and is unrevoked and has been transferred to and is now owned by said district, then upon the approval by the Secretary of the Interior of any such later map with such modifications and under such conditions as he may deem appropriate the rights hereby granted shall, as to such lands or rights-of-way, become effective as of the date of the filing of said earlier map or maps with the register of the United States local land office. (47 Stat. 325)

Sec. 3. [Lands in national forest subject to approval—Date said lands shall vest in grantee.]—If any of the lands to which the said district seeks to acquire title under sections 1 and 2 of this act are in a national forest, the said map or maps shall be subject to the approval of the Secretary of Agriculture so far as national-forest lands are affected; and upon such approval and the subsequent approval by the Secretary of the Interior, title to said lands shall vest in the grantee upon the date of such subsequent approval. (47 Stat. 325)

Sec. 4. [Grants subject to prior claims.]—Said grants are to be made subject to the rights of all claimants or persons who shall have filed or made valid claims, locations, or entries on or to said lands, or any part thereof prior to the effective date of any conflicting grant hereunder, unless prior to such effective date proper relinquishments or quitclaims have been procured and caused to be filed in the proper land office. (47 Stat. 325)

Sec. 5. [Land to revest in United States on cessation of use.]—On the cessation of use of the land granted for the purposes of the grant the estate of the grantee or of its assigns shall terminate and revest in the United States. (47 Stat. 326)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 10048, Public Law 188 in the 72nd Congress. H.R. Rept. No. 1138. S. Rept. No. 801.

RECLASSIFICATION OF LANDS WITHIN KLAMATH IRRIGATION DISTRICT

An act to amend section 14 of an act entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (44 Stat. 636), as amended (46 Stat. 249). (Act of June 23, 1932, ch. 273, 47 Stat. 331)

[Secretary authorized to place lands in temporarily unproductive class.]—An act entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (44 Stat. 636), as amended by the act of April 23, 1930 (46 Stat. 249) is hereby further amended by adding after the subparagraph (a) in section 14 the following new subparagraph:

"(a–1) The Secretary of the Interior is hereby authorized to reclassify all lands within the Klamath irrigation district and to place in the temporarily unproductive class such lands as he determines are properly subject to this classification." (47 Stat. 332; 43 U.S.C. § 610)

Explanatory Notes

References in the Text. The Act of May 25, 1926 (44 Stat. 636), as amended by the Act of April 23, 1930 (46 Stat. 249), which is amended by this act, is the Omnibus Adjustment Act. Both the Act and the amending statute appear herein in chronological order.

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 14 of the Act of May 25, 1926.

Legislative History. S. 4614, Public Law 191 in the 72nd Congress. S. Rept. No. 724. H.R. Rept. No. 1438 (on H.R. 11966).

SECOND DEFICIENCY APPROPRIATION ACT, 1932

[**Extracts from**] An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1932, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1932, and June 30, 1933, and for other purposes. (Act of July 1, 1932, ch. 364, 47 Stat. 525.)

The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1932, and prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1932, and June 30, 1933, and for other purposes, namely:

* * * * *

[**Yakima project—Power revenues.**]—Yakima project (Kennewick Highlands unit), Washington: . . . *Provided,* That not to exceed $40,000 from power revenues shall be available during the fiscal year 1933 for operation and maintenance of power system. (47 Stat. 535)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes of the Yakima project, not limited to the Kennewick Highlands unit, is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781.

[**Palo Verde Valley flood protection—Authorized.**]—Palo Verde Valley, California, flood protection: For the protection of the Palo Verde Valley, California, from overflow and destruction by Colorado River floods, to be expended under the direction of the Secretary of the Interior for the purpose of repairing and reconstructing the levee system on the Colorado River in front of the said Palo Verde Valley, fiscal year 1933, $50,000, or so much thereof as may be necessary. (47 Stat. 535)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Legislative History. H.R. 12443, Public Law 235 in the 72nd Congress. H.R. Rept. No. 1491. S. Rept. No. 948. H.R. Rept. No. 1736 (conference report).

LEAVITT ACT

An act to authorize the Secretary of the Interior to adjust reimbursable debts of Indians and tribes of Indians. (Act of July 1, 1932, ch. 369, 47 Stat. 564)

[**Indians—Adjustment of reimbursable debts—Deferment of irrigation construction charges—Report to Congress—Approval of Congress.**]—The Secretary of the Interior is hereby authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: *Provided,* That the collection of all construction costs against any Indian owned lands within any Government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished, and any construction assessments heretofore levied against such lands in accordance with the provisions of the Act of February 14, 1920 (41 Stat. L. 409), and uncollected, are hereby canceled: *Provided further,* That a report shall be made to Congress annually, on the first Monday in December, showing adjustments so made during the preceding fiscal year: *Provided further,* That any proceedings hereunder shall not be effective until approved by Congress unless Congress shall have failed to act favorably or unfavorably thereon by concurrent resolution within sixty legislative days after the filing of said report, in which case they shall become effective at the termination of the said sixty legislative days. (47 Stat. 564; 25 U.S.C. § 386a)

Explanatory Notes

Reference in the Text. The Act of February 14, 1920 (41 Stat. L. 409), referred to in the text, is the Bureau of Indian Affairs Appropriation Act for the fiscal year ending June 30, 1921. It included appropriations for irrigation projects on Indian reservations, which appropriations were to be reimbursed to the Government.

Cross Reference, Phipps Act. The Act of May 9, 1924, 43 Stat. 116, popularly known as the Phipps Act, is an act for the relief of Indian water users. The Act appears herein in chronological order.

Legislative History. H.R. 10884, Public Law 240 in the 72nd Congress. H.R. Rept. No. 951. S. Rept. No. 752. H.R. Rept. No. 1725 (conference report).

Notes of Opinions

1. Application

The reference in the first proviso to any "Government irrigation project" should be construed as applying only to a Government *Indian* irrigation project, and does not include reclamation projects. Solicitor Finney Opinion, 54 I.D. 90 (1932.)

The provision in subsection 9(c) of the Flood Control Act of 1944 that "irrigation of Indian trust and tribal lands, and repayment therefor, shall be in accordance with the laws relating to Indian lands," extends the Leavitt Act to all such Indian lands irrigated under the Missouri River Basin project. Memorandum of Associate Solicitor Hogan, June 26, 1964, in re definite plan report for Tower, Greenwood, and Yankton units.

Section 4(d) of the Colorado River Storage Project Act extends the Leavitt Act to all participating projects. The Leavitt Act therefore applies to Pueblo Indian lands in the Middle Rio Grande Conservancy District served by the San Juan-Chama project; and the fact that section 2 of the

Act of June 13, 1962, 76 Stat. 96, specifically states that section 4(d) of the 1956 Act applies to the Navajo Indian Irrigation project does not preclude application of section 4(d) to the San Juan-Chama project. Memorandum of Acting Associate Solicitor Lanning, July 31, 1964.

MORATORIUM ON CONSTRUCTION CHARGES FOR 1932 AND 1933

An act to extend the operation of the act entitled "An act for the temporary relief of water users on irrigation projects constructed and operated under the reclamation law", approved April 1, 1932. (Act of March 3, 1933, ch. 200, 47 Stat. 1427)

[Sec. 1. Provisions of act of April 1, 1932, extended to remaining one-half of charges coming due for 1932 and to all of charges for 1933—Time extended for beginning Uncompahgre drainage system—Time extended for payment of charges on Uncompahgre and Grand Valley projects—Interest at 3 percent on deferred charges.]—In the administration of the act entitled "An act for the temporary relief of water users on irrigation projects constructed and operated under the reclamation law", approved April 1, 1932, the Secretary of the Interior is authorized and directed to extend the provisions of such act relating to certain charges coming due for 1931 and to one-half of certain charges due for 1932, in like manner to the remaining one-half of such charges coming due for 1932 and to all of similar charges to become due for 1933, and to extend the provisions of section 3 of such act, (1) so far as they relate to the extension of time for beginning construction of a drainage system upon the Uncompahgre reclamation project, to one year from and after January 1, 1933, and (2) so far as they relate to certain charges upon or for the Uncompahgre and Grand Valley reclamation projects in the State of Colorado due and payable for the year 1932, in like manner to all similar charges due and payable for the year 1933: *Provided,* That the deferred charges shall bear interest at the rate of 3 per centum per annum for the years specified in the act approved April 1, 1932, and as amended herein, which interest shall be paid at the same time the principal deferred herein is paid. (47 Stat. 1427)

Sec. 2. [Section 10 of act of April 1, 1932, amended.]—The last line of section 10 of said act is amended by substituting "1936" for "1934." (47 Stat. 1427)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of April 1, 1932, referred to in the text, appears herein in chronological order.

Legislative History. S. 5417, Public Law 416 in the 72nd Congress. S. Rept. No. 1067. H.R. Rept. No. 2067.

Note of Opinion

1. Interest on deferred payments

The Comptroller General, in decision of June 24, 1933, A–48742, held that interest on the deferred installments of construction charges for the years 1931, 1932, and 1933 is limited to the 3 years specified in the Act of March 3, 1933. In decisions of November 9, 1935, and January 15, 1936, he held there would be no interest due on the 1935 installments deferred unless the charges became due prior to December 31, 1935.

EXCHANGE OF LANDS ON KLAMATH PROJECT

An act providing for an exchange of lands between the Colonial Realty Company and the United States, and for other purposes. (Act of March 23, 1933, ch. 7, 48 Stat. 1295)

[**Sec. 1. Patent to issue to Colonial Realty Co. conveying lands on Tule Lake division, in exchange for seeped and unproductive lands, as determined by the Secretary.**]—Upon execution and delivery by the Colonial Realty Company of a deed conveying to the United States, title in fee, free of incumbrance, to approximately one thousand four hundred and twenty acres of seeped and unproductive lands, as determined by the Secretary of the Interior, in sections 20, 21, 22, 25, 27, 28, 31, 32, 33, and 34, township 39 south, and section 3 of township 40 south, range 9 east, Willamette meridian, Oregon, Klamath project, or to such portion thereof as said company may elect so to convey, the said Secretary is hereby authorized and directed to issue a patent to the Colonial Realty Company, conveying to said company title to approximately an equivalent amount of public lands on the Tule Lake division of the Klamath project in Oregon-California to be selected and designated by said company from available lands in that division: *Provided,* That in order to avoid the expense of additional surveys, and since many of the tracts to be conveyed to the United States are designated as lots by public land surveys and for this reason the subdivisions contain areas both less than and in excess of legal subdivision, the areas conveyed to the Government and the areas patented by the Government need be only approximately of the same acreage: *Provided further,* That should any legal subdivision of the lands herein described consist of more than 50 per centum of unproductive land the whole subdivision may, at the option of said company, be conveyed to the United States, with the right of exchange of an equivalent area as herein authorized. (48 Stat. 1295)

Sec. 2. [**Water-right charges to be same as those for similar lands in district.**]—The water-right charges payable by said company or its successor on the Tule Lake lands patented pursuant to this act shall be the same as those fixed for similar lands in that district and shall be subject to payment in the same manner. (48 Stat. 1295)

Explanatory Notes

Cross Reference, Credits for Charges Paid on Damaged Lands. The Act of June 14, 1933, 48 Stat. 1300, allowed credit for construction charges paid by the owners of certain of the lands conveyed to the United States pursuant to this Act. The Act appears herein in chronological order.

Cross Reference, Jurisdiction Conferred Upon Court of Claims. The Act of August 27, 1954, 68 Stat. A226, conferred jurisdiction upon the Court of Claims to hear, determine and render judgment on the claim of Mary K. Reynolds, as successor in interest to the Colonial Realty Company, against the United States resulting from the alleged failure of the Secretary of the Interior to complete the exchange of land authorized by the Act of March 23, 1923 (48 Stat. 1295), as supplemented by the Act of June 14, 1933 (48 Stat. 1300), in the manner and to the extent required by such Acts. The Act appears herein in chronological order.

Legislative History. S. 156, Private Law 2 in the 73rd Congress.

CREDITS FOR CHARGES PAID ON DAMAGED LANDS, KLAMATH PROJECT

An act giving credit for water charges paid on damaged land. (Act of June 14, 1933, ch. 75, 48 Stat. 1300)

[**Credits on construction and operation and maintenance charges.**]—All construction charges heretofore paid by owners on lands to be conveyed to the United States of America pursuant to the act of Congress approved March 23, 1933 (S. 156, Seventy-third Congress), shall be transferred as a credit to the lands to be so patented by the United States, and all payments of operation and maintenance charges with penalty and interest heretofore made on such of the lands to be conveyed as were not, in the determination of the Secretary of the Interior, during the period for which payment was made, susceptible of successful cultivation by reason of seepage, alkalinity, or other causes not within the control of the owners of such land, shall be allowed as credits on future construction, operation, and maintenance charges on the lands retained or those to be patented by the United States pursuant to the act of Congress approved March 23, 1933 (S. 156, Seventy-third Congress). Like credit shall also be given the irrigation district for all the charges heretofore paid by it on such lands and for which the owners of said lands have not in turn reimbursed the irrigation district. (48 Stat. 1300)

Explanatory Notes

Reference in the Text. The Act of March 23, 1933, referred to in the text, appears herein in chronological order.

Cross Reference, Jurisdiction Conferred Upon Court of Claims. The Act of August 27, 1954, 68 Stat. A226, conferred jurisdiction upon the Court of Claims to hear, determine and render judgment on the claim of Mary K. Reynolds, as successor in interest to the Colonial Realty Company, against the United States resulting from the alleged failure of the Secretary of the Interior to complete the exchange of land authorized by the Act of March 23, 1923 (48 Stat. 1295), as supplemented by the Act of June 14, 1933 (48 Stat. 1300), in the manner and to the extent required by such Acts. The Act appears herein in chronological order.

Legislative History. S. 1536, Private Law 12 in the 73rd Congress. S. Rept. No. 95. H.R. Rept. No. 198.

CONSERVATION OF WILD LIFE, FISH AND GAME

An act to promote the conservation of wild life, fish and game, and for other purposes. (Act of March 10, 1934, ch. 55, 48 Stat. 401)

Editor's Note: This Act was substantially rearranged and expanded by the Act of August 14, 1946, and the complete act, including subsequent amendments, appears herein under that date. The original 1934 Act is reprinted below for historical reference.

[**Sec. 1. Cooperation of Agriculture, Commerce, and other agencies to increase fish.**]—That the Secretary of Agriculture and the Secretary of Commerce are authorized to provide expert assistance to, and to cooperate with, Federal, State, and other agencies in the rearing, stocking, and increasing the supply of game and fur-bearing animals and fish, in combating diseases, and in developing a Nation-wide program of wild-life conservation and rehabilitation. (48 Stat. 401)

Sec. 2. [Investigations on pollution of waters. Report to Congress.]—The Secretary of Agriculture and the Secretary of Commerce are authorized to make such investigations as they may deem necessary to determine the effects of domestic sewage, trade wastes, and other polluting substances on wild life, with special reference to birds, mammals, fish, and shellfish, and to make reports to the Congress of their investigations with recommendations for remedial measures. Such investigations shall include studies of methods for the recovery of wastes and the collection of data on the progress being made in these fields for the use of Federal, State, municipal, and private agencies. (48 Stat. 401)

Sec. 3. [Bureau of Fisheries to be given opportunity to make use of impounded waters and to be consulted before construction of new works is initiated.]—(a) Whenever the Federal Government, through the Bureau of Reclamation or otherwise, impounds water for any use, opportunity shall be given to the Bureau of Fisheries and/or the Bureau of Biological Survey to make such uses of the impounded waters for fish-culture stations and migratory-bird resting and nesting areas as are not inconsistent with the primary use of the waters and/or the constitutional rights of the States. In the case of any waters heretofore impounded by the United States, through the Bureau of Reclamation or otherwise, the Bureau of Fisheries and/or the Bureau of Biological Survey may consult with the Bureau of Reclamation or other governmental agency controlling the impounded waters, with a view to securing a greater biological use of the waters not inconsistent with their primary use and/or the Constitutional rights of the States and make such proper uses thereof as are not inconsistent with the primary use of the waters and/or the constitutional rights of the States.

(b) Hereafter, whenever any dam is authorized to be constructed, either by the Federal Government itself or by any private agency under Government permit, the Bureau of Fisheries shall be consulted, and before such construction is begun or permit granted, when deemed necessary, due and adequate provision, if economically practicable, shall be made for the migration of fish life from the upper to the lower and from the lower to the upper waters of said dam by means of fish lifts, ladders, or other devices. (48 Stat. 401)

Sec. 4. [Plans for better protection of wild-life resources].—The Office of Indian Affairs, the Bureau of Fisheries, and the Bureau of Biological Survey are authorized, jointly, to prepare plans for the better protection of the wild-life resources, including fish, migratory waterfowl and upland game birds, game animals and fur-bearing animals, upon all the Indian reservations and unallotted Indian lands coming under the supervision of the Federal Government. When such plans have been prepared they shall be promulgated by the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, who are authorized to make the necessary regulations for enforcement thereof and from time to time to change, alter, or amend such regulations. (48 Stat. 402)

Sec. 5. [Surveys of wild-life resources to be made.]—The Bureau of Biological Survey and the Bureau of Fisheries are hereby authorized to make surveys of the wild-life resources of the public domain, or of any lands owned or leased by the Government, to conduct such investigations as may be necessary for the development of a program for the maintenance of an adequate supply of wild life in these areas, to establish thereon game farms and fish-cultural stations commensurate with the need for replenishing the supply of game and fur-bearing animals and fish, and in cooperation with the National Park Service, the Forest Service, or other Federal agencies, the State agencies, to

coordinate and establish adequate measures for wild-life control on such game farms and fish-cultural stations: *Provided,* That no such game farm shall hereafter be established in any State without the consent of the legislature of that State. (48 Stat. 402)

Sec. 6. [Cooperation of Federal agencies and authority to accept donations.]—In carrying out the provisions of this act the Federal agencies charged with its enforcement may cooperate with other Federal agencies and with States, counties, municipalities, individuals, and public and private agencies, organizations, and institutions, and may accept donations of lands, funds, and other aids to the development of the program authorized in this act: *Provided, however,* That no such donations of land shall be accepted without consent of the legislature of the State in which such land may be situated: *Provided,* That no authority is given in this act for setting up any additional bureau or division in any department or commission, and shall not authorize any additional appropriation for carrying out its purposes (48 Stat. 402)

EXPLANATORY NOTES

Transfer of Functions. Reorganization Plan No. 2 of 1939, 53 Stat. 1433, transferred the Bureau of Fisheries, its personnel and functions, from the Department of Commerce to the Department of the Interior; transferred the functions of the Secretary of Commerce relating to the protection of fur seals and other fur bearing animals to the Secretary of the Interior; and transferred the functions of the Secretary of Agriculture relating to the conservation of wildlife, game and migratory birds to the Secretary of the Interior.

Creation of Fish and Wildlife Service. Section 3 of Reorganization Plan No. III of 1940, 54 Stat. 1232, consolidated the Bureau of Fisheries and the Bureau of Biological Survey into one agency in the Department of the Interior to be known as the Fish and Wildlife Service.

Legislative History. S. 2529, Public Law 121 in the 73rd Congress S. Rept. No. 244. H.R. Rept. No. 850 (on H.R. 7672).

MORATORIUM ON CONSTRUCTION CHARGES FOR 1934

An act to further extend the operation of the act entitled "An act for the temporary relief of water users on irrigation projects constructed and operated under the reclamation law" approved April 1, 1932. (Act of March 27, 1934, ch. 92, 48 Stat. 500)

[**Sec. 1. Construction charges for 1934 suspended; drainage deferred Uncompahgre project and water-right charges deferred on Grand Valley project.**]—The Secretary of the Interior is authorized and directed to extend such provisions of the Act entitled "An Act for the temporary relief of water users on reclamation projects constructed and operated under the reclamation law", approved April 1, 1932 (47 Stat. 75), as extended by the act of March 3, 1933 (47 Stat. 1427), as relate to the deferment of payment of certain water-rights charges for the years 1931, 1932, and 1933, in like manner to all similar charges coming due for the year 1934. The Secretary of the Interior is further authorized, upon the acceptance by the Uncompahgre Valley Water Users Association of the moratorium act of April 1, 1932, and its amendments, including this act, to enter into a contract with the association deferring the initiation of its drainage construction program until January 1, 1936, and permitting the completion of said drainage program during the years 1936 to 1941, both inclusive, under the conditions set out in the act of January 31, 1931 (46 Stat. 1974) as herein modified, and to extend such provisions of such section 3 as relate to certain water-rights charges on the Grand Valley reclamation project in like manner to all similar charges coming due for the year 1934. (48 Stat. 500)

Sec. 2. [Interest same as prescribed in act of March 3, 1933.]—Interest on the charges for which the time of payment is extended pursuant to this act shall be payable at the same rate and under the same conditions as those prescribed in such act of March 3, 1933, with respect to the charges for the years 1931, 1932, and 1933. (48 Stat. 501)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Acts of April 1, 1932, and March 3, 1933, referred to in the text, appear herein in chronological order.

Legislative History. S. 2534, Public Law 132 in the 73rd Congress. S. Rept. No. 321. H.R. Rept. No. 859.

Notes of Opinions

1. Application

Charges already deferred under earlier moratoria acts and coming due in 1934 may be further deferred under the provisions of this Act, as they come reasonably within the scope of the language, "all similar charges coming due for the year 1934." Solicitor Margold Opinion, 54 I.D. 550 (1934).

The Relief Act of March 27, 1934, in extending temporary relief on water charges, also extended relief from punishment for nonpayment of charges. Section 7 of the moratorium act of April 1, 1932, must be considered in granting moratorium under the relief act of March 27, 1934. Opinion of Acting Solicitor Fahey, April 17, 1934.

KING HILL IRRIGATION DISTRICT AGREEMENTS RESCINDED

An act to convey to the King Hill irrigation district, State of Idaho, all the interest of the United States in the King Hill Federal Reclamation Project, and for other purposes. (Act of June 18, 1934, ch. 571, 48 Stat. 980)

[Rescinding agreements with King Hill irrigation district.]—The Secretary of the Interior is hereby authorized to enter into a contract with the King Hill irrigation district, organized under the laws of the State of Idaho, by which said district and the United States shall rescind the agreements between them of March 2, 1926, November 14, 1923, January 11, 1922, June 17, 1920, and December 17, 1917, each party in such rescissory agreement to release the other from all obligations, accrued or to accrue, under the said five agreements, and the United States as a part of said rescissory agreement to quitclaim to the said district all the right, title, interest, and estate of the United States in or to said King Hill Reclamation projects, including the water rights thereof and any real estate acquired or held by the United States in connection therewith. (48 Stat. 980)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 3151, Public Law 378 in the 73rd Congress. S. Rept. No. 1055. H.R. Rept. No. 1600 (on H.R. 9583).

DEFICIENCY APPROPRIATION ACT FOR 1934

[Extracts from] An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1934, and prior fiscal years, to provide supplemental general and emergency appropriations for the fiscal years ending June 30, 1934, and June 30, 1935, and for other purposes. (Act of June 19, 1934, ch. 648, 48 Stat. 1021)

* * * * *

BUREAU OF RECLAMATION

[Sun River project.]—Refund of construction charges: For refund of construction charges heretofore paid on permanently unproductive land designated "Farm Unit F", in section 32, township 21 north, range 1 west, Sun River project in Montana, and excluded from said project in accordance with sections 42 and 44 of the act approved May 25, 1926 (44 Stat. 636), $335.40, payable from the reclamation fund.

[North Platte project.]—North Platte project, Nebraska-Wyoming: Not to exceed $6,000 from power revenues allocated to the Northport Irrigation District under subsection I, section 4, of the act of December 5, 1924 (43 Stat. 703), shall be available during the fiscal year 1935 for payment on behalf of the Northport Irrigation District, to the Farmers' Irrigation District for carriage of water for the Northport District under contract of August 10, 1915, between the United States and the Farmers' Irrigation District. (48 Stat. 1034)

EXPLANATORY NOTES

Not Codified. The above section of the Act of June 19, 1934, is not codified in the U.S. Code.

Provision Repeated. A similar appropriation from power revenues for payment to the Farmers Irrigation District is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781, with the following modifications: the Act of May 9, 1935, 49 Stat. 198, and subsequent acts omit the words after "carriage of water" to the end of the sentence; and the Act of October 12, 1949, 63 Stat. 781, makes the appropriation from "*net* power *and other* revenues." [Emphasis supplied.]

Cross References, Northport Irrigation District. Water to the Northport Irrigation District is transported through an extension of the Farmers' Irrigation District canal. The Northport District has annually reimbursed the Farmers' District for this carriage of water. Other statutory provisions authorizing the use of power revenues from the North Platte project for this purpose are found herein in chronological order under the Act of May 25, 1948, 62 Stat. 273, and the Act of September 6, 1950, 64 Stat. 689. The Act of August 13, 1957, 71 Stat. 342, also found herein in chronological order, authorizes the Secretary of the Interior to enter into an amendatory contract with the Northport Irrigation District in which contract the Northport Irrigation District shall relinquish any interest it may have in all present and potential power revenues from or related to the North Platte Federal reclamation project.

Reference in the Text. Subsection I, section 4, of the Act of December 5, 1924 (43 Stat. 703), deals with the distribution of the profit from projects taken over by water users. The Act is the Fact Finders' Act, which appears herein in chronological order.

Legislative History. H.R. 9830, Public Law 412 in the 73rd Congress. H.R. Rept. No. 1879. S. Rept. No. 1418. H.R. Rept. No. 2057 (conference report).

ADJUSTMENT OF CHARGES, LANGELL VALLEY IRRIGATION DISTRICT

An act to amend the act entitled "An act to adjust water-right charges, to grant other relief on the Federal irrigation projects, and for other purposes," approved May 25, 1926, with respect to certain lands in the Langell Valley irrigation district. (Act of June 27, 1934, ch. 849, 48 Stat. 1266)

[Omnibus Adjustment Act amended to provide: 1. Suspension of construction charges, Langell Irrigation District; 2. Contract for resumption of payment of construction charges required.]—The act entitled "An act to adjust water-right charges, to grant other relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926, is amended by adding after section 16 thereof the following new sections:

"**Sec. 16–A.** All payments upon construction charges shall be suspended against such lands in the Langell Valley irrigation district as the Secretary of the Interior shall cause to be classified as to productivity and as the said Secretary may determine to be temporarily unproductive because nonagricultural and unsuitable for irrigation, and the said Secretary is hereby authorized to reduce the construction obligations of the Langell Valley irrigation district exclusive of costs incurred in the construction of Clear Lake Channel in the ratio and proportion as the number of acres so found and determined to be temporarily unproductive bears to the total number of acres now included as a part of said irrigation district: *Provided,* That the amount of irrigation water to which the Langell Valley irrigation district is entitled shall be reduced in proportion to the area temporarily suspended from construction charges.

"**Sec. 16–B.** The Secretary of the Interior, as a condition precedent to the allowance of the benefits offered under section 16–A, shall require the Langell Valley irrigation district to execute a contract providing for the resumption of construction charges by said district upon all, or any, of such acreages so found and determined to be temporarily unproductive, as the Secretary of the Interior may, subsequent to such suspension, find and declare to be possessed of sufficient productive power to be again placed in the paying class." (48 Stat. 1266)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 16 of the Act of May 25, 1926, the Omnibus Adjustment Act.

Legislative History. S. 1510, Public Law 481 in the 73rd Congress. S. Rept. No. 1060.

TAYLOR GRAZING ACT

[**Extract from**] An act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes. (Act of June 28, 1934, ch. 865, 48 Stat. 1269)

* * * * *

Sec. 7. [**Classification of lands.**]—The Secretary of the Interior is hereby authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lien, exchange or script rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws, except that homestead entries shall not be allowed for tracts exceeding three hundred and twenty acres in area. Such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry: *Provided,* That locations and entries under the mining laws, including the Act of February 25, 1920, as amended, may be made upon such withdrawn and reserved areas without regard to classification and without restrictions or limitation by any provision of this Act. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of the Interior to any grazing permittee of such lands. The applicant, after his entry, selection, or location is allowed, shall be entitled to the possession and use of such lands: *Provided,* That upon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the Secretary of the Interior, shall entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided. (48 Stat. 1272; § 2, Act of June 26, 1936, 49 Stat. 1976; 43 U.S.C. § 315f)

Explanatory Notes

1936 Amendment. Section 2 of the Act of June 26, 1936, amended the section generally by extending the classification authority to all lands covered by Executive Orders 6910 and 6964, as well as lands within a grazing district, and by permitting lands after appropriate classification to be open to all forms of entry, selection or location under the public land laws, rather than confining such entry to homesteads. For legislative history of the 1936 Act see H.R. 10094, Public Law 827 in the 74th Congress; H.R. Rept. No. 2125; S. Rept. No. 2371.

Executive Orders. Executive Order No. 6910 (November 26, 1934) withdrew from settlement, location, sale or entry, all vacant, unreserved and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah and Wyoming, for classification under the Act of June 28, 1934, and for conservation and development of natural

resources. Executive Order No. 6964 (February 5, 1935) withdrew from settlement, location, sale, or entry, all public lands, except public lands under an existing reservation for a public purpose, in the States of Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, Oklahoma, Washington, and Wisconsin, for classification and for conservation and development of natural resources.

Reference in Text. The Act of February 25, 1920, referred to in the text, is the Mineral Leasing Act.

Editor's Notes, Annotations. Only selected annotations of opinions are included because this act does not relate primarily to activities of the Bureau of Reclamation.

Legislative History. H.R. 6462, Public Law 482 in the 73rd Congress. H.R. Rept. No. 903. S. Rept. No. 1182. H.R. Rept. No. 2050 (conference report).

NOTES OF OPINIONS

Classification 1
Withdrawals, effect of 2

1. Classification

In exercise of the discretionary authority vested in the Secretary under section 7 of the Taylor Grazing Act, as amended, public land in the Imperial Valley, California, may be classified as not proper for disposition under the Desert Land Act, 19 Stat. 377, as amended, on the grounds that it would be contrary to the public interest at this time to increase the pressure on the inadequate water supply available for use in California from the Colorado River. *Hugh S. Ritter, Thomas M. Bunn,* 72 I.D. 111 (1965). See also *Stephan H. Clarkson,* 72 I.D. 138 (1965).

2. Withdrawals, effect of

Land withdrawn under reclamation withdrawal is not unreserved land or land of the type contemplated in Executive Order No. 6910, withdrawing all vacant, unreserved and unappropriated public land in 12 Western States, and unless and until public lands withdrawn pursuant to the Act of June 17, 1902, are restored or eliminated by the Department from such reclamation withdrawals, such lands are excepted from said Executive order, except as otherwise therein provided. Decision of General Land Office, December 13, 1934, approved by First Assistant Secretary, in re Udin entry 05979, Greenfields Irrigation District.

Executive Order No. 6910 applies to lands which at the time of the order were covered by withdrawal and attaches to such lands upon the termination of the prior withdrawal. Solicitor Margold Opinion, 55 I.D. 205 (1935).

Where lands within a grazing district are found to be needed for reclamation purposes and are more valuable or suitable for that purpose than for grazing purposes, the Secretary of the Interior may, by one order, eliminate them from the grazing district and withdraw them for reclamation purposes by virtue of his authority under the Act of June 26, 1936, and the Act of June 17, 1902, 32 Stat. 388. Memorandum of First Assistant Secretary Walters to Commissioner, General Land Office, July 10, 1936.

Public land in a state irrigation district under the Smith Act and burdened with an obligation to pay a proportionate share of irrigation charges is unaffected by the withdrawal order of November 26, 1934, which order declares its operation as a land withdrawal is subject to "existing valid rights." *Harley R. Black,* 55 I.D. 445 (1936).

Public land which is included in a first form reclamation withdrawal is not open to selection and disposal under the private exchange provisions of section 8 of the Taylor Grazing Act. *Perley M. Lewis,* A–26748 (June 9, 1954).

SOIL AND MOISTURE CONSERVATION

An act to provide for the protection of land resources against soil erosion, and for other purposes. (Act of April 27, 1935, ch. 85, 49 Stat. 163)

[Sec. 1. Protection of land resources against soil erosion.]—It is hereby recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is hereby declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment, and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion and in order to effectuate this policy is hereby authorized, from time to time—

(1) **[Surveys and investigations to be conducted.]**—To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water;

(2) To carry out preventive measures, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land;

(3) To cooperate or enter into agreements with, or to furnish financial or other aid to, any agency, governmental or otherwise, or any person, subject to such conditions as he may deem necessary, for the purposes of this Act; and

(4) To acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this Act. (49 Stat. 163; 16 U.S.C. § 590a)

Sec. 2. [Lands on which preventive measures may be taken.]—The acts authorized in section 1 (1) and (2) may be performed—

(a) On lands owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction thereof; and

(b) On any other lands, upon obtaining proper consent or the necessary rights or interests in such lands. (49 Stat. 163; 16 U.S.C. § 590b)

Sec. 3. [Conditions to extending benefits.]—As a condition to the extending of any benefits under this Act to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of this Act, require—

(1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion;

(2) Agreements or covenants as to the permanent use of such lands; and

(3) Contributions in money, services, materials, or otherwise, to any operations conferring such benefits. (49 Stat. 163; 16 U.S.C. § 590c)

Sec. 4. [Cooperation of governmental agencies; officers and employees, appointment and compensation; expenditures for personal services and supplies.]—For the purposes of this Act, the Secretary of Agriculture may—

(1) Secure the cooperation of any governmental agency;

(2) Subject to the provisions of the civil-service laws and the Classification Act of 1949, as amended, appoint and fix the compensation of such officers and employees as he may deem necessary, except for a period not to exceed eight months from the date of this enactment, the Secretary of Agriculture may make appointments and may continue employees of the organization heretofore established for the purpose of administering those provisions of the National Industrial Recovery Act which relate to the prevention of soil erosion, without regard to the civil-service laws or regulations and the Classification Act, as amended; and any persons with technical or practical knowledge may be employed and compensated under this Act on a basis to be determined by the Civil Service Commission; and

(3) Make expenditures for personal services and rent in the District of Columbia and elsewhere, for the purchase of law books and books of reference, for printing and binding, for the purchase, operation, and maintenance of passenger-carrying vehicles, and perform such acts, and prescribe such regulations, as he may deem proper to carry out the provisions of this Act. (49 Stat. 164; Act of October 28, 1949, 63 Stat. 972; 16 U.S.C. § 590d)

EXPLANATORY NOTE

1949 Amendment. The Act of October 28, 1949, substituted the "Classification Act of 1949" for "Classification Act of 1923" in the text.

Sec. 5. [Soil Conservation Service established; transfer of functions to.]—The Secretary of Agriculture shall establish an agency to be known as the "Soil Conservation Service", to exercise the powers conferred on him by this Act and may utilize the organization heretofore established for the purpose of administering those provisions of sections 202 and 203 of the National Industrial Recovery Act which relate to the prevention of soil erosion, together with such personnel thereof as the Secretary of Agriculture may determine, and all unexpended balances of funds heretofore allotted to said organization shall be available until June 30, 1937, and the Secretary of Agriculture shall assume all obligations incurred by said organization prior to transfer to the Department of Agriculture. Funds provided in H. J. Res. 117, "An Act making appropriation for relief purposes" (for soil erosion) shall be available for expenditure under the provisions of this Act; and in order that there may be proper coordination of erosion-control activities the Secretary of Agriculture may transfer to the agency created under this Act such functions, funds, personnel, and property of other agencies in the Department of Agriculture as he may from time to time determine. (49 Stat. 164; 16 U.S.C. § 590e)

EXPLANATORY NOTES

Reference in the Text. H.J. Res. 117, "An Act making appropriation for relief purposes", referred to in the text, is the Emergency Relief Appropriation Act of 1935, approved April 8, 1935, Pub. Res., No. 11, 49 Stat. 115.

Sec. 6. [Appropriation authorization.]—There are hereby authorized to be appropriated for the purposes of this Act such sums as Congress may from time to time determine to be necessary. (49 Stat. 164; 16 U.S.C. § 590e, note)

EXPLANATORY NOTES

Cross Reference, Appropriation Act Language. The current appropriation act language regarding soil and moisture conservation appears herein as an extract from the Interior Department Appropriation Act, 1951, approved September 6, 1950.

Legislative History. H.R. 7054, Public Law 46 in the 74th Congress. H.R. Rept. No. 528. S. Rept. No. 466.

NOTES OF OPINIONS

Demonstration measures 3
Generally 1
Preparatory work 2

1. Generally

The Department may carry out soil and moisture conservation programs on lands under its jurisdiction even though the primary benefits from such programs accrue to lands in private ownership or to federally owned improvements which are under the jurisdiction of other Federal agencies. Solicitor's Opinion M–36047, 60 I.D. 436 (1950), will not be followed to the extent it holds otherwise. Solicitor Barry Opinion, 72 I.D. 92 (1965).

The authority of the Secretary of the Interior under the Act of April 27, 1935, and Reorganization Plan No. IV of 1940 is limited to the performance of soil and moisture conservation work on lands under his jurisdiction, or which has as its primary purpose the protection and benefit of lands under his jurisdiction. But once it has been determined that any such land is in need of soil and moisture conservation work, he may proceed to carry out that work regardless of the fact that any or even all of the actual operations must be performed on private lands, and of the fact that resultant benefits may flow to private lands. Acting Solicitor Flanery Opinion, 57 I.D. 382, 387–90 (1941).

2. Preparatory work

Under the Soil and Moisture Conservation Act of 1935 and section 6 of Reorganization Plan No. IV (1940) authority exists in the Secretary of the Interior to do certain preparatory work, such as clearing, leveling, and constructing farm ditches, and planting cover crops, on public lands within irrigation projects in the interest of preventing and controlling erosion by wind and water. Solicitor White Opinion, 59 I.D. 299, 304–05 (1946).

3. Demonstration measures

The Bureau of Reclamation is authorized to spend funds appropriated for soil and moisture conservation programs for demonstration measures on private lands in connection with reclamation projects to demonstrate methods of applying water and other irrigation practices for the purpose of improving the efficiency of water use, to reduce siltation and to prevent seepage injury to public lands. Solicitor Gardner Opinion, 58 I.D. 449 (1943).

[EXTRACTS FROM] REORGANIZATION PLAN NO. IV OF 1940

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 11, 1940, pursuant to the provision of the Reorganization Act of 1939, approved April 3, 1939 (54 Stat. 1234)

* * * * *

DEPARTMENT OF THE INTERIOR

Sec. 6. [Certain functions of the Soil Conservation Service transferred.]—The functions of the Soil Conservation Service in the Department of Agriculture with respect to soil and moisture conservation operations conducted on any lands under the jurisdiction of the Department of the Interior are transferred to the Department of the Interior and shall be administered under the direction and supervision of the Secretary of the Interior through such agency or agencies in the Department of the Interior as the Secretary shall designate. (54 Stat. 1235)

NOTE OF OPINION

1. Authority transferred

Section 6 of the Reorganization Plan No. IV of 1940 transferred to the Department of the Interior with respect to lands under its jurisdiction only the authority of the Soil Conservation Service under the Act of April 27, 1935, and did not transfer the authority of the Soil Conservation Service under the Water Facilities Act of August 28, 1937, 50 Stat. 869, the Flood Control Act of June 22, 1936, 49 Stat. 1570, as amended, or Title III of the Bankhead-Jones Farm Tenant Act of July 22, 1937, 50 Stat. 525. Letter of Attorney General to Secretary of the Interior, August 5, 1941, reversing in part Solicitor Margold Opinion, M–31174 (May 28, 1941).

* * * * *

GENERAL PROVISIONS

Sec. 13. [Transfer of functions of heads of departments.]—Except as otherwise provided in the Plan, the functions of the head of any department relating to the administration of any agency or function transferred from his department by this Plan, are transferred to, and shall be exercised by, the head of the department or agency to which such transferred agency or function is transferred by this Plan. (54 Stat. 1237)

* * * * *

EXPLANATORY NOTE

Effective Date. Section 4 of the Act of June 4, 1940, 54 Stat. 231, provides that: "The provisions of . . . Reorganization Plan Numbered IV, submitted to the Congress on April 11, 1940, shall take effect on June 30, 1940, notwithstanding the provisions of the Reorganization Act of 1939."

MORATORIUM ON CONSTRUCTION CHARGES FOR 1935

[**Extract from**] An act to further extend relief to water users on United States reclamation projects and on Indian irrigation projects. (Act of June 13, 1935, c. 219, 49 Stat. 337)

Sec. 1. [All provisions of Act of March 27, 1934, extended for one year.]—All of the provisions of the Act entitled "An Act to further extend the operation of the Act entitled 'An Act for the temporary relief of water users on irrigation projects constructed and operated under the reclamation law', approved April 1, 1932", approved March 27, 1934, be, and all of the provisions thereof are hereby, further extended for the period of one year. (49 Stat. 337)

* * * * *

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

1936 Modification. Section 3 of the Act of April 14, 1936, 49 Stat. 1207, provides that this Act shall be "further extended for a period of one year so far as concerns 50 per centum of the construction charges, for the calendar year 1936; *Provided, however,* That where the construction charge for the calendar year 1936 is payable in two installments, the sum hereby extended shall be the amount due as the first of such installments. If payable in one installment, the due date for the 50 per centum to be paid shall not be changed." The 1936 Act appears herein in chronological order.

Legislative History. S. 1305, Public Law 128 in the 74th Congress. Unnumbered S. Rept. H.R. Rept. No. 1039 (on H. Res. 232).

GENERAL AUTHORITY, INTERNATIONAL BOUNDARY COMMISSION

An act to amend the Act of May 13, 1924, entitled "An Act providing for a study regarding the equitable use of the waters of the Rio Grande", and so forth, as amended by the public resolution of March 3, 1927. (Act of August 19, 1935, ch. 561, 49 Stat. 660)

The Act of May 13, 1924, entitled "An Act providing for a study regarding the equitable use of the waters of the Rio Grande below Fort Quitman, Texas, in cooperation with the United States of Mexico", as amended by the public resolution of March 3, 1927, is hereby amended to read as follows:

"**Sec. 1. [Cooperative study with Mexico on Lower Rio Grande and Lower Colorado and Tia Juana Rivers.]**—The President is hereby authorized to designate the American Commissioner on the International Boundary Commission, United States and Mexico, or other Federal agency, to cooperate with a representative or representatives of the Government of Mexico in a study regarding the equitable use of the waters of the lower Rio Grande and the lower Colorado and Tia Juana Rivers, for the purpose of obtaining information which may be used as a basis for the negotiation of a treaty with the Government of Mexico relative to the use of the waters of these rivers and to matters closely related thereto. On completion of such study the results shall be reported to the Secretary of State. (49 Stat. 660; 22 U.S.C. § 277)

"**Sec. 2. [Authority to construct boundary markers, utility systems and Lower Rio Grande flood control and other works.]**—The Secretary of State, acting through the American Commissioner, International Boundary Commission, United States and Mexico, is further authorized to conduct technical and other investigations relating to the defining, demarcation, fencing, or monumentation of the land and water boundary between the United States and Mexico, to flood control, water resources, conservation, and utilization of water, sanitation and prevention of pollution, channel rectification, and stabilization and other related matters upon the international boundary between the United States and Mexico; and to construct and maintain fences, monuments and other demarcations of the boundary line between the United States and Mexico, and sewer systems, water systems, and electric light, power and gas systems crossing the international border, and to continue such work and operations through the American Commissioner as are now in progress and are authorized by law.

"The President is authorized and empowered to construct, operate, and maintain on the Rio Grande River below Fort Quitman, Texas, any and all works or projects which are recommended to the President as the result of such investigations and by the President are deemed necessary and proper. (49 Stat. 660; 22 U.S.C. § 277a)

"**Sec. 3. [Authority to construct and operate treaty projects.]**—(a) The President is further authorized to construct any project or works which may be provided for in a treaty entered into with Mexico and to repair, protect, maintain, or complete works now existing or now under construction or those that may be

constructed under the treaty provisions aforesaid; and to construct any project or works designed to facilitate compliance with the provisions of treaties between the United States and Mexico; and (b) to operate and maintain any project or works so constructed or, subject to such rules and regulations for continuing supervision by the said American Commissioner or any Federal agency as the President may cause to be promulgated, to turn over the operation and maintenance of such project or works to any Federal agency, or any State, county, municipality, district, or other political subdivision within which such project or works may be in whole or in part situated, upon such terms, conditions, and requirements as the President may deem appropriate. (49 Stat. 660; 22 U.S.C. § 277b)

"**Sec. 4. [Acceptance, acquisition and withdrawal of lands.]**—In order to carry out the provisions of this Act, the President, or any Federal agency he may designate is authorized, (a) in his discretion, to enter into agreements with any one or more of said political subdivisions, in connection with the construction of any project or works provided for in section 2, paragraph 2, and section 3 of this Act, under the terms of which agreements there shall be furnished to the United States, gratuitously, except for the examination and approval of titles, the lands or easements in lands necessary for the construction, operation, and maintenance in whole or in part of any such project or works, or for the assumption by one or more of any such political subdivisions making such agreement, of the operation and maintenance of such project or works in whole or in part upon the completion thereof: *Provided, however,* That when an agreement is reached that necessary lands or easements shall be provided by any such political subdivision and for the future operation and maintenance by it of a project or works or a part thereof, in the discretion of the President the title to such lands and easements for such projects or works need not be required to be conveyed to the United States but may be required only to be vested in and remain in such political subdivision; (b) to acquire by purchase, exercise of the power of eminent domain, or by donation, any real or personal property which may be necessary; (c) to withdraw from sale, public entry or disposal of such public lands of the United States as he may find to be necessary and thereupon the Secretary of the Interior shall cause the lands so designated to be withdrawn from any public entry whatsoever, and from sale, disposal, location or settlement under the mining laws or any other law relating to the public domain and shall cause such withdrawal to appear upon the records in the appropriate land office having jurisdiction over such lands, and such lands may be used for carrying out the purposes of this Act: *Provided,* That any such withdrawal may subsequently be revoked by the President; and (d) to make or approve all necessary rules and regulations. (49 Stat. 661; Act of May 22, 1936, 49 Stat. 1370; 22 U.S.C. § 277c)

EXPLANATORY NOTE

1936 Amendment. The Act of May 22, 1936, 49 Stat. 1370, changed "section 3 hereof" to read "section 2, paragraph 2, and section 3 of this Act." For legislative history of the 1936 Act see H.R. 10321, Public Law 613 in the 74th Congress; H.R. Rept. No. 2128.

"**Sec. 5. [Moneys contributed by Mexico.]**—Any moneys contributed by or received from the United Mexican States for the purpose of cooperating or assisting in carrying out the provisions of this Act shall be available for expenditure in connection with any appropriation which may be made for the purposes of this Act." (49 Stat. 661; 22 U.S.C. § 277d)

EXPLANATORY NOTES

1924 Act: International Water Commission. The Act of May 13, 1924, 43 Stat. 118, which this Act amends, authorized the appointment of three special commissioners to meet with representatives of Mexico to study the use of the waters of the Rio Grande below Fort Quitman, Texas. The joint group was known as the International Water Commission. The Joint Resolution of March 3, 1927, 44 Stat. 1403, extended the study to include the Lower Colorado and Tia Juana Rivers. The American Section submitted a report to Congress on April 21, 1930, H.R. Doc. No. 359, 71st Congress. The Act of June 30, 1932, 47 Stat. 417, abolished the American Section of the Commission and transferred its functions to the International Boundary Commission.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treaty with Mexico of February 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Cross Reference, Treaties with Mexico. A note following the Treaty of February 3, 1944, herein, briefly describes the treaties and conventions with Mexico regarding the Rio Grande and the Colorado Rivers.

Lower Rio Grande Flood Control Project. On September 3, 1932, the International Boundary Commission signed a report recommending that each commissioner be authorized to construct flood control works on the Lower Rio Grande within his own country, and both countries accepted the report. Construction on the American side began in December, 1933, under authority of the National Industrial Recovery Act, utilizing funds allotted by the Public Works Administration. The above Act of August 19, 1935, particularly section 2, confers general statutory authority to carry out the project. In addition to levees and floodways, the project includes the Anzaldúas flood control diversion dam on the Rio Grande near Mission, Texas. A provision in the State Department appropriation act of July 10, 1952, 66 Stat. 549, and subsequent appropriation acts, provides that Anzaldúas Dam may not be used for irrigation or water supply purposes unless suitable arrangements have been made for repayment of costs allocated to these functions. The text of the provision appears herein in chronological order.

Rio Grande Rectification Project. The Commission also carries on the Rio Grande rectification project in the El Paso-Juarez Valley pursuant to the Convention with Mexico of February 1, 1933 (effective November 10, 1933), 48 Stat. 1621.

Supplementary Provision: Additional Miscellaneous Authority. The Act of August 27, 1935, 49 Stat. 906, as amended, provides additional miscellaneous authorities in connection with operations of the Commission. The Act appears herein in chronological order.

Supplementary Provisions: American Diversion Dam and Rio Grande Canalization Project. The Act of August 29, 1935, 49 Stat. 961, authorizes construction of the American Diversion Dam, and the Act of June 4, 1936, 49 Stat. 1463, authorizes the Rio Grande canalization project. The Act of September 18, 1964, 78 Stat. 956, authorizes additional watershed control works in connection with the Rio Grande canalization project. All three acts appear herein in chronological order.

Supplementary Provision: Valley Gravity Canal and Storage Project. The Interior Department Appropriation Act of June 28, 1941, 55 Stat. 338, authorizes construction of the Valley Gravity canal and storage project, Texas, a reclamation project in the Lower Rio Grande Valley, with construction of the international features to be done by the International Boundary Commission. The project has not been constructed. The text of the provision appears herein in chronological order.

Supplementary Provision: American-Mexican Treaty Act of 1950. The Act of September 13, 1950, 64 Stat. 846, grants additional authority in connection with projects of the Commission. The Act appears herein in chronological order.

Supplementary Provisions: Falcon Dam. The Act of October 5, 1949, 63 Stat. 701,

authorizes U.S. participation in the construction of hydroelectric power facilities at Falcon Dam, and the Act of June 18, 1954, 68 Stat. 255, authorizes the Secretary of the Interior to market this power. Both acts appear herein in chronological order.

Supplementary Provisions: Amistad Dam. The Act of July 7, 1960, 74 Stat. 360, authorizes United States participation in the construction of Amistad Dam on the Rio Grande, including power development if it can be put on a self-liquidating basis. The Act of December 23, 1963, 77 Stat. 475, authorizes the Secretary of the Interior to market power generated at the project in conjunction with power from Falcon Dam. The 1960 and 1963 Acts appear herein in chronological order.

Supplementary Provision: Lower Colorado River Flood Control Measures. The Act of August 10, 1964, 78 Stat. 386, authorizes United States participation in flood control measures in the reaches of the Colorado River from Imperial Dam to the Gulf of California. The Act appears herein in chronological order.

Supplementary Provision: Franklin Canal Relocation. Pursuant to the authority contained in section 1 of the American-Mexican Chamizal Act of 1964, enacted April 29, 1964, 78 Stat. 184, the International Boundary Commission, United States and Mexico, relocated 1.7 miles of the Franklin Canal, which is part of the distribution system of the Rio Grande project. For legislative history of the 1964 Act see S. 2394 in the 88th Congress; S. Rept. No. 868; H.R. Rept. No. 1233.

Editor's Note, Annotations. Annotations of opinions are not included because this statute does not deal primarily with the activities of the Bureau of Reclamation.

Legislative History. H.R. 6453, Public Law 286 in the 74th Congress. H.R. Rept. No. 422. S. Rept. No. 633. H.R. Rept. No. 1736 (conference report).

AMEND REHABILITATION OF BITTER ROOT PROJECT ACT

An act to amend sections 3 and 4 of the act of July 3, 1930, entitled "An act for the rehabilitation of Bitter Root irrigation project, Montana." (Act of August 26, 1935, ch. 681, 49 Stat. 799)

Repealed.

EXPLANATORY NOTES

Repealed. The Act of May 6, 1949, 63 Stat. 62, which appears herein in chronological order, repealed this Act and the Act of July 3, 1930, 46 Stat. 852, referred to in section 2 below. The text of the Act before repeal read as follows:

"[**Sec. 1. Amendatory contract authorized.**]—The Secretary of the Interior is authorized and directed to negotiate and execute a contract with the Bitter Root Irrigation District, amending as provided herein articles 3 and 6 of the contract dated August 24, 1931, between the United States of America and said irrigation district. The amended contract shall segregate the district's obligation into two components: (1) All money advanced to the district under section 2, subsection (1) of the Act of July 3, 1930, for liquidating bonded and other outstanding indebtedness of said district; and (2) all money advanced or used under section 2, subsections (2) and (3) of said Act for construction, betterment, and repair work. All money advanced under component (1) shall be repaid to the United States within the period fixed in said contract, with interest at 4 per centum per annum until paid: *Provided,* That all interest now due and unpaid on component (1) shall be added to and merged with the principal sum advanced under that component. Nothing herein contained shall be construed as authorizing a modification in said amendatory contract of the interest charges heretofore paid by the district under the contract of August 24, 1931. (49 Stat. 799)

"**Sec. 2. [Penalty if default in payment.**]—The amended contract shall provide also that all money advanced or used under section 2, subsections (2) and (3) of the Act of July 3, 1930, shall be repaid to the United States without interest within the period fixed in said contract, and in the case of default in the payment when due of any installment fixed by the Secretary for repayment of money advanced or used under said section 2, subsections (2) and (3), there shall be added to the payment unpaid a penalty of one-half of 1 per centum of the amount unpaid on the 1st day of each month thereafter so long as such default shall continue." (49 Stat. 799)

Legislative History. S. 946, Public Law 327 in the 74th Congress. S. Rept. No. 403. H.R. Rept. No. 810.

FEDERAL POWER ACT

Editor's Note. The Act of August 26, 1935, ch. 687, 49 Stat. 803, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes," is the Public Utility Act of 1935. Title I carries the short title of the Public Utility Holding Company Act of 1935. Title II deals with amendments to the Federal Water Power Act of June 10, 1920. Sections 201 through 211 of Title II, 49 Stat. 838–47, make a number of revisions in the 1920 Act; section 212, 49 Stat. 847, provides that the Federal Water Power Act, as amended, shall constitute Part I of an expanded act; and section 213, 49 Stat. 847–63, adds Part II, relating to the regulation of electrical utility companies engaged in interstate commerce, and Part III, dealing with licenses and administrative matters. This expanded act is given the short title of the Federal Power Act, 49 Stat. 863. Extracts from Parts II and III appear below, while Part I, the revised Federal Water Power Act, appears in chronological order herein under the Act of June 10, 1920.

* * * * *

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

DECLARATION OF POLICY, APPLICATION OF PART, DEFINITIONS

Sec. 201. [Applies to transmission, and to sale at wholesale, of electric energy in interstate commerce.]—(a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.

(e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto. (49 Stat. 847; 16 U.S.C. § 824)

EXPLANATORY NOTE

Editor's Note, Annotations. Only selected annotations of opinions are included.

NOTES OF OPINIONS

1. F.P.C. jurisdiction

The inclusion of energy from Hoover and Davis dams in the energy sold to the City of Colton, California, by the Southern California Edison Company renders such sale a "sale of electric energy at wholesale in interstate commerce" within the meaning of section 201(b) of the Federal Power Act, and therefore such sale is subject to the jurisdiction of the Federal Power Commission. The distinction in the act between Federal and State regulatory jurisdiction turns on whether the sale is at wholesale to local distributing companies or is at local retail rates to ultimate consumers. *F.P.C.* v. *Southern California Edison Co.,* 376 U.S. 205 (1964).

The authority conferred on the Secretary of the Interior by section 6 of the Boulder Canyon Project Act to prescribe and enforce rules and regulations conforming with the requirements of the Federal water power act respecting "control of rates and service" of companies purchasing Hoover power, was superseded and repealed by Part II of the Federal Power Act of 1935 with respect to resales of electric energy from Hoover dam at wholesale in interstate commerce, and therefore the Federal Power Commission has jurisdiction over the rates at which Southern California Edison Company sells power, including energy from Hoover and Davis dams, to the City of Colton, California. *F.P.C.* v. *Southern California Edison Co.,* 376 U.S. 205, 216–20 (1964).

The rates charged by Utah Power and Light Company for wheeling energy, some of which originates out of state, for the Bureau of Reclamation to preference customers are subject to the jurisdiction of the Federal Power Commission under section 201 of the Federal Power Act notwithstanding the fact that the company is performing this paid transportation service for an agency of the Federal Government whose own operations are not subject to the jurisdiction of the Commission. 33 F.P.C. 314 (1965).

INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

Sec. 202. (a) [Regions—Voluntary interconnections.]—For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the

public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) **[Mandatory interconnections.]**—Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided,* That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

(c) **[Emergency powers.]**—During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(d) **[Emergency interconnections.]**—During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the

transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided,* That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further,* That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

(e) **[Transmission to foreign country.]**—After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

(f) **[Limit on jurisdiction.]**—The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202(e). (49 Stat. 848; Act of August 7, 1953, 67 Stat. 461; 16 U.S.C. § 824a)

EXPLANATORY NOTE

1953 Amendment. The Act of August 7, 1953, added subsection (f). For legislative history of the 1953 Act see S. 1442, Public Law 210 in the 83rd Congress; S. Rept. No. 513; H.R. Rept. No. 978.

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

ACCOUNTS, RECORDS, AND MEMORANDA

Sec. 301. (a) [Records to be kept—Commission may prescribe system of accounts.]—Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of

the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) **[Access to property and accounts—Commission shall not divulge information.]**—The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(c) **[Records subject to examination.]**—The books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility subject to the jurisdiction of the Commission, and of any other company controlled by such person, insofar as they relate to transactions with or the business of such licensee or public utility, shall be subject to examination on the order of the Commission. (49 Stat. 854; 16 U.S.C. § 825)

EXPLANATORY NOTE

1953 Modification. The Act of August 15, 1953, 67 Stat. 587, as amended by the Act of July 31, 1959, 73 Stat. 271, provides that sections 301 and 302 shall not apply to any project owned by a State or a municipality. The text of the 1953 Act appears herein as a note following section 14 of this Act.

RATES OF DEPRECIATION

Sec. 302. (a) **[Commission may fix rates of depreciation.]**—The Commission may, after hearing, require licensees and public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine, and by order fix, the proper and adequate

rates of depreciation of the several classes of property of each licensee and public utility. Each licensee and public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The licensees and public utilities subject to the jurisdiction of the Commission shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such licensee or public utility shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State Commission to determine in the exercise of its jurisdiction, with respect to any public utility, the percentage rate of depreciation to be allowed, as to any class of property of such public utility, or the composite depreciation rate, for the purpose of determining rates or charges.

(b) [State Commission to be notified.]—The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any public utility involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations. (49 Stat. 855; 16 U.S.C. § 825a)

EXPLANATORY NOTE

1953 Modification. The Act of August 15, 1953, 67 Stat. 587, as amended by the Act of July 31, 1959, 73 Stat. 271, provides that sections 301 and 302 shall not apply to any project owned by a State or a municipality. The text of the 1953 Act appears herein as a note following section 14 of this Act.

REQUIREMENTS APPLICABLE TO AGENCIES OF THE UNITED STATES

Sec. 303. [Requirements applicable to agencies of the United States.]—All agencies of the United States engaged in the generation and sale of electric energy for ultimate distribution to the public shall be subject, as to all facilities used for such generation and sale, and as to the electric energy sold by such agency, to the provisions of sections 301 and 302 hereof, so far as may be practicable, and shall comply with the provisions of such sections and with the rules and regulations of the Commission thereunder to the same extent as may be required in the case of a public utility. (49 Stat. 855; 16 U.S.C. § 825b)

* * * * *

INVESTIGATIONS RELATING TO ELECTRIC ENERGY

Sec. 311. [Investigations relative to electric energy authorized—Commission to secure and keep current information and report investigations to Congress.]—In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions,

whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State. It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section. (49 Stat. 859; 16 U.S.C. § 825j)

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SHORT TITLE

Sec. 320. This Act may be cited as the "Federal Power Act." (49 Stat. 863; 16 U.S.C. § 791a)

EXPLANATORY NOTE

Legislative History. S. 2796, Public Law 333 in the 74th Congress. S. Rept. No. 621 and S. Rept. No. 621, pt. 2. H.R. Rept. No. 1318 and H.R. Rept. No. 1318, pt. 2 H.R. Rept. No. 1903 (conference report).

MISCELLANEOUS AUTHORITY, INTERNATIONAL BOUNDARY COMMISSION

An act to authorize the Secretary of State to lease to citizens of the United States any land heretofore or hereafter acquired under any Act, Executive order or treaty in connection with projects, in whole or in part constructed or administered by the Secretary of State through the International Boundary Commission, United States and Mexico, American section. (Act of August 27, 1935, ch. 763, 49 Stat. 906)

[**Lease and disposition of lands.**]—The Secretary of State is authorized to lease any land heretofore or hereafter acquired under any Act, Executive order, or treaty in connection with projects, in whole or in part, constructed or administered by the Secretary of State through the said American Commissioner, or to dispose of such lands when no longer needed, subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, by sale at public auction, after thirty days' advertisement, at a price not less than that which may be fixed by three disinterested appraisers, to be designated by the Secretary of State, or by private sale, or otherwise, at not less than such appraised value: *Provided,* That any of such land as shall have been donated to the United States and which is no longer needed may be reconveyed, without cost, to the grantor or his heirs: *Provided further,* That the lease or disposal of any land pursuant hereto may, in the discretion of the Secretary of State, be subject to reservations in favor of the United States for rights-of-way for irrigation, drainage, river work, and other purposes, and any such disposal may be conditioned upon and made subject to inclusion of such lands in any existing irrigation district in the vicinity of such lands, the proceeds of any such lease or sale to be covered into the Treasury of the United States: *And provided further,* That in the discretion of the Secretary of State, and subject to such conditions as he may deem appropriate, conveyances of any other of such lands not needed by the United States may be made to the State to which they lie adjacent or to any similarly situated county, city, or other governmental subdivision of such State, without cost, for use for public purposes.

[**Revocable licenses.**]—The Secretary of State is further authorized to issue revokable licenses for public or private use for irrigation or other structures or uses not inconsistent with the use of such lands made, or to be made, by the United States, across any lands retained by the United States, and to execute all necessary leases, title instruments, and conveyances, in order to carry out the provisions of this Act.

[**Restoration of property.**]—Whenever the construction of any project or works undertaken or administered by the Secretary of State through the International Boundary and Water Commission, United States and Mexico, results in the interference with or necessitates the alteration or restoration of constructed and existing irrigation or water-supply structures, sanitary or sewage disposal works, or other structures, or physical property belonging to any municipal or private corporation, company, association, or individual, the Secretary of State may cause the restoration or reconstruction of such works, structures, or physical

property or the construction of others in lieu thereof or he may compensate the owners thereof to the extent of the reasonable value thereof as the same may be agreed upon by the American Commissioner with such owner.

[**Damage claims.**]—The Secretary of State acting through such officers as he may designate, is further authorized to consider, adjust, and pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages accruing after March 31, 1937, caused to owners of lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary and Water Commission, United States and Mexico, if such claim for damages does not exceed $1,000 and has been filed with the American Commissioner within one year after the damage is alleged to have occurred, and when in the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by the said Commissioner. (49 Stat. 906; Act of June 19, 1939, 53 Stat. 841; § 2(15), Act of October 31, 1951, 65 Stat. 707; Act of August 28, 1957, 71 Stat. 475; 22 U.S.C. § 277e)

EXPLANATORY NOTES

1957 Amendment. The Act of August 28, 1957, 71 Stat. 475, eliminated from the first paragraph the limitation that leases could be issued only to American citizens. For legislative history of the 1957 Act see H.R. 8929, Public Law 85–201 in the 85th Congress; H.R. Rept. No. 945; S. Rept. No. 862.

1951 Amendment. Section 2(15) of the Act of October 31, 1951, 65 Stat. 707, inserted the reference in the first paragraph to the Federal Property and Administrative Services Act of 1949.

1939 Amendment. The Act of June 19, 1939, 53 Stat. 841, added the last paragraph relating to damage claims. For legislative history of the 1939 Act see H.R. 3065, Public Law 134 in the 76th Congress; H.R. Rept. No. 274; S. Rept. No. 519.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treaty with Mexico of February 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Cross Reference, Treaties with Mexico. A note following the Treaty of February 3, 1944, herein, briefly describes the treaties and conventions with Mexico regarding the Rio Grande and the Colorado Rivers.

Cross Reference, Damage Claims from Construction of Falcon Dam. The Act of August 19, 1964, 78 Stat. 481, authorizes the United States Commissioner to settle claims for loss by reason of sudden floods of the Rio Grande resulting from the construction of Falcon Dam. For legislative history of the 1964 Act see H.R. 8999, Public Law 88–447 in the 88th Congress; H.R. Rept. No. 964; S. Rept. No. 1311.

Cross References, Statutory Authority of the Commission. The Act of August 19, 1935, which appears herein in chronological order, provides general authority for the work of the Commission, and the notes following the Act briefly summarize other statutory provisions relating to its program.

Editor's Note, Annotations. Annotations of opinions are not included because this statute does not relate primarily to activities of the Bureau of Reclamation.

Legislative History. H.R. 7927, Public Law 370 in the 74th Congress. H.R. Rept. No. 1622. S. Rept. No. 1417.

AMERICAN DIVERSION DAM, RIO GRANDE

An act authorizing construction, operation, and maintenance of Rio Grande canalization project and authorizing appropriation for that purpose (Act of August 29, 1935, ch. 805, 49 Stat. 961)

[**Sec. 1. Construction of diversion dam in Rio Grande.**]—Upon the completion of the engineering investigation, study, and report to the Secretary of State, as heretofore authorized by Public Resolution Numbered 4, Seventy-fourth Congress, approved February 13, 1935, the Secretary of State, acting through the American Section, International Boundary Commission, United States and Mexico, in order to facilitate compliance with the convention between the United States and Mexico concluded May 21, 1906, providing for the equitable division of the waters of the Rio Grande, and to properly regulate and control, to the fullest extent possible, the water supply for use in the two countries as provided by treaty, is authorized to construct, operate, and maintain, in substantial accordance with the engineering plan contained in said report, a diversion dam in the Rio Grande wholly in the United States, with appurtenant connections to existing irrigation systems, and to acquire by donation, condemnation, or purchase such real and personal property as may be necessary therefor. (49 Stat. 961)

EXPLANATORY NOTES

Reference in the Text. Public Resolution Numbered 4, Seventy-fourth Congress, approved February 13, 1935, referred to in the text, 49 Stat. 24, authorized an appropriation of $60,000 to defray the expenses of the American section, International Boundary Commission, United States and Mexico, in investigating the feasibility and best means of effecting the canalization of the Rio Grande from the Caballo Reservoir site in New Mexico to the international diversion dam near El Paso, Texas.

Reference in the Text. The convention between the United States and Mexico concluded May 21, 1906, referred to in the text, appears herein in chronological order.

Sec. 2. [Appropriation of $1,000,000—Any portion may be transferred for direct expenditure to Department of Interior.]—There is authorized to be appropriated the sum of $1,000,000 for the purposes of carrying out the provisions of section 1 hereof, other than for operation and maintenance, including salaries and wages, fees for professional services; rents, travel expenses; per diem in lieu of actual subsistence; printing and binding, law books and books of reference: *Provided,* That the provisions of section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5) shall not apply to any purchase made or service procured when the aggregate amount involved is $100 or less; purchase, exchange, maintenance, repair, and operation of motor-propelled passenger- and freight-carrying vehicles; hire with or without personal services, of work animals and animal-drawn and motor-propelled vehicles and equipment; acquisition by donation, condemnation, or purchase of real and personal property; transportation (including drayage) of personal effects of employees upon change of station; telephone, telegraphic, and air-mail communications; rubber boots for official use by employees; ice; equipment, services, supplies, and materials and other such miscellaneous expenses as the Secretary of State may deem necessary prop-

erly to carry out the provisions of the Act: *Provided,* That any part of any appropriation made hereunder may be transferred to, for direct expenditure, by the Department of the Interior pursuant to such arrangements therefor as may be from time to time effected between the Secretary of State and the Secretary of the Interior, or as directed by the President of the United States. (49 Stat. 961).

EXPLANATORY NOTES

Not Codified. This Act is not codified to the U.S. Code.

American Diversion Dam. The diversion dam constructed and operated by the United States section of the International Boundary Commission, under the authority of this Act, is located on the Rio Grande 2 miles northwest of El Paso immediately above the point where the river becomes the international boundary line. The dam is called the American Diversion Dam.

Purpose: Rio Grande Canalization Project. The purpose of the American Diversion Dam is to provide better measurement and control of the 60,000 acre-feet of water annually which the United States is obligated to deliver to Mexico in the bed of the Rio Grande under the convention of May 21, 1906 (effective January 16, 1907). The diversion dam is part of an over-all project by the United States section of the Commission to provide better control over and more efficient use of the waters released from the Elephant Butte Reservoir. The remainder of this work, called the Rio Grande canalization project, was authorized by the Act of June 4, 1936, 49 Stat. 1463. Both the 1906 convention and the 1936 Act appear herein in chronological order.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treaty with Mexico of February 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Reference in the Text. Section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5), referred to in section 2, deals with competitive bidding. The section appears herein in the Appendix.

Cross Reference, Statutory Authority of the Commission. The Act of August 19, 1935, which appears herein in chronological order, provides general authority for the work of the Commission, and the notes following the Act briefly summarize other statutory provisions relating to its program.

Editor's Note, Annotations. Annotations of opinions are not included because this statute does not relate primarily to activities of the Bureau of Reclamation.

Legislative History. S. 3085, Public Law 392 in the 74th Congress. S. Rept. No. 1292. H.R. Rept. No. 1764 (on H.R. 8692).

PARKER AND GRAND COULEE DAMS AUTHORIZED

[**Extract from**] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes. (Act of August 30, 1935, 49 Stat. 1028, 1039)

* * * * *

Sec. 2. [Authorization of Parker and Grand Coulee dams—All contracts and agreements heretofore made ratified—Authorization of Head Gate Rock dam, Arizona.]—For the purpose of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored water thereof, for the reclamation of public lands and Indian reservations, and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertakings, the projects known as "Parker Dam" on the Colorado River and "Grand Coulee Dam" on the Columbia River, are hereby authorized and adopted, and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the President, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain dams, structures, canals, and incidental works necessary to such projects, and in connection therewith to make and enter into any and all necessary contracts including contracts amendatory of or supplemental to those hereby validated and ratified. The construction by the Secretary of the Interior of a dam in and across the Colorado River at or near Head Gate Rock, Arizona, and structures, canals, and incidental works necessary in connection therewith is hereby authorized, and none of the waters, conserved, used, or appropriated under the works hereby authorized shall be charged against the waters allocated to the upper basin by the Colorado River compact, nor shall any priority be established against such upper basin by reason of such conservation, use, or appropriation; nor shall said dam, structures, canals, and works, or any of them, be used as the basis of making any such charge, or establishing any such priority or right, and all contracts between the United States and the users of said water from or by means of said instrumentalities shall provide against the making of any such charge or claim or the establishment of any priority right or claim to any part or share of the water of the Colorado River allocated to the Upper Basin by the Colorado River compact, and all use of said instrumentalities shall be in compliance with the conditions and provisions of said Colorado River compact and the Boulder Canyon Project Act. (49 Stat. 1039; 33 U.S.C. § 540)

Explanatory Notes

Parker Dam: Background. On January 14, 1935, the United States filed a bill in equity in the Supreme Court to enjoin the State of Arizona from interfering with the construction of Parker Dam, which it had done by threatening the use of military force to halt construction. The dam was begun the previous September, over Arizona's objections, by Harold L. Ickes, Secretary of the Interior and Federal Emergency Administrator of Public Works, pursuant to a contract between the United States and the Metropolitan Water District of Southern California. Dismissing the Government's

bill, the Court found that the Government had not complied with section 9 of the Act of March 3, 1899, forbidding the construction of any dam in any navigable river of the United States until the consent of Congress had been obtained, and until the plans had been approved by the Chief of Engineers and the Secretary of War. The Court held that section 9 of the 1899 Act applied to acts of Government officers as well as to private persons. *United States* v. *Arizona,* 295 U.S. 174 (1935). Extracts from the 1899 Act, including section 9, appear herein in chronological order.

Parker Dam: Metropolitan Water District Contract. Relying upon the existing reclamation law, the Secretary of the Interior entered into a cooperative contract with the Metropolitan Water District of Southern California on February 10, 1933, whereby the United States agreed to build and operate the Parker Dam with funds provided by the district. The United States was to retain title and retain control over all water passing the dam. The district was accorded the right to divert water from the reservoir created by the dam and one-half the power privileges. The United States retained one-half the power privilege and the right to divert water from the reservoir for the Colorado River Indian Reservation and for projects built under the reclamation law. The Government also secured the right to utilize excess capacity in the district's transmission system from Hoover Dam to Parker Dam.

Cross References, Parker Dam Power Project. The Act of May 2, 1939, 53 Stat. 626, includes an appropriation for continuing construction of the Parker Dam power plant. The Act of October 28, 1942, provided for the acquisition of Indian lands required in connection with the construction, operation and maintenance of electric transmission lines and other works of the Parker Dam project.

Cross Reference, Parker-Davis Project. The Act of May 28, 1954, 68 Stat. 143, authorized the Parker Dam power project and the Davis Dam project to be consolidated and administered as a single project to be known as the Parker-Davis project, Arizona-California-Nevada. The Act appears herein in chronological order.

Reference in the Text. The Colorado River Compact, referred to in the text, appears herein in chronological order following the Act of December 21, 1928, the Boulder Canyon Project Act.

Grand Coulee Dam: Background. Funds were initially made available for the construction of Grand Coulee Dam by the Public Works Administration on July 27, 1933, by an allotment of $63 million under section 202 of the National Industrial Recovery Act of June 16, 1933. In August 1934, the first of two major contracts for the construction of Grand Coulee Dam and Power Plant was awarded to a combination of contracting firms. Originally, the building of Grand Coulee Dam was planned in two stages. A low dam was to be built first, but with a foundation designed so that a high dam could later be superimposed on this low dam, and a pumping plant and other components of the irrigation system added at that time. By the Act above, authorizing construction of Parker and Grand Coulee Dams, the Congress ratified the contracts already entered into for construction of Grand Coulee Dam and authorized construction of the high dam and the irrigation project.

Cross Reference, Columbia Basin Project. The Grand Coulee Dam project on the Columbia River was renamed as the Columbia Basin Project and reauthorized by the Act of March 10, 1943, 57 Stat. 14. The Act appears herein in chronological order.

Columbia Basin Compact, Consent to Negotiate. The Act of March 4, 1925, 43 Stat. 1268, granted the consent of Congress to the States of Washington, Idaho, Oregon and Montana to negotiate and enter into a compact not later than January 1, 1927, providing for an equitable apportionment of the water of the Columbia River and its tributaries. This Act was extended by subsequent acts through January 1, 1935 (Acts of April 13, 1926, 44 Stat. 247; March 3, 1927, 44 Stat. 1403; and June 29, 1932, 47 Stat. 381). The compact not having been entered into, the Congress again granted its consent to the same states and Wyoming to negotiate a compact by the Act of July 16, 1952, 66 Stat. 737. This act was amended by the Act of July 14, 1954, 68 Stat. 468, by adding the States of Nevada and Utah to those already authorized to negotiate and enter into a compact. The 1952 Act, as amended, appears herein in chronological order.

Bonneville Power Administration. Executive Order No. 8526, dated August 26, 1940, designated the Bonneville Power Administrator under the supervision of the Secretary as agent for the sale and distribution of electrical power and energy generated at the Grand Coulee Dam project and not required for the operation of that project, including its irrigation features. 5 Fed. Reg. 3390 (1940).

Legislative History. H.R. 6732, Public Law 409 in the 74th Congress. H.R. Rept. No. 424. S. Rept. No. 893. H.R. Rept. No. 1738 (on H. Res. 322). H.R. Rept. No. 1816 (conference report).

NOTES OF OPINIONS

Grand Coulee Dam 1
Parker Dam 2

1. Grand Coulee Dam

The Secretary of the Interior has authority under subsections 2(b), 2(f), 5(a), 5(b) and 9(b) of the Bonneville Project Act; section 5 of the Flood Control Act of 1944; section 9(c) and 14 of the Reclamation Project Act of 1939; and section 2 of the Act of August 30, 1935, 49 Stat. 1039, reauthorizing the Grand Coulee Dam project, to construct transmission lines between the Pacific Northwest and the Pacific Southwest. Solicitor Barry Opinion, 70 I.D. 237 (1963).

2. Parker Dam

If an upstream project, such as the proposed Central Arizona project and Bridge Canyon project in the Lower Colorado River Basin, interfere with the statutory responsibility of the Secretary to recover the costs of Hoover Dam by June 1, 1987, or to recover the costs of Davis and Parker Dams within a reasonable period of time, then the cost of such interference should be included as one of the "costs" of the new upstream development under section 9(a) of the Reclamation Project Act of 1939. Memorandum of Chief Counsel Fix, October 9, 1947.

RELIEF TO WATER USERS

An act to create a commission and to extend further relief to water users on United States reclamation projects and on Indian irrigation projects. (Act of April 14, 1936, ch. 215, 49 Stat. 1206)

[Sec. 1. Investigating committee of three members authorized—Report to be made to the 75th Congress.]—*Repealed.*

EXPLANATORY NOTE

Section Repealed. Section 4 of the Act of August 21, 1937, 50 Stat. 737, repealed this section. Section 1 of the 1937 Act is essentially a reenactment of this section, with these important differences: (1) the Commission authorized by this section was to be composed of two members appointed from the Department of the Interior and one member who was a landowner and water user under a United States reclamation project, whereas the 1937 Act provides for a Commission composed of members who shall have an intimate knowledge of irrigation farming, but who shall not be employees of the Bureau of Reclamation or the Bureau of Indian Affairs, and shall have no financial interest in the matters coming under their jurisdiction; (2) the Commission was authorized by this section to hold hearings at reclamation projects "where requested, etc . . .", whereas the 1937 Act authorizes such hearings "where deemed advisable by the Commission and requested, etc. . ."; and (3) this section referred to "United States reclamation projects", whereas the 1937 Act refers to "United States and Indian reclamation projects." The 1937 Act appears herein in chronological order.

Sec. 2. [Authorization for appropriation of $5,000 for expense of Commission.]—*Repealed.*

EXPLANATORY NOTES

Section Repealed. Section 4 of the Act of August 21, 1937, 50 Stat. 737, repealed this section. Section 2 of the 1937 Act is a reenactment of this section except that an appropriation of $30,000 is authorized, whereas this section authorized an appropriation of $5,000. The 1937 Act appears herein in chronological order.

Commission's Report. The Commission authorized to be appointed by this Act, as modified by the Act of August 21, 1937, 50 Stat. 737, submitted its report to the Congress in May, 1938. The report was printed as House Document No. 673, 75th Congress, 3rd Session.

Sec. 3. [50 percent of construction charges for 1936 deferred.]—All the provisions of the act entitled "An Act to further extend relief to water users on the United States reclamation projects and on Indian irrigation projects", approved June 13, 1935, are hereby further extended for the period of 1 year, so far as concerns 50 percent of the construction charges, for the calendar year 1936; *Provided, however,* That where the construction charge for the calendar year 1936 is payable in two installments, the sum hereby extended shall be the amount due as the first of such installments. If payable in one installment, the due date for the 50 percent to be paid shall not be changed. (49 Stat. 1207)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of June 13, 1935, referred to in section 3, appears herein in chronological order. Annotations of opinions with respect to section 3, if any, are found under the Act of April 1, 1932, rather than under the 1935 Act.

Legislative History. S. 4232, Public Law 519 in the 74th Congress. H.R. Rept. No. 2365.

LOANS TO LANDS IN IRRIGATION DISTRICTS

An act to make lands in drainage, irrigation, and conservancy districts eligible for loans by the Federal land banks and other Federal agencies loaning on farm lands, notwithstanding the existence of prior liens of assessments made by such districts, and for other purposes. (Act of June 4, 1936, ch. 496, 49 Stat. 1461)

[**Lands eligible for loans notwithstanding prior liens.**]—The Farm Credit Administration, the Federal Farm Mortgage Corporation, the Federal land banks, the Land Bank Commissioner and any lending or financial agency established by or under the Farm Credit Act of 1933, as amended, or the Federal Farm Loan Act, as amended, are authorized to make loans or acquire mortgages on lands in any drainage, irrigation, or conservancy district, notwithstanding the existence of any prior lien or charge arising out of an assessment for special benefits made by such district, in any case where (1) such land is otherwise eligible for a loan, (2) such assessment is payable over a period of years, and (3) reasonable security exists for the repayment of the loan, taking into consideration all facts and values, including the term and size of the loan, the integrity of the applicant, and the increased earning capacity of the lands arising from the improvements or benefits in respect of which the assessment was made. (49 Stat. 1461; 12 U.S.C. § 773a)

Explanatory Notes

References in the Text. The Farm Credit Act of 1933, as amended, referred to in the text, is codified in title 12, section 1131 *et seq.* The Federal Farm Loan Act, as amended, also referred to in the text, is generally dispersed throughout title 12, United States Code.

Legislative History. H.R. 9009, Public Law 644 in the 74th Congress. H.R. Rept. No. 2280. S. Rept. No. 2008.

RIO GRANDE CANALIZATION PROJECT

An act authorizing construction, operation, and maintenance of Rio Grande canalization project and authorizing appropriation for that purpose. (Act of June 4, 1936, ch. 500, 49 Stat. 1463)

[**Sec. 1. Construction authorized of canalization works.**]—Upon the completion of the engineering investigation, study, and report to the Secretary of State, as heretofore authorized by Public Resolution Numbered 4, Seventy-fourth Congress, approved February 13, 1935, the Secretary of State, acting through the American Section, International Boundary Commission, United States and Mexico, in order to facilitate compliance with the convention between the United States and Mexico concluded May 21, 1906, providing for the equitable division of the water of the Rio Grande, and to properly regulate and control, to the fullest extent possible, the water supply for use in the two countries as provided by treaty, is authorized to construct, operate, and maintain, in substantial accordance with the engineering plan contained in said report, works for the canalization of the Rio Grande from the Caballo Reservoir site in New Mexico to the international dam near El Paso, Texas, and to acquire by donation, condemnation, or purchase such real and personal property as may be necessary therefor. (49 Stat. 1463)

Sec. 2. [**$3,000,000 authorized to be appropriated—Appropriation may be transferred for direct expenditure to Department of Interior.**]—There is authorized to be appropriated the sum of $3,000,000 for the purposes of carrying out the provisions of section 1 hereof, other than for operation and maintenance, including salaries and wages, fees for professional services; rents; travel expenses; per diem in lieu of actual subsistence; printing and binding, law books, and books of reference: *Provided,* That the amount herein authorized to be appropriated shall include so much as may be necessary for completion of construction of the diversion dam in the Rio Grande wholly in the United States, in addition to the $1,000,000 authorized to be appropriated for this purpose by the Act of August 29, 1935 (49 Stat. 961): *Provided further,* That the total cost of construction of said diversion dam and canalization works shall not exceed $4,000,000: *Provided further,* That the provisions of section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5) shall not apply to any purchase made or service procured when the aggregate amount involved is $100 or less; purchase, exchange, maintenance, repair and operation of motor-propelled passenger- and freight-carrying vehicles; hire with or without personal services, of work animals and animal-drawn and motor-propelled vehicles and equipment; acquisition by donation, condemnation, or purchase of real and personal property; transportation (including drayage) of personal effects of employees upon change of station; telephone, telegraphic, and airmail communication; rubber boots for official use by employees; ice; equipment, service, supplies, and materials and other such miscellaneous expenses as the Secretary of State may deem necessary properly to carry out the provisions of the Act: *And provided further,* That any part of

any appropriation made hereunder may be transferred to, for direct expenditure by, the Department of the Interior pursuant to such arrangements therefor as may be from time to time effected between the Secretary of State and the Secretary of the Interior, or as directed by the President of the United States. (49 Stat. 1463)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Location. The canalization work herein authorized is in the reach of the river between Caballo Dam and El Paso.

Supplementary Provision: Flood and Sediment Control. The Act of September 18, 1964, 78 Stat. 956, authorizes the United States Commissioner to enter into agreements with local organizations for maintenance of flood and arroyo sediment control dams in the Rio Grande watershed between Caballo Dam and El Paso, Texas. The Act appears herein in chronological order.

References in the Text. The Act of August 29, 1935, 49 Stat. 961, referred to in the text, authorizes construction of the American Diversion Dam by the United States section of the International Boundary Commission. Both the diversion dam and the canalization project are for the purpose of providing better control over and better use of the waters released from the Elephant Butte Reservoir, particularly with respect to the 60,000 acre-feet of water annually that the United States is obligated to deliver to Mexico in the bed of the Rio Grande under the convention with Mexico of May 21, 1906 (effective January 16, 1907), also referred to in the text. Both the 1906 convention and the 1935 Act appear herein in chronological order.

Reference in the Text. Section 3709 of the Revised Statutes (U.S.C., title 41, sec. 5), referred to in the text, deals with competitive bidding. The section appears herein in the Appendix.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treatry with Mexico of February 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Cross References, Statutory Authority of the Commission. The Act of August 19, 1935, which appears herein in chronological order, provides general authority for the work of the Commission, and the notes following the Act briefly summarize other statutory provisions relating to its program.

Editor's Note, Annotations. Annotations of opinions are not included because this statute does not relate primarily to activities of the Bureau of Reclamation.

Legislative History. H.R. 11768, Public Law 648 in the 74th Congress. H.R. Rept. No. 2239. S. Rept. No. 2038. S. Rept. No. 2029 (on S. 3536).

FLOOD CONTROL ACT OF 1936

[Extracts from] An act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes. (Act of June 22, 1936, ch. 688, 49 Stat. 1570)

Declaration of Policy

[Sec. 1. Federal-State cooperation in flood control.]—It is hereby recognized that destructive floods upon the rivers of the United States, upsetting orderly processes and causing loss of life and property, including the erosion of lands, and impairing and obstructing navigation, highways, railroads, and other channels of commerce between the States, constitute a menace to national welfare; that it is the sense of Congress that flood control on navigable waters or their tributaries is a proper activity of the Federal Government in cooperation with States, their political subdivisions, and localities thereof; that investigations and improvements of rivers and other waterways, including watersheds thereof, for flood-control purposes are in the interest of the general welfare; that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected. (49 Stat. 1570; 33 U.S.C. § 701e)

Sec. 2. [Federal investigations of rivers and other waterways—Jurisdiction of Departments of Army, Agriculture, and Interior.]—Hereafter, Federal investigations and improvements of rivers and other waterways for flood control and allied purposes shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers, except as otherwise provided by Act of Congress; and in his reports upon examinations and surveys, the Secretary of War shall be guided as to flood-control measures by the principles set forth in section 1 in the determination of the Federal interests involved: *Provided,* That the foregoing grant of authority shall not interfere with investigations and river improvements incident to reclamation projects that may now be in progress or may be hereafter undertaken by the Bureau of Reclamation of the Interior Department pursuant to any general or specific authorization of law. (49 Stat. 1570; Act of June 28, 1938, 52 Stat. 1215; Act of August 18, 1941, 55 Stat. 638; Act of August 4, 1954, 68 Stat. 668; 33 U.S.C. § 701b)

Explanatory Note

1954 Amendment. Section 7 of the Act of August 4, 1954, the Watershed Protection and Flood Prevention Act, repealed the authority formerly contained in this section and in section 1 of the Flood Control Act of June 28, 1938, of the Secretary of Agriculture over Federal investigations of watersheds and measures for run-off and water flow retardation and soil erosion prevention on watersheds. However, similar authority contained in section 2 of the Flood Control Act of 1944 was preserved, as well as emergency authority provided in section 7 of the Flood Control Act of 1938, 52 Stat. 1215, as amended by section 216 of the Act of May 17, 1950, 64 Stat. 163.

Moreover, the 1954 Act and other acts provide general authority for the Secretary of Agriculture with respect to these matters.

The 1954 Act and extracts from the 1938 and 1944 Acts appear herein in chronological order.

Sec. 3. [Responsibility of State to share costs of flood control.]—Hereafter no money appropriated under authority of this Act shall be expended on the construction of any project until States, political subdivisions thereof, or other responsible local agencies have given assurances satisfactory to the Secretary of War that they will (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the construction of the project, except as otherwise provided herein; (b) hold and save the United States free from damages due to the construction works; (c) maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of War: *Provided,* That the construction of any dam authorized herein may be undertaken without delay when the dam site has been acquired and the assurances prescribed herein have been furnished, without awaiting the acquisition of the easements and rights-of-way required for the reservoir area: *And provided further,* That whenever expenditures for lands, easements, and rights-of-way by States, political subdivisions thereof, or responsible local agencies for any individual project or useful part thereof shall have exceeded the present estimated construction cost therefor, the local agency concerned may be reimbursed one-half of its excess expenditures over said estimated construction cost: *And provided further,* That when benefits of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, the Secretary of War with the consent of the State wherein the same are located may acquire the necessary lands, easements, and rights-of-way for said project or part thereof after he has received from the States, political subdivisions thereof, or responsible local agencies benefited the present estimated cost of said lands, easements, and rights-of-way, less one-half the amount by which the estimated cost of these lands, easements, and rights-of-way exceeds the estimated construction cost corresponding thereto: *And provided further,* That the Secretary of War shall determine the proportion of the present estimated cost of said lands, easements, and rights-of-way that each State, political subdivision thereof, or responsible local agency should contribute in consideration for the benefits to be received by such agencies: *And provided further,* That whenever not less than 75 per centum of the benefits as estimated by the Secretary of War of any project or useful part thereof accrue to lands and property outside of the State in which said project or part thereof is located, provision (c) of this section shall not apply thereto; nothing herein shall impair or abridge the powers now existing in the Department of War with respect to navigable streams: *And provided further,* That nothing herein shall be construed to interfere with the completion of any reservoir or flood control work authorized by the Congress and now under way. (49 Stat. 1571; Act of August 28, 1937, 50 Stat. 877; 33 U.S.C. § 701c)

EXPLANATORY NOTE

1938 Modification. Section 2 of the Flood Control Act of 1938, approved June 28, 1938, 52 Stat. 1215, modified the requirements set forth in section 3 of this Act for financial participation of States and their political subdivisions in flood control projects. Extracts from the 1938 Act, including section 2 of the Act, appear herein in chronological order.

Sec. 4. [Interstate compacts authorized.]—The consent of Congress is hereby given to any two or more States to enter into compacts or agreements in connection with any project or operation authorized by this Act for flood control or the prevention of damage to life or property by reason of floods upon any stream or streams and their tributaries which lie in two or more such States, for the purpose of providing, in such manner and such proportion as may be agreed upon by such States and approved by the Secretary of War, funds for construction and maintenance, for the payment of damages, and for the purchase of rights-of-way, lands, and easements in connection with such project or operation. No such compact or agreement shall become effective without the further consent or ratification of Congress, except a compact or agreement which provides that all money to be expended pursuant thereto and all work to be performed thereunder shall be expended and performed by the Department of War, with the exception of such reasonable sums as may be reserved by the States entering into the compact or agreement for the purpose of collecting taxes and maintaining the necessary State organizations for carrying out the compact or agreement. (49 Stat. 1571; 33 U.S.C. § 701d)

* * * * *

EXPLANATORY NOTE

Legislative History. H.R. 8455, Public Law 738 in the 74th Congress. S. Rept. No. 1963. H.R. Rept. No. 2198 (conference report).

INTERIOR DEPARTMENT APPROPRIATION ACT, 1937

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1937, and for other purposes. (Act of June 22, 1936, ch. 691, 49 Stat. 1757)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[Boulder Canyon project—power revenues.]—Boulder Canyon project: . . . *Provided,* That not to exceed $350,000 from revenues shall be available for the operation and maintenance of the Boulder Dam, power plant, and other incidental operations. (49 Stat. 1785)

EXPLANATORY NOTE

Provision Repeated. Similar appropriations of funds from power and other revenues for operation, maintenance and replacement purposes at Boulder Canyon project are contained in each subsequent annual Interior Department Appropriation Act through the Act of July 3, 1945, 59 Stat. 341. Thereafter, appropriations for these purposes are made from the Colorado River dam fund.

[All-American Canal.]—Boulder Canyon project (All-American Canal): . . . For continuation of construction of a diversion dam, and main canal (and appurtenant structures) located entirely within the United States connecting the diversion dam with the Imperial and Coachella Valleys in California; to acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, and other property necessary for such purposes; and for incidental operations, as authorized by the Boulder Canyon Project Act, approved December 21, 1928 (U.S.C., title 43, ch. 12a); to be immediately available and to remain available until advanced to the Colorado River Dam Fund, ... (49 Stat. 1785)

EXPLANATORY NOTE

Provision Repeated. The same language is contained in the succeeding acts appropriating money for the All-American Canal (there were no appropriations in fiscal years 1944 and 1945) through the Act of October 12, 1949, 63 Stat. 782, with the modification that the Act of May 10, 1939, 53 Stat. 718, and subsequent acts added "including distribution and drainage systems" after "appurtenant structures" within the parentheses, whereas the Act of July 25, 1947, 61 Stat. 476, and subsequent acts, relocates the reference to distribution and drainage systems to follow "California." The latter change was made pursuant to the Act of June 26, 1947, 61 Stat. 183, which in turn followed Solicitor White's Opinion, M–34900 (March 27, 1947), in re flood protection works in Coachella Valley.

NOTE OF OPINION

1. Coachella Valley flood protection

Although several appropriation acts characterize the distribution system for Coachella Valley as an appurtenant structure to the All-American Canal, thereby precluding the allocation of costs of associated flood protection works to flood control on a nonreimbursable basis under section 9 of the Reclamation Project Act of 1939, this effect could be avoided by rearranging the appropriation act language. Solicitor White Opinion, M–34900 (March 27, 1947), in re flood protection works in Coachella Valley.

* * * * *

NATIONAL PARK SERVICE

* * * * *

[Boulder Dam recreational area.]—Boulder Canyon project, Arizona and Nevada: For administration, protection, and maintenance of the recreational activities of the Boulder Canyon project and any lands that may be added thereto by Presidential or other authority, including not exceeding $1,050 for the purchase, maintenance, operation, and repair of motor-driven passenger-carrying vehicles, $10,000. (49 Stat. 1794)

* * * * *

[Roads and trails, Boulder Dam recreational area.]—Roads and Trails, National Park Service: For the construction, reconstruction, and improvement of roads and trails, inclusive of necessary bridges, in the national parks, monuments, and other areas administered by the National Park Service, including the Boulder Dam Reservation, and other areas authorized to be established as national parks and monuments, and national park and monument approach roads authorized by the Act of January 31, 1931 (U.S.C., title 16, sec. 8a and 8b), as amended, ... (49 Stat. 1795)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Provision Repeated. Appropriations to the National Park Service for recreational activities in connection with the Boulder Canyon Project similar to the two provisions above are contained in subsequent Interior Department Appropriation Acts.

Cross Reference, Lake Mead National Recreation Area. The Act of October 8, 1964, 78 Stat. 1039, was enacted to "provide a more adequate basis for effective administration" of the Lake Mead National Recreation Area. The act appears herein in chronological order.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 10630, Public Law 741 in the 74th Congress. H.R. Rept. No. 1927. S. Rept. No. 1615. H.R. Rept. No. 2430 and H.R. Rept. No. 2919 (conference reports).

NOTES OF OPINIONS

Area covered 1
Leases and permits 2

1. Area covered

The provisions of the Interior Department Appropriations Act for 1937 relating both to recreational activities and to roads and trails of the Boulder Canyon project place under the jurisdiction of the National Park Service the recreational activities of the entire area withdrawn under the first form of withdrawal for the Boulder Canyon project, and are not limited to the small area in Nevada designated as the Boulder Canyon Project Federal Reservation. Solicitor Margold Opinion, M–28693 (October 13, 1936).

2. Leases and permits

Both the National Park Service and the Bureau of Reclamation, in administering their respective areas withdrawn under the first form in connection with the Boulder Canyon project, may grant leases for land and permits to engage in business activities to private individuals without advertising for proposals or securing competitive bids. Solicitor Margold Opinion, M–28694 (October 13, 1936).

AMENDED CONTRACT WITH BRIDGEPORT IRRIGATION DISTRICT

An act for the relief of the Bridgeport Irrigation District. (Act of June 24, 1936, ch. 742, 49 Stat. 1897)

[Amending contract of June 14, 1915—Granting permanent right to use of water from North Platte project—District to pay delinquent operation and maintenance.]—The Secretary of the Interior is hereby authorized to enter into a contract with the Bridgeport Irrigation District, North Platte reclamation project, by which (a) the United States, in consideration of $23,286 heretofore paid under the contract of June 14, 1915, between the United States and the district, shall grant to the district a permanent right to the use of water from the North Platte Federal reclamation project under the Act of June 17, 1902 (32 Stat. 388), as amended and supplemented, which permanent water right shall entitle the district to divert from the North Platte River a quantity of water equal to three-tenths part of the quantity of water for which provision is made in article 1 of said contract of June 14, 1915, such total quantity of water for diversion by the district to be delivered by the United States under a schedule of delivery reduced in accordance with the provisions of this Act; (b) the district shall agree to pay the United States the amount of $5,628.55; the operation and maintenance charges delinquent under said contract of June 14, 1915, for the years 1926 to 1935, both inclusive, upon the execution of said contract herein authorized; (c) the Secretary shall agree, upon the execution of said contract and its confirmation by the State courts, to cancel the judgment entered on July 30, 1929, against the district and in favor of the United States; (d) the district shall agree to pay to the United States in advance of the delivery of water under said contract one one-hundredth part of such amounts as shall be fixed by the Secretary as operation and maintenance charges in connection with the irrigation works from which said water supply is made available by the United States, such charges to be payable for the year 1936 and thereafter with interest from the due date at the rate of 6 per centum per annum if not paid when due; (e) the Secretary shall be authorized to refuse the delivery of water under said contract to the district at any time when any installment in whole or in part (including any interest due thereon) of operation and maintenance charges shall not have been paid at the date provided in subdivision (d) hereof and shall remain unpaid at the date delivery of water is requested under said contract; and (f) the contract of June 14, 1915, shall otherwise remain in full force and effect. (49 Stat. 1897)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Contract Cancelled. The Secretary never entered into a contract pursuant to this Act. By the Act of August 1, 1942, 56 Stat. 732, the contract of June 14, 1915, between the United States and the Bridgeport Irrigation District and the delinquent indebtedness of the district thereunder were cancelled and released, and the judgment entered on July 30, 1929, in the United States District Court for the

District of Nebraska against the district and in favor of the United States was released and discharged. The 1956 Act appears herein in chronological order.

Legislative History. S. 4719, Public Law 772 in the 74th Congress. S. Rept. No. 2341. H.R. Rept. No. 2964 (on H.R. 12920).

RELIEF FOR THE ORLAND PROJECT

An act for the relief of the Orland reclamation project, California. (Act of June 24, 1936, ch. 756, 49 Stat. 1907)

[Sec. 1. Repayment period Stony Gorge extended to thirty-five years—Delinquent operation and maintenance to be added to cost of reservoir.]—The Secretary of the Interior is hereby authorized to execute or authorize the execution of amendatory contracts with the individual water users of the Orland reclamation project, California, by which (a) the time within which the cost of Stony Gorge Reservoir may be paid shall be thirty-five years in lieu of the seventeen years allowed for such payment under existing contracts, the said annual payments to be graduated as the said Secretary may prescribe, and (b) any construction or operation and maintenance charges due from the individual water users and delinquent as of the date of this Act, together with the accrued interest or penalties, may be added to their proportionate part of the cost of said reservoir. (49 Stat. 1907)

Sec. 2. [Lands to be classified—Charges paid on permanently unproductive lands to be transferred to producing lands—Water rights shall be transferred.]—The said Secretary shall classify the lands of the Orland project and the owners of all lands found by the said Secretary to be permanently unproductive may, by supplemental agreement with the United States, be relieved of all liability for further operation and maintenance and construction charges on land so found to be permanently unproductive, and the credit for construction charges theretofore paid on such permanently unproductive lands may be transferred to other producing lands, as the owner of such permanently unproductive lands may designate in writing. The released water rights theretofore appurtenant to such permanently unproductive lands shall be transferred to other productive lands, as the said Secretary may designate and under such regulations as he may prescribe. (49 Stat. 1907)

Sec. 3. [Operation and maintenance to be estimated by Secretary and collected in advance—Overpayments to be adjusted by credits.]—After the plan prescribed in section 4 hereof becomes effective, all operation and maintenance charges shall be estimated annually by the Secretary and collected in advance on the Orland project on or before January 1 of each year for that calendar year, and no water shall be delivered to any water user failing to make such advance payment. Should the estimate by the Secretary of the amount of the operation and maintenance charges for any calendar year or the collections from water users for such year prove to be too small, the water users shall be required to make a further payment in advance of the additional amount then estimated to be sufficient to meet the remainder of the operation and maintenance cost for that year, and the delivery of water shall not be continued (a) to the project unless said additional amount is paid to the United States, or (b) to any water user failing to pay his proportionate share (as determined by the Secretary) of such additional operation and maintenance cost. Overpayments resulting from too large

estimates for any year shall be adjusted by credits upon succeeding years after the amount of the overpayment is ascertained. (49 Stat. 1908)

Sec. 4. [Operation and maintenance of water users executing supplemental contracts to be consolidated with cost of Stony Gorge Reservoir—Water users not executing supplementary contracts not to benefit.] For all water users executing supplementary contracts as permitted herein their proportionate share, as determined by the said Secretary, of the operation and maintenance charges for the first year in which this plan is made effective for the Orland project, by the execution of this agreement by at least 90 per centum of the water users of the project, as conclusively determined by the Secretary, shall be consolidated with the construction cost of the Stony Gorge Reservoir and paid when such construction cost is paid as herein permitted. Water users failing or refusing to execute such supplementary contracts shall not be accorded the benefit of this Act, nor shall they receive the benefit of any moratory construction charge legislation enacted in 1936 or thereafter unless otherwise specifically directed in such moratory legislation. (49 Stat. 1908)

Sec. 5. [$35,000 authorized for classification and construction of canals and other necessary works.]—An appropriation of $35,000 from the reclamation fund for the Orland project is hereby authorized to enable the Secretary to make the land classification provided for in section 2 hereof and to construct canals and other works necessary to conduct to new project lands the water supply to be released hereunder from permanently unproductive lands. The primary construction charge of $55 per acre on such new lands shall be payable in installments as provided in section 2 of the Act of August 13, 1914 (38 Stat. 687). The supplemental construction charges for the new land shall be the same as for the old land, except that each acre of new land shall be required to pay in addition its proportionate part, as determined by the Secretary, of the construction cost of new work as authorized in this section. The supplemental construction charges for the new land shall be payable in installments over a period of thirty-five years, the first of such installments to be due one year after the due date of the last installment of the original construction charge on the new land. The supplemental construction charge installments for the new land shall be graduated in the same manner as for the old land as provided in section 1 hereof. The dates for the payment of the construction charges provided for in section 1 and 5 hereof shall be as fixed by the said Secretary. (49 Stat. 1908)

EXPLANATORY NOTE

Reference in the Text. Section 2 of the Act of August 13, 1914, 38 Stat. 687, referred to in the text, establishes a graduated method of paying construction charges. The Act is the Reclamation Extension Act, which appears herein in chronological order.

Sec. 6. [Secretary authorized to modify contract of April 3, 1909, if necessary.]—The said Secretary is also authorized to enter into a contract with the Orland Unit Waters Users' Association, a corporation organized under the laws of California, modifying said corporation's contract of April 3, 1909, with the United States, if and so far as in the opinion of the said Secretary modification of said contract is requisite by reason of the execution of agreements between

the United States and the individual stockholders of said corporation as authorized herein. (49 Stat. 1909)

Sec. 7. [Authority of the Secretary.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect. (49 Stat. 1909)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 11538, Public Law 786 in the 74th Congress. H.R. Rept. No. 2353. S. Rept. No. 2321.

INVESTIGATION OF CLEAR LAKE WATERSHED, CALIFORNIA

An act to provide for an investigation to determine whether the water rights of the United States have been violated in the Clear Lake Watershed, California, and for other purposes. (Act of June 26, 1936, ch. 841, 49 Stat. 1975)

Repealed.

EXPLANATORY NOTES

Statute Repealed. The Act of August 7, 1946, 60 Stat. 866, extracts of which appear herein in chronological order, repealed this statute. The investigation was never conducted because the irrigation districts declined to enter into contracts to repay the costs of such an investigation. Before repeal, the act read as follows:

"**Sec. 1.** The Secretary of the Interior is authorized and directed (1) to make a full and complete investigation with a view to determining whether any dams, waterworks, or other projects have been constructed in the Clear Lake Watershed, in the State of California, in violation of the water rights of the United States in such State, and (2) to report thereon to the Congress as soon as practicable.

"**Sec. 2.** There is hereby authorized to be appropriated from the reclamation fund the sum of $5,000 or so much thereof as may be necessary to carry out the provisions of section 1 of this Act, the amounts expended from such appropriations to be reimbursable under the reclamation law."

Legislative History. H.R. 6773, Public Law 826 in the 74th Congress. H.R. Rept. No. 820. S. Rept. No. 2228.

PREVENTION OF LAND SPECULATION, COLUMBIA BASIN PROJECT

An act to prevent speculation in lands in the Columbia Basin prospectively irrigable by reason of the construction of the Grand Coulee Dam project and to aid actual settlers in securing such lands at the fair appraised value thereof as arid land, and for other purposes. (Act of May 27, 1937, ch. 269, 50 Stat. 208)

Repealed.

EXPLANATORY NOTES

Statute Repealed. The Act of March 10, 1943, 50 Stat. 208, the Columbia Basin Project Act, which appears herein in chronological order, amends the Act of May 27, 1937, in its entirety. The text of the 1937 Act read as follows:

[**Sec. 1. Funds appropriated may not be expended for irrigation features of the project until following conditions are complied with.**]—No part of the funds heretofore or hereafter appropriated or allotted for the construction of the Grand Coulee Dam project (authorized by section 2 of the Act of August 30, 1935, 49 Stat. 1028, 1039, entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors and for other purposes," and by the Act of June 22, 1936, 49 Stat. 1757, 1784, entitled "An Act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1937, and for other purposes") or for the reclamation of land in connection with said project shall be expended in the construction of any irrigation feature of said project, exclusive of Grand Coulee Dam and appurtenant works now under construction, until after the following provisions have been complied with:

(a) [**Appraisal of privately-owned lands.**]—The privately owned lands proposed to be irrigated under said project (including county lands and such State lands as the State may desire and be able to subscribe for irrigation under said project and to subject to the terms of this Act) shall have been impartially appraised in a manner and to the extent prescribed by the Secretary of the Interior for the determination of their value at the date of appraisal without reference to the proposed construction of the said irrigation works and without increment on account of the prospect of the construction of the said project.

(b) [**Contract with irrigation district for repayment under Reclamation laws—Excess lands—Owners of to contract to sell—Size of farm units—Upon sale excess lands United States to be paid proportionate incremented value—Excess provisos not applicable lands now cultivated outside project but desiring additional water.**]—A contract or contracts shall have been made with an irrigation or reclamation district or districts organized under State law providing for payment by the district or districts of that part of the cost of construction of the project allocated by the Secretary of the Interior as the part thereof properly chargeable to irrigation, the said cost of construction to be repaid within such term or terms of years as the Secretary shall find to be necessary, not to exceed the maximum term permitted under the Federal reclamation laws, the payments to be made in the manner and subject to the terms and conditions provided in the said reclamation laws and subject to enforcement by all of the means and remedies provided in the Reclamation Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto or amendatory thereof: *Provided,* That every such contract with any district shall further require that all irrigable land held in private ownership by any one owner in excess of forty irrigable acres and all county and State lands which may be subscribed to or irrigated under said project shall be designated as excess land and as such shall not be entitled to receive water from said project. The contract shall provide further that no owner of such excess lands in the said project shall receive water therefrom for any part of the lands owned by him if and so long as he shall refuse to sell any excess lands owned or held by him under terms and conditions satisfactory to the Secretary of the Interior and at prices fixed in the appraisals made and approved as hereinabove provided. The Secretary of the Interior may require each landowner, as a condition precedent to receiving water from the said irrigation works, to execute a valid recordable contract wherein he shall agree to dispose of excess holdings then or thereafter owned by him in the manner provided in this Act and in the contract between his district and the United States, and wherein the said landowner also shall confer upon the Secretary

of the Interior an irrevocable power of attorney to make any such sale on his behalf. For the purpose of determining excess lands under the provisions of this Act husband and wife shall be considered separate persons and each may hold not to exceed forty irrigable acres as nonexcess lands or husband and wife together may hold eighty irrigable acres of community property as such nonexcess lands: *Provided further,* That as to any part of the irrigable lands of the said project for which the Secretary of the Interior shall determine that farm units of less than forty irrigable acres would be sufficient to support a family, he may approve and cause to be filed farm unit plats establishing farm units of less than forty acres but not less than ten acres and in that event all lands held in any one ownership in excess of one farm unit as shown on such plat shall be considered excess lands subject to the provisions of this Act applicable to excess lands: *Provided further,* That in addition to the foregoing provisions, every such contract with any district shall also provide, with respect to all irrigable lands whether initially excess or nonexcess, that whenever any land is sold at a price in excess of the sum of the appraised value of the arid land, the appraised value of improvements made thereon after the date of the original appraisal, and the amount of irrigation construction costs actually paid for that land, then, before the new owner shall be entitled to receive water from the project, a proportionate part of the said excess or incremented value shall be paid to the United States as follows: If such payment is made to the United States more than fifty months after such sale at an excessive price has been made, then as a prerequisite to the right to receive water all of the incremented value shall be paid to the United States to apply on construction installments to come due on such land in inverse order of their accrual; if payment is made in less than fifty months but more than forty-nine months after the date of such sale, then 99 per centum of such incremented value or excess of sale price shall be thus paid and applied; if payment is made in less than forty-nine but more than forty-eight months after the date of such sale, then 98 per centum of such incremented value or excess of sale price shall be thus paid and applied, and so on for earlier payment allowing an additional reduction of 1 per centum for each month, so that in the event that such payment is made to the United States within one month after the date of such sale, then the percentage of the incremented value required to be paid to the United States for application to construction costs as a prerequisite to the right to receive water shall be 50 per centum thereof: *Provided further,* That each district contract may include a provision which, subject to authorization and validation thereof by the State of Washington, shall require that all irrigable lands which are allowed by the owners thereof without objection to remain in such district until after the judicial confirmation of the organization of the district and of the regularity and validity of said contract and the proceedings authorizing it shall be considered as automatically subjected to the provisions of the excess land clauses and incremented value clauses hereinbefore provided for, such obligation to be impressed on the title to the land and to be considered equivalent to a covenant running with the land. The said provision, however, shall not apply to any landowner who, prior to the entry of the judicial decree of confirmation, shall file with the district and duly record as an instrument affecting title to his land, a notice of his objection to the said obligation and of his renunciation of the right of the said land to receive water through, from, or by means of any works constructed by the United States in connection with such project: *And provided further,* That the foregoing four provisos shall not apply to any lands in the State of Washington which have already been developed and are now being cultivated with the aid of water from sources other than the said Grand Coulee project and for which additional water may be desired.

(c) **[State of Washington shall ratify provisions.]**—The State of Washington by appropriate legislation shall have authorized, adopted, ratified, and consented to all the provisions of this Act insofar as such provisions or any of them, in whole or in part, may come within the scope of State jurisdiction or authority or be applicable to State lands.

Sec. 2. [Appropriation for surveys, investigations, and appraisal of lands and for plans, surveys, and designs of irrigation works.]—The Secretary of the Interior is authorized to use not to exceed $350,000 of the funds hereafter appropriated or alloted for the fiscal year 1938 for the said project for the purpose of the survey, investigation, and appraisal of the irrigable lands of the said project and for surveys, investigations, plans, and designs for the irrigation works therefor.

Sec. 3. The Secretary of the Interior is authorized to make such rules and regulations and to include in the contracts hereinbefore provided for such provisions as may be appropriate and useful for the purpose of carrying out the purpose and provisions of this Act.

Sec. 4. [Consent of United States to sale of school lands.]—The consent of the United States is hereby given to the sale of school lands and any other public lands of the State

of Washington which may be included in any irrigation or reclamation project to which this Act is or may be applicable at prices not to exceed the appraised valuation thereof, determined as herein provided.

References in the Text. Section 2 of the Act of August 30, 1935, 49 Stat. 1028, 1039, referred to in Section 1 appears herein in chronological order. While extracts from the Act of June 22, 1936, the Interior Department Appropriation Act, 1937, also referred to in the text, appear herein, the Grand Coulee Dam item, 49 Stat. 1757, 1784, is not included.

Legislative History. S. 2172, Public Law 117 in the 75th Congress. S. Rept. 428. H.R. Rept. No. 626 (on H.R. 6319).

REFUNDS TO THE GREAT NORTHERN RAILWAY COMPANY

An act for the relief of the Great Northern Railway Company. (Act of June 7, 1937, 50 Stat. 980)

[Claim allowed for $1,298.50, refund of construction charges.]—The Secretary of the Treasury is hereby authorized and directed to pay to the Great Northern Railway Company, Saint Paul, Minnesota, out of any money in the Treasury not otherwise appropriated, the sum of $1,298.50 in full satisfaction of its claim against the United States for a refund of construction charges on a grant of thirty-seven and one-tenth acres of land in the Sun River irrigation project in the State of Montana upon which the said Great Northern Railway Company proposed to locate and construct a line of railway under the Act of March 3, 1875, which line of railway was never constructed, and which grant was canceled by court decree in April 1921: *Provided,* That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000. (50 Stat. 980)

Explanatory Note

Legislative History. H.R. 3354, Private Law 126 in the 75th Congress. H.R. Rept. No. 245. S. Rept. No. 575.

CIVILIAN CONSERVATION CORPS

[Extracts from] An act to establish a Civilian Conservation Corps, and for other purposes. (Act of June 28, 1937, ch. 383, 50 Stat. 319)

[Sec. 1. Employment and training for unemployed youthful citizens, war veterans, and Indians—Act to continue for three years after July 1, 1937.]—There is hereby established the Civilian Conservation Corps, hereinafter called the Corps, for the purpose of providing employment, as well as vocational training, for youthful citizens of the United States who are unemployed and in need of employment, and to a limited extent as hereinafter set out, for war veterans and Indians; through the performance of useful public work in connection with the conservation and development of the natural resources of the United States, its Territories, and insular possessions: *Provided,* That at least ten hours each week may be devoted to general educational and vocational training: *Provided,* That the provisions of this Act shall continue for the period of three years after July 1, 1943, and no longer. (50 Stat. 319; Act of August 7, 1939, 53 Stat. 1253)

* * * * *

Sec. 3. [Director to employ Corps for protection of natural resources of lands and waters of United States, and the several States—President may authorize projects under control of counties, municipalities, or on lands in private ownership—No projects on private lands unless provisions made for operation after completion.]—In order to carry out the purposes of this Act, the Director is authorized to provide for the employment of the Corps and its facilities on works of public interest or utility for the protection, restoration, regeneration, improvement, development, utilization, maintenance, or enjoyment of the natural resources of lands and waters, and the products thereof, including forests, fish and wildlife on lands or interest in lands (including historical or archeological sites), belonging to, or under the jurisdiction or control of, the United States, its Territories, and insular possessions, and the several States: *Provided,* That the President may, in his discretion, authorize the Director to undertake projects on lands belonging to or under the jurisdiction or control of counties, and municipalities, and on lands in private ownership, but only for the purpose of doing thereon such kinds of cooperative work as are or may be provided for by Acts of Congress, including the prevention and control of forest fires, forest tree pests and diseases, soil erosion, and floods: *Provided further,* That no projects shall be undertaken on lands or interests in lands, other than those belonging to or under the jurisdiction or control of the United States, unless adequate provisions are made by the cooperating agencies for the maintenance, operation, and utilization of such projects after completion. (50 Stat. 319)

Sec. 4. [Transfer to Corps of personnel, records, funds, and obligations of Emergency Conservation Work—Corps to take over camp exchange.]—There are hereby transferred to the Corps all enrolled personnel, records, papers, property, funds, and obligations of the Emergency Conservation Work estab-

lished under the Act of March 31, 1933 (48 Stat. 22), as amended; and the Corps shall take over the institution of the camp exchange heretofore established and maintained, under supervision of the War Department, in connection with and aiding in administration of Civilian Conservation Corps work-camps conducted under the authority of said Act as amended: *Provided,* That such camp exchange shall not sell to persons not connected with the operation of the Civilian Conservation Corps. (50 Stat. 320)

* * * * *

Sec. 12. [Utilization of services of such departments necessary.]—The President is hereby authorized to utilize the services and facilities of such departments or agencies of the Government as he may deem necessary for carrying out the purposes of this Act. (50 Stat. 321)

* * * * *

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code. However, historical notes appear therein in title 16, §§ 584–584q.

1939 Amendment; Termination of the Corps. The Act of August 7, 1939, 53 Stat. 1253, amended section 1 of the Act by extending the life of the Act to July 1, 1943. However, an appropriation to provide for the liquidation of the Civilian Conservation Corps was included in the Labor-Federal Security Appropriation Act, 1943, approved July 2, 1942, 56 Stat. 569. For other amendments to the Act, see the notes following sections 584–584q, title 16, United States Code.

Reference in the Text. The Act of March 31, 1933 (48 Stat. 22), referred to in section 4, authorized the employment on public works of the United States of unemployed citizens.

Editor's Note, Annotations. Annotations of opinions are not included because none were found dealing primarily with the activities of the Bureau of Reclamation under this statute.

Legislative History. H.R. 6551, Public Law 163 in the 75th Congress. H.R. Rept. No. 687. H.R. Report No. 943 and H.R. Rept. No. 1032 (conference reports).

TUCUMCARI PROJECT

An act to authorize the construction of a Federal reclamation project to furnish a water supply for the lands of the Arch Hurley Conservancy District in New Mexico. (Act of August 2, 1937, ch. 557, 50 Stat. 557)

[Project to be found feasible if district can repay amount expended from Reclamation Fund, and if such money plus other money equals construction cost—Repayment contract to be executed—Landowners to sell excess acreage.]—The Secretary of the Interior is hereby authorized to construct a Federal reclamation project for the irrigation of the lands of the Arch Hurley Conservancy District in New Mexico under the Federal reclamation laws: *Provided,* That construction work is not to be initiated on said irrigation project until (a) the project shall have been found to be feasible under subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 702), but the project may be found to be financially feasible if the Secretary of the Interior finds that the amount to be expended from the reclamation fund can be repaid by the District, and further that the amount of money to be expended from the reclamation fund, plus the amount of money which has been made available from other sources (for the estimated period of construction), equals the estimated cost of construction; (b) a contract shall have been executed with an irrigation or conservation district embracing the land to be irrigated under said project, which contract shall obligate the contracting district to repay the cost of construction of said project met by expenditure of moneys from the reclamation fund in forty equal annual installments, without interest; (c) contracts shall have been made with each owner of more than one hundred and sixty irrigable acres under said project, by which he, his successors, and assigns shall be obligated to sell all of his land in excess of one hundred and sixty irrigable acres at or below price fixed by the Secretary of the Interior and within the time to be fixed by said Secretary, no water to be furnished to the land of any such large landowner refusing or failing to execute such contract. (50 Stat. 557; Act of April 9, 1938, 52 Stat. 211; Act of August 9, 1955, 69 Stat. 556; 43 U.S.C. § 600a)

Explanatory Notes

1955 Amendment: Repeal of Incremental Value Provisions. The Act of August 9, 1955, 69 Stat. 556, which is found herein in chronological order, amended the Act by striking clause "(d)" which appeared at the end of the proviso and read as follows: "(d) contracts shall have been made with all owners of lands to be irrigated under the project by which they will agree that if their land is sold at prices above the appraised value thereof, approved by said Secretary, one-half of such excess shall be paid to the United States to be applied in the inverse order of the due dates upon the construction charge installments coming due thereafter from the owners of said land."

The 1955 Act also provides as follows: "No provision with respect to the matters covered in said clause (d) which is contained in any contract entered into prior to the date of enactment of this Act shall, except as is otherwise provided by this Act, be enforced by the United States. Nothing contained in this section shall affect (1) the retention and application by the United States of any payments which have been made prior to the date of enactment of this Act in accordance with any such provision of a contract, (2) the obligation of any party to the United States with respect to any payment which is due to the United States under any such provision but not paid upon

the date of enactment of this Act, and the application by the United States of any such payment in accordance with the terms of such contract, or (3) the enforcement of any such obligation by refusal to deliver water to lands covered by contractual provisions executed in accordance with said clause (d), except in those cases, if any, in which a sale or transfer consummated between December 27, 1938, and the date of enactment of this Act is only discovered after such date of enactment to have been made contrary to such contractual provisions or to said clause (d).

"**Sec. 2.** The Secretary of the Interior is authorized to amend any contract, which has been entered into prior to the date of enactment of this Act, to conform with the provisions of the first section of this Act. The consent of the United States is hereby given to the recording, at the expense of the party benefited thereby, of any such amended contract and to the simultaneous discharge of record of the original contract. The consent of the United States is likewise given to the discharge of record, at the expense of the party benefited thereby, of any contract which the Secretary of the Interior or his duly authorized agent finds is rendered nugatory by the enactment of this Act."

1938 Amendment. The Act of April 9, 1938, 52 Stat. 211, amended the Act by: (1) adding the language in clause "(a)" beginning with the word "but", (2) adding the words "met by expenditure of moneys from the reclamation fund", and by adding clause "(d)". The 1938 Act appears herein in chronological order.

Project Name. The reclamation project conditionally authorized by this Act is the Tucumcari Project, and is referred to as such in the project feasibility report submitted to the President by the Acting Secretary of the Interior on October 31, 1938. The report was approved by the President on November 1, 1938.

Reference in the Text. Subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 702), referred to in the text, requires a finding of feasibility by the Secretary of the Interior before any new project or division of a project shall be approved for construction. The Act is the Fact Finders' Act, which appears herein in chronological order.

Cross References, Amendatory Repayment Contracts. The Act of July 31, 1953, 67 Stat. 243, extended the benefits of subsection (b), section 7, of the Reclamation Project Act of 1939, to the Arch Hurley Conservancy District and authorized the amendment of its existing repayment contract. The Act of August 14, 1958, 72 Stat. 615, authorized a further amendment of the Districts' repayment contract. Both the 1953 and the 1958 Acts appear herein in chronological order.

Legislative History. S. 2086, Public Law 241 in the 75th Congress. S. Rept. No. 772. H.R. 7680 (companion bill).

INTERIOR DEPARTMENT APPROPRIATION ACT, 1938

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1938, and for other purposes. (Act of August 9, 1937, ch. 570, 50 Stat. 564)

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BUREAU OF RECLAMATION

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[Elephant Butte Dam—Transfer of power facilities to United States—Power costs repaid from power revenues.]—Rio Grande project, New Mexico-Texas: For operation and maintenance, $350,000: *Provided,* That the Secretary of the Interior is hereby authorized to enter into a contract with the El Paso County Water Improvement District Numbered 1 and the Elephant Butte Irrigation District of New Mexico by which the districts will be relieved of the obligation of making payment of the construction cost chargeable to the development of power of Elephant Butte Dam in the amount determined as equitable by the Secretary of the Interior in return for the conveyance by the said two districts to the United States of all the districts' right, title, interest, and estate in the use of said dam and other project works, including the project water supply, for the development of hydroelectric energy: *Provided further,* That in such contracts it shall be stated that the use of the dam, project works, and water supply for power purposes shall not deplete or interfere with the use thereof for irrigation purposes: *Provided further,* That the net earnings of the power plant and system belonging to the United States and any other available revenues shall be applied, until the cost thereof has been met, upon the cost of the power development, including (1) the cost of power facilities, (2) the amount invested, as herein authorized, in the cost of Elephant Butte Dam, and (3) the amount invested by the Bureau of Reclamation in Caballo Dam: *Provided further,* That after the cost of the power development has been met the net earnings of the power plant and system shall be disposed of as Congress may direct; (50 Stat. 593)

* * * * *

[Gila project—Subject to Boulder Canyon Project Act and Colorado River Compact.]—Gila project, Arizona, $700,000; said Gila project, including the waters to be diverted and used thereby and the lands and structures for the diversion and storage thereof, to be subject to the provisions of the Boulder Canyon Project Act of December 21, 1928, and subject to and controlled by the provisions of the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922; (50 Stat. 595)

EXPLANATORY NOTE

Reference in the Text. The Boulder Canyon Project Act of December 21, 1928, and the Colorado River Compact, both referred to in the text, appear herein in chronological order under the date of the Act.

NOTE OF OPINION

1. Veterans preference

The veterans preference provision of section 9 of the Boulder Canyon Project Act was not adopted by the Interior Department Appropriation Act for 1938, approved August 9, 1937, for the Gila project ("Gila project, Arizona, $700,000; said Gila project . . . to be subject to the provisions of the Boulder Canyon Project Act . . ."), and the lands in the Gila project are not subject thereto. Acting Solicitor Kirgis Opinion, 57 I.D. 177 (1940).

* * * * *

[**Colorado-Big Thompson project—Repayment contracts.**]—Colorado-Big Thompson project, Colorado: For construction in accordance with the plan described in Senate Document Numbered 80, Seventy-fifth Congress, $900,000: *Provided,* That no construction thereof shall be commenced until the repayment of all costs of the project shall, in the opinion of the Secretary of the Interior, be assured by appropriate contracts with water conservancy districts, or irrigation districts or water users' associations organized under the laws of Colorado, or other form of organization satisfactory to the Secretary of the Interior; (50 Stat. 595)

EXPLANATORY NOTES

Authorization. The Colorado-Big Thompson project was authorized by a finding of feasibility by the Secretary of the Interior, approved by the President on December 21, 1937, pursuant to section 4 of the Act of June 25, 1910, and subsection B of section 4 of the Act of December 5, 1924 (Fact Finders' Act). Both the 1910 and 1924 Acts appear herein in chronological order.

Water Rights Decree Entered. A decree was entered on October 12, 1955, in the Federal District Court for the District of Colorado, adjudicating the water rights of all parties interested in the water supply for the project and involved in compensating arrangements made to satisfy other water users affected. This decree was modified by a consent decree entered April 16, 1964, in the same court, further clarifying water rights involved. *United States* v. *Northern Colorado Water Conservancy District,* Civil Nos. (consolidated) 2782, 5016, 5017. See also section 11 of the Act of April 11, 1956, the Colorado River Storage Project Act, with respect to the effect of the 1955 decree.

NOTES OF OPINIONS

Reimbursement requirements 1
Taxing power of district 2

1. Reimbursement requirements

The proviso in the Act of August 9, 1937, 50 Stat. 595, making the initial appropriation for the construction of an irrigation and power project, that "no construction thereof shall be commenced until the repayment of all costs of the project shall . . . be assured by appropriate contracts with water conservancy districts," is for interpretation in the light of the plan referred to in said act, which contemplates reimbursement by irrigation districts of construction costs chargeable to irrigation features of the project only, as distinguished from power features. Thus the appropriation may be considered available for the project—power features as well as irrigation features—upon the execution of such repayment contracts as are necessary to cover repayment of the cost of the irrigation features only. 17 Comp. Gen. 763 (1938)

2. Taxing power of district

The constitutionality of the state Water Conservancy Act was unsuccessfully challenged by a landowner in the Northern Colorado Water Conservancy District, which was the district organized to execute the repayment contract with the United States. The Court found the requisite public purpose to validate the passing of the Act, and refused to accept plaintiff's argument that the taxing power constituted deprivation of property without due process of law. *People ex rel. Rogers* v. *Letford,* 102 Colo. 284, 79 P. 2d 274 (1938).

* * * * *

[Casper-Alcova project—Protection of water rights and beneficial use in Colorado—Name changed to Kendrick project.]—Casper-Alcova project, Wyoming, $650,000: *Provided,* That in recognition of the respective rights of both the States of Colorado and Wyoming to the amicable use of the waters of the North Platte River, neither the construction, maintenance, nor operation of said project shall ever interfere with the present vested rights or the fullest use hereafter for all beneficial purposes of the waters of said stream or any of its tributaries within the drainage basin thereof in Jackson County, in the State of Colorado, and the Secretary of the Interior is hereby authorized and directed to reserve the power by contract to enforce such provisions at all times: *Provided further,* That from and after the passage of this Act, the reclamation project heretofore known as the Casper-Alcova project shall be known and designated on the public records as the Kendrick project, and that the change in the name of said project shall in no wise affect the rights of the State of Wyoming or the State of Colorado or any county, municipality, corporation, association, or person, and all records, surveys, maps, and public documents of the United States or of either of said States in which said project is mentioned or referred to under the name of the Casper-Alcova project shall be held to refer to said project under and by the name of Kendrick project; (50 Stat. 595)

NOTE OF OPINION

1. Effect of

The Act of August 9, 1937, 50 Stat. 564, 595, appropriating funds for the Kendrick project does not limit or restrict Nebraska's or Wyoming's claim for apportionment of the waters of the North Platte River against Colorado, and therefore does not preclude the Supreme Court from determining Colorado's rights to the natural flow of the river in a suit among the three States for the equitable apportionment of the waters of the river. *Nebraska v. Wyoming, et al.,* 325 U.S. 589, 623 (1945).

* * * * *

Sec. 4. [Short title.]—This Act may be cited as the "Interior Department Appropriation Act, 1938." (50 Stat. 616)

EXPLANATORY NOTES

Not Codified. Extracts shown from this Act are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 6958, Public Law 249 in the 75th Congress. H.R. Rept. No. 786. S. Rept. No. 817. H.R. Rept. No. 1178 (conference report).

STUDIES AND PLANS FOR RECLAMATION PROJECTS IN OKLAHOMA

An act to provide for studies and plans for the development of reclamation projects on the Cimarron River in Cimarron County, Oklahoma; the Washita River in Oklahoma, and the North Canadian River in Oklahoma. (Act of August 19, 1937, ch. 705, 50 Stat. 718)

[**Sec. 1. Surveys and investigations to determine feasibility.**]—The Secretary of the Interior is hereby authorized (a) to conduct surveys and investigations in order to determine the feasibility and economic usefulness of the development of reclamation projects embracing certain lands in the Washita River Basin in Oklahoma, and certain lands in the North Canadian River Basin in Oklahoma, and certain lands in the Cimarron River Basin, Cimarron County, Oklahoma, and (b) if such development is determined to be feasible and economically useful, to prepare cost of estimates and designs for the construction of dams at such sites and such additional or incidental facilities as are necessary to carry out such development. (50 Stat. 718)

Sec. 2. [**Funds for surveys.**]—That any funds appropriated providing for surveys under the Reclamation Act may be used to carry out the provisions of this Act. (50 Stat. 718)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 7953, Public Law 324 in the 75th Congress. H.R. Rept. No. 1378. S. Rept. No. 1048.

BONNEVILLE PROJECT

An act to authorize the completion, maintenance, and operation of Bonneville project for navigation, and for other purposes. (Act of August 20, 1937, ch. 720, 50 Stat. 731)

[**Sec. 1. Completion of dam by Secretary of War—Surplus power to be disposed of by Power Administrator.**]—For the purpose of improving navigation on the Columbia River, and for other purposes incidental thereto, the dam, locks, power plant, and appurtenant works now under construction at Bonneville, Oregon and North Bonneville, Washington (hereinafter called Bonneville project), shall be completed, maintained, and operated under the direction of the Secretary of War and the supervision of the Chief of Engineers, subject to the provisions of this Act relating to the powers and duties of the Bonneville power administrator provided for in section 2(a) (hereinafter called the administrator) respecting the transmission and sale of electric energy generated at said project. The Secretary of War shall provide, construct, operate, maintain, and improve at Bonneville project such machinery, equipment, and facilities for the generation of electric energy as the administrator may deem necessary to develop such electric energy as rapidly as markets may be found therefor. The electric energy thus generated and not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith shall be delivered to the administrator, for disposition as provided in this Act. (50 Stat. 731; 16 U.S.C. § 832)

Sec. 2. [**Administrator appointed by Secretary of the Interior—Advisory Board of representatives of War, Interior, Federal Power Commission, and Agriculture departments—Office of Administrator to be an officer of the Department of the Interior—Secretary of War to install necessary machinery—Powers and duties of Administrator.**]—(a) The electric energy generated in the operation of the said Bonneville project shall be disposed of by the said administrator as hereinafter provided. The administrator shall be appointed by the Secretary of the Interior; shall be responsible to said Secretary of the Interior; and shall maintain his principal office at a place selected by him in the vicinity of the Bonneville project. The administrator shall, as hereinafter provided, make all arrangements for the sale and disposition of electric energy generated at Bonneville project not required for the operation of the dam and locks at such project and the navigation facilities employed in connection therewith. The form of administration herein established for the Bonneville project is intended to be provisional pending the establishment of a permanent administration for Bonneville and other projects in the Columbia River Basin. The Secretary of War shall install and maintain additional machinery, equipment, and facilities for the generation of electric energy at the Bonneville project when in the judgment of the administrator such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy. The Secretary of War shall schedule the operations of the several electrical generating units and appurtenant equipment of the Bonneville project in accordance

with the requirements of the administrator. The Secretary of War shall provide and maintain for the use of the administrator at said Bonneville project adequate station space and equipment, including such switches, switchboards, instruments, and dispatching facilities as may be required by the administrator for proper reception, handling, and dispatching of the electric energy produced at the said project, together with transformers and other equipment required by the administrator for the transmission of such energy from that place at suitable voltage to the markets which the administrator desires to serve. The office of the Administrator of the Bonneville project is hereby constituted an office in the Department of the Interior and shall be under the jurisdiction and control of the Secretary of the Interior. All functions vested in the Administrator of the Bonneville project under this Act may be exercised by the Secretary of the Interior and, subject to his supervision and direction, by the Administrator and other personnel of the project.

(b) In order to encourage the widest possible use of all electric energy that can be generated and marketed and to provide reasonable outlets therefor, and to prevent the monopolization thereof by limited groups, the administrator is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, as he finds necessary, desirable, or appropriate for the purpose of transmitting electric energy, available for sale, from the Bonneville project to existing and potential markets, and, for the purpose of interchange of electric energy, to interconnect the Bonneville project with other Federal projects and publicly owned power systems now or hereafter constructed.

(c) The administrator is authorized, in the name of the United States, to acquire, by purchase, lease, condemnation, or donation, such real and personal property, or any interest therein, including lands, easements, rights-of-way, franchises, electric transmission lines, substations, and facilities and structures appurtenant thereto, as the administrator finds necessary or appropriate to carry out the purposes of this Act. Title to all property and property rights acquired by the administrator shall be taken in the name of the United States.

(d) The administrator shall have power to acquire any property or property rights, including patent rights, which in his opinion are necessary to carry out the purposes of this Act, by the exercise of the right of eminent domain and to institute condemnation proceedings therefor in the same manner as is provided by law for the condemnation of real estate.

(e) The administrator is authorized, in the name of the United States, to sell, lease, or otherwise dispose of such personal property as in his judgment is not required for the purposes of this Act and such real property and interests in land acquired in connection with construction or operation of electric transmission lines or substations as in his judgment are not required for the purposes of this Act: *Provided, however.* That before the sale, lease, or disposition of real property or transmission lines, as herein provided, the administrator shall secure the approval of the President of the United States.

(f) Subject only to the provisions of this Act, the Administrator is authorized to enter into such contracts, agreements, and arrangements, including the amend-

ment, modification, adjustment, or cancellation thereof and the compromise or final settlement of any claim arising thereunder, and to make such expenditures, upon such terms and conditions and in such manner as he may deem necessary. (50 Stat. 732; Act of March 6, 1940, 54 Stat. 47; Act of October 23, 1945, 59 Stat. 546; 16 U.S.C. § 832a)

Explanatory Notes

1945 Amendment. The Act of October 23, 1945, 59 Stat. 546, amended subsection 2(f) to read as it appears above. Before amendment, the subsection authorized the Administrator "to negotiate and enter into such contracts, agreements, and arrangements as he shall find necessary or appropriate to carry out the purposes of this Act."

1940 Amendments. The Act of March 6, 1940, 54 Stat. 47, amended subsection 2(a) by adding to it its last sentence concerning the jurisdiction of the Secretary of the Interior. The 1940 Act also provided authority for the Secretary to appoint an Assistant Administrator, chief engineer and general counsel, who would serve under fixed salary limitations. This provision was repealed by the Act of October 23, 1945, 59 Stat. 546, which act, however, also amended section 10 of the 1937 Act and, as amended, section 10 includes a provision similar to the one repealed.

Advisory Board Abolished. The Bonneville Power Advisory Board authorized in section 2 to be composed of representatives of the Secretaries of the Army, Interior, and Agriculture and the Federal Power Commission was abolished by Reorganization Plan No. 4 of 1965, effective July 27, 1965, and its function transferred to the Secretary of the Interior.

Notes of Opinions

Contracting authority 1
Intertie 3
Weather modification 2

1. Contracting authority

The legislative history of section 2(f) of the Bonneville Project Act as amended on October 23, 1945 (59 Stat. 546, 16 U.S.C. § 832a(f)), expresses an intent on the part of Congress to authorize the Bonneville Power Administrator to conduct his affairs in a manner which equates his authority with that of private business enterprises. Solicitor Barry Opinion, 71 I.D. 315, 326 (1964), in re Canadian Entitlement Exchange Agreements.

In view of the express legislative intent of section 2(f) of the Bonneville Project Act to vest discretion in the Administrator of the Bonneville Power Administration as to the terms and conditions of contracts made to carry out the purposes of that Act, and assuming that Congress authorizes Atomic Energy Commission participation in the plan to sell steam from the New Production Reactor at Hanford, Washington, the contingent liability provision in a proposed agreement that BPA would reimburse the Washington Public Power Supply System for expenses incurred in the event construction of the reactor should be discontinued, will not be questioned, notwithstanding the general provision of sections 3679 and 3732, Revised Statutes (31 U.S.C. § 665 and 41 U.S.C. § 11). Dec. Comp. Gen. B-149016, B-149083 (letter of Assistant Comptroller General Weitzel to Chairman Holifield, Joint Committee on Atomic Energy, July 16, 1962).

The legislative history of section 2(f) of the Bonneville Project Act indicates a purpose to enable the Administrator to conduct the business of the project with a freedom similar to that conferred on public corporations carrying on comparable activities. Dec. Comp. Gen. B-105397 (September 21, 1951).

Under the broad authority of section 2(f) of the Bonneville Project Act the Administrator is authorized to enter into contracts and expend appropriated funds to increase precipitation in the watershed above Grand Coulee Dam through artificial nucleation and cloud modification if he determines that such services are necessary for the proper administration of the act. Dec. Comp. Gen. B-105397 (September 21, 1951).

2. Weather modification

Under his general authority to dispose of electric energy, establish rates, and enter contracts, the Bonneville Power Administrator may enter into a contract and expend appropriated funds for a survey to determine the feasibility of providing additional firm power by increasing precipitation through artificial nucleation and cloud modification. Dec. Comp. Gen. B-104463 (July 23, 1951).

3. Intertie

The Secretary of the Interior has authority under subsection 2(b), 2(f), 5(a), 5(b) and 9(b) of the Bonneville Project Act; section 5 of the Flood Control Act of 1944; sections 9(c) and 14 of the Reclamation Project Act of 1939; and section 2 of the Act of August 30, 1935, 49 Stat. 1039, reauthorizing the Grand Coulee Dam project, to construct transmission lines between the Pacific Northwest and the Pacific Southwest. Solicitor Barry Opinion, 70 I.D. 237 (1963).

Sec. 3. [Definition of "public body or bodies."]—As employed in this Act, the term "public body", or "public bodies", means States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof.

As employed in this Act, the term "cooperative", or "cooperatives", means any form of non-profit-making organization or organizations of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost. (50 Stat. 733; 16 U.S.C. § 832b)

Sec. 4. [Preference to public bodies and cooperatives.]—(a) In order to insure that the facilities for the generation of electric energy at the Bonneville project shall be operated for the benefit of the general public, and particularly of domestic and rural consumers, the administrator shall at all times, in disposing of electric energy generated at said project, give preference and priority to public bodies and cooperatives.

(b) To preserve and protect the preferential rights and priorities of public bodies and cooperatives as provided in section (a) and to effectuate the intent and purpose of this Act at all times up to January 1, 1942, there shall be available for sale to public bodies and cooperatives not less than 50 per centum of the electric energy produced at the Bonneville project, it shall be the duty of the administrator in making contracts for the sale of such energy to so arrange such contracts as to make such 50 per centum of such energy available to said public bodies and cooperatives until January 1, 1942: *Provided,* That the electric energy so reserved for but not actually purchased by and delivered to such public bodies and cooperatives prior to January 1, 1942, may be disposed of temporarily so long as such temporary disposition will not interfere with the purchase by and delivery to such public bodies and cooperatives at any time prior to January 1, 1942: *Provided further,* That nothing herein contained shall be construed to limit or impair the preferential and priority rights of such public bodies or cooperatives after January 1, 1942; and in the event that after such date there shall be conflicting or competing applications for an allocation of electric energy between any public body or cooperative on the one hand and a private agency of any character on the other, the application of such public body or cooperative shall be granted.

(c) An application by any public body or cooperative for an allocation of electric energy shall not be denied, or another application competing or in conflict therewith be granted, to any private corporation, company, agency, or person, on the ground that any proposed bond or other security issue of any such public body or cooperative, the sale of which is necessary to enable such prospective purchaser to enter into the public business of selling and distributing the electric energy proposed to be purchased, has not been authorized or marketed, until after a reasonable time, to be determined by the administrator, has been afforded

such public body or cooperative to have such bond or other security issue authorized or marketed.

(d) It is declared to be the policy of the Congress, as expressed in this Act, to preserve the said preferential status of the public bodies and cooperatives herein referred to, and to give to the people of the States within economic transmission distance of the Bonneville project reasonable opportunity and time to hold any election or elections or take any action necessary to create such public bodies and cooperatives as the laws of such States authorize and permit, and to afford such public bodies or cooperatives reasonable time and opportunity to take any action necessary to authorize the issuance of bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and in all other respects legally to become qualified purchasers and distributors of electric energy available under this Act. (50 Stat. 733; Act of March 6, 1940, 54 Stat. 47; 16 U.S.C. § 832c)

EXPLANATORY NOTE

1940 Amendment. The Act of March 6, 1940, 54 Stat. 47, amended subsection 4(b) by striking out "January 1, 1941" wherever it occurred and inserting in lieu thereof "January 1, 1942".

NOTES OF OPINIONS

1. Preference provision

The preference provisions of section 5 of the Flood Control Act of 1944 must be read in *pari materia* with the preference provisions of section 5(c) of the Boulder Canyon Project Act (43 U.S.C. § 617d-(c)), the Tennessee Valley Authority Act (16 U.S.C. § 831k), and Section 4 of the Bonneville Project Act (16 U.S.C. § 832-c(d)). 41 Op. Atty Gen. 236, 245 (1955), in re disposition of power from Clark Hill reservoir project.

If the marketing area of the Columbia River system were extended to California, the preference provisions of the Bonneville Project Act would extend thereto. Consequently, legislation would be required to modify the preference provision in order to assure that power sold to California applicants, both preference and non-preference, could subsequently be withdrawn and disposed of in the Pacific Northwest if that power were required in that area. Opinion of Portland Regional Solicitor, Coulter, November 4, 1959, reprinted in *Study of a High Voltage Electrical Interconnection between the Pacific Northwest and California,* submitted to the Senate Committee on Interior and Insular Affairs by Secretary Seaton, February 1960, at 53–57.

Sec. 5. [Federal Power Commission to approve rate schedules—Administrator to contract for sale of electric energy.]—(a) Subject to the provisions of this Act and to such rate schedules as the Federal Power Commission may approve, as hereinafter provided, the administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons and for the disposition of electric energy to Federal agencies. Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision. Contracts entered into under this subsection shall be binding in accordance with the terms

thereof and shall be effective for such period or periods, including renewals or extensions, as may be provided therein, not exceeding in the aggregate twenty years from the respective dates of the making of such contracts. Contracts entered into under this subsection shall contain (1) such provisions as the administrator and purchaser agree upon for the equitable adjustment of rates at appropriate intervals, not less frequently than once in every five years, and (2) in the case of a contract with any purchaser engaged in the business of selling electric energy to the general public, the contract shall provide that the administrator may cancel such contract upon five years' notice in writing if in the judgment of the administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirements of the said public bodies or cooperatives referred to in this Act, and that such cancellation may be with respect to all or any part of the electric energy so purchased under said contract to the end that the preferential rights and priorities accorded public bodies and cooperatives under this Act shall at all times be preserved. Contracts entered into with any utility engaged in the sale of electric energy to the general public shall contain such terms and conditions, including among other things stipulations concerning resale and resale rates by any such utility, as the administrator may deem necessary, desirable or appropriate to effectuate the purposes of this Act and to insure that resale by such utility to the ultimate consumer shall be at rates which are reasonable and nondiscriminatory. Such contract shall also require such utility to keep on file in the office of the administrator a schedule of all its rates and charges to the public for electric energy and such alterations and charges therein as may be put into effect by such utility.

(b) The administrator is authorized to enter into contracts with public or private power systems for the mutual exchange of unused excess power upon suitable exchange terms for the purpose of economical operation or of providing emergency or break-down relief. (50 Stat. 734; Act of October 23, 1945, 59 Stat. 546; 16 U.S.C. § 832d)

Explanatory Note

1945 Amendment. The Act of October 23, 1945, 59 Stat. 546, amended subsection 5(a) by inserting before the period of its first sentence the words "and for the disposition of electric energy to Federal agencies."

Notes of Opinions

1. Exchange agreements

The advantages at federal hydroelectric projects to be realized from implementing the "Treaty between Canada and the United States of America Relating to Cooperative Development of the Water Resources of the Columbia River Basin" through the execution of exchange agreements, support, as a matter of law, the Bonneville Power Administrator's determination of "economical operation" as required by section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. § 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. § 832d(b)), Solicitor Barry Opinion, 71 I.D. 315, 326–28 (1964).

Agreements providing for the delivery to the Bonneville Power Administrator of a quantity of power which cannot, with certainty, be determined but which constitutes a valuable power resource, in return for the delivery by the Administrator of stated amounts of power over the same period, constitute power-for-power exchange agreements which the Administrator is authorized to enter into under section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. § 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734,

16 U.S.C. § 832d(b)). Solicitor Barry Opinion, 71 I.D. 315 (1964), in re Canadian Entitlement Exchange agreements.

A proposed agreement whereby the Washington Public Power Supply System would furnish to the Bonneville Power Administration the total electric power generated from steam to be purchased from the Atomic Energy Commission's New Production Reactor at Hanford, Washington, and would receive in exchange therefor firm power from BPA, is clearly a contract for the exchange of power and comes within the general authority granted by section 5(b) of the Bonneville Project Act and section 14 of the Reclamation Project Act of 1939, which governs the operation of the Columbia Basin project as provided by section 1 of the Columbia Basin Project Act. Dec. Comp. Gen. B–149016, B–149083 (letter of Assistant Comptroller General Weitzel to Chairman Holifield, Joint Committee on Atomic Energy, July 16, 1962).

As a prerequisite to the execution of a proposed agreement with the Washington Public Power System to furnish firm power in exchange for the total electric power generated at the Atomic Energy Commission's New Production Reactor at Hanford, Washington, the Bonneville Power Administration must make a determination that the agreement is in the interest of economical operation, as required by section 14 of the Reclamation Project Act of 1939 and section 5(b) of the Bonneville Project Act. Dec. Comp. Gen. B–149016, B–149083 (letter to Chairman Holifield, July 16, 1962).

The provisions of the Bonneville Act with respect to pullback of power from private utilities on five years' notice if power is needed by preference customers and relative to a maximum contract term of 20 years relate only to contracts for the sale of power under section 5(a) of the Bonneville Project Act. Neither of these provisions is applicable to a contract for the exchange of power under section 5(b) of the Bonneville Project Act. Memorandum of Associate Solicitor Weinberg to Administrator, Bonneville Power Administration, July 12, 1962.

Sec. 6. [Schedules of rates and charges for electric energy.]—Schedules of rates and charges for electric energy produced at the Bonneville project and sold to purchasers as in this Act provided shall be prepared by the administrator and become effective upon confirmation and approval thereof by the Federal Power Commission; and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies. Subject to confirmation and approval by the Federal Power Commission, such rate schedules may be modified from time to time by the administrator, and shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. The said rate schedules may provide for uniform rates or rates uniform throughout prescribed transmission areas in order to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at the Bonneville project. (50 Stat. 735; Act of October 23, 1945, 59 Stat. 546; 16 U.S.C. § 832e)

Explanatory Note

1945 Amendment. The Act of October 23, 1945, 59 Stat. 546, amended section 6 by changing the period at the end of its first sentence to a semicolon and adding the words "and such rates and charges shall also be applicable to dispositions of electric energy to Federal agencies."

Note of Opinion

1. Rates and charges

The provisions relating to power marketing and power rates in section 9(c) of the Reclamation Project Act of 1939, section 5 of the Flood Control Act of 1944, and section 6 of the Bonneville Power Act are *in pari materia,* and each may be examined to shed light on the Congressional intent with respect to the others. Indeed, as a practical matter, as illustrated by the Bonneville Power Administration, because a single system may be used to market power from different sources, the three statutes have to be read together and interpreted as establishing identical criteria for power rates. Consequently, the mandate of the Flood Control Act of 1944 to market power from Army projects "in such manner as to en-

courage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles," applies also to power marketed from reclamation projects under reclamation law. Letter of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage Project.

Sec. 7. [Rate schedules to be based on cost of production of energy—Computation of costs.]—It is the intent of Congress that rate schedules for the sale of electric energy which is or may be generated at the Bonneville project in excess of the amount required for operating the dam, locks, and appurtenant works at said project shall be determined with due regard to and predicated upon the fact that such electric energy is developed from water power created as an incident to the construction of the dam in the Columbia River at the Bonneville project for the purposes set forth in section 1 of this Act. Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of Bonneville project) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment over a reasonable period of years. Rate schedules shall be based upon an allocation of costs made by the Federal Power Commission. In computing the cost of electric energy developed from water power created as an incident to and a byproduct of the construction of the Bonneville project, the Federal Power Commission may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production of electric energy and other purposes as the power development may fairly bear as compared with such other purposes. (50 Stat. 735; 16 U.S.C. § 832f)

NOTES OF OPINIONS

Allocation of costs 2
Repayment 1

1. Repayment

Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration (section 7 of the Bonneville Project Act, section 9(c) of the Reclamation Project Act of 1939, and section 5 of the Flood Control Act of 1944) require that the costs of each project to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied. Statement furnished by Assistant Secretary Holum in regard to statutory authority for revised procedure for presenting Bonneville Power Administration rate and repayment data on a consolidated system basis, printed in *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 36–38 (1964).

2. Allocation of costs

In allocating costs for the McNary Project, the Federal Power Commission should allocate part of the joint facility costs to recreation, both because recreation is authorized as a part of the project under the general authority of section 4 of the Flood Control Act of 1944, and because section 7 of the Bonneville Project Act specifically directs the Commission to take into account the use of the project for recreation. Memorandum of Solicitor Barry, July 22, 1965, in re authority of FPC under Section 7 of Bonneville Project Act to allocate part of joint facility costs to recreation at McNary Dam.

Sec. 8. [Advertising required on contracts for supplies or services.]—Notwithstanding any other provision of law, all purchases and contracts made by the administrator or the Secretary of War for supplies or for services except for

personal services, shall be made after advertising, in such manner and at such times, sufficiently in advance of opening bids, as the administrator or Secretary of War, as the case may be, shall determine to be adequate to insure notice and opportunity for competition. Such advertisement shall not be required, however, when (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed $500; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen. In comparing bids and in making awards, the administrator or the Secretary of War, as the case may be, may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, and ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications. (50 Stat. 735; 16 U.S.C. § 832g)

Sec. 9. [Accounts to be maintained—Independent commercial audit required—Expenditure of funds.]—(a) The administrator, subject to the requirements of the Federal Water Power Act, shall keep complete and accurate accounts of operations, including all funds expended and received in connection with transmission and sale of electric energy generated at the Bonneville project, and in the maintenance of such accounts, appropriate obligations shall be established for annual and sick leave of absence as earned. The Administrator shall, after the close of each fiscal year, obtain an independent commercial-type audit of such accounts. The forms, systems, and procedures prescribed by the Comptroller General for the Administrator's appropriation and fund accounting shall be in accordance with the requirements of the Federal Water Power Act with respect to accounts of electric operations of public utilities and the regulations of the Federal Power Commission pursuant thereto.

(b) The administrator may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for attendance at meetings; and for such other facilities and services as he may find necessary for the proper administration of this Act. (50 Stat. 736; Act of October 23, 1945, 59 Stat. 547; 16 U.S.C. § 832h)

(c) **[Annual report to Congress.]**—***Repealed.***

EXPLANATORY NOTES

Provision Repealed. The Act of June 14, 1966, 80 Stat. 200, repealed subsection (c) of section (9) which read as follows: "In December of each year, the administrator shall file with the Congress, through the Secretary of the Interior, a financial statement and a complete report as to the transmission and sale of electric energy generated at the Bonneville project during the preceding governmental fiscal year." The 1966 Act appears herein in chronological order.

1945 Amendment. The Act of October 23, 1945, 59 Stat. 546, amended subsection 9(a) by adding to it all that follows the words "Bonneville project" in the subsection.

Sec. 10. [Appointment of officers and employees—Voluntary and uncompensated services.]—(a) The Secretary of the Interior shall appoint, without regard to the civil-service laws, an Assistant Administrator, chief engineer, and general counsel and shall fix the compensation of each in accordance with the Classification Act of 1949, as amended. The Assistant Administrator shall perform the duties and exercise the powers of the Administrator, in the event of the absence or sickness of the Administrator until such absence or sickness shall cease and in the event of a vacancy in the office of Administrator until a successor is appointed.

(b) The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are authorized to appoint, subject to the civil-service laws, such officers and employees as may be necessary to carry out the purposes of this Act, the appointment of whom is not otherwise provided for, and to fix their compensation in accordance with the Classification Act of 1949, as amended. The Administrator may employ laborers, mechanics, and workmen in connection with construction work or the operation and maintenance of electrical facilities (hereinafter called 'laborers, mechanics, and workmen'), subject to the civil-service laws, and fix their compensation without regard to the Classification Act of 1949, as amended, and any other laws, rules, or regulations relating to the payment of employees of the United States except the Act of May 29, 1930 (46 Stat. 468), as amended, to the extent that it otherwise is applicable. The Administrator is further authorized to employ physicians, under agreement and without regard to civil-service laws or regulations, to make physical examinations of employees or prospective employees who are or may become laborers, mechanics, and workmen. The Administrator, the Secretary of War, and the Federal Power Commission, respectively, are also authorized to appoint, without regard to the civil-service laws, such experts as may be necessary for carrying out the functions entrusted to them under this Act.

(c) The Administrator may accept and utilize such voluntary and uncompensated services and with the consent of the agency concerned may utilize such officers, employees, or equipment of any agency of the Federal, State, or local governments which he finds helpful in carrying out the purposes of this Act; in connection with the utilization of such services, reasonable payments may be allowed for necessary travel and other expenses. (50 Stat. 736; Act of October 23, 1945, 59 Stat. 547; Act of October 28, 1949, 63 Stat. 972; 16 U.S.C. § 832i)

EXPLANATORY NOTES

1949 Amendment. The Act of October 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923" in the text, and by its operation eliminated the provision at the end of subsection "(b)" which read: "and to fix the compensation of each such expert without regard to the Classification Act of 1923, as amended, but at not to exceed $7,500 per annum."

1945 Amendment. The Act of October 23, 1945, 59 Stat. 547, amended section 10 in its entirety. Before amendment, the section read as follows:

"**Sec. 10.** The administrator, the Secretary of War, and the Federal Power Commission, respectively, shall appoint such attorneys, engineers, and other experts as may be necessary for carrying out the functions entrusted to them under this Act, without regard to the provisions of the civil-service laws and shall fix the compensation

of each of such attorneys, engineers, and other experts at not to exceed $7,500 per annum; and they may, subject to the civil-service laws, appoint such other officers and employees as may be necessary to carry out such functions and fix their salaries in accordance with the Classification Act of 1923 as amended."

Reference in the Text. The Act of May 29, 1930 (46 Stat. 468), referred to in the text, deals with the retirement of employees in the classified civil service.

Sec. 11. [Receipts from transmission and sale of electric energy.]—All receipts from transmission and sale of electric energy generated at the Bonneville project shall be covered into the Treasury of the United States to the credit of miscellaneous receipts, save and except that the Treasury shall set up and maintain from such receipts a continuing fund of $500,000, to the credit of the administrator and subject to check by him, to defray emergency expenses and to insure continuous operation. There is hereby authorized to be appropriated from time to time, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act, including installation of equipment and machinery for the generation of electric energy and facilities for its transmission and sale. (50 Stat. 736; 16 U.S.C. § 832j)

NOTES OF OPINIONS

1. Continuing fund

The primary purpose of the continuing fund for the Bonneville Power Administration, as of the continuing fund first established for the Southwestern Power Administration and the emergency fund created by the Act of June 26, 1948, for the Bureau of Reclamation, is to insure continuous operation of transmission facilities in the face of emergencies that cause or threaten interruption (as distinguished from curtailment) in power service. Dec. Comp. Gen. B–105397 (September 21, 1951).

A seasonal reduction in rainfall and consequent decrease in the output of electrical energy from federal dams on the Columbia River does not constitute such an emergency or interruption of service as to justify expenditure of money from the continuing fund, created by section 11 of the Bonneville Project Act, for artificial nucleation and cloud modification services to increase precipitation. Dec. Comp. Gen. B–105397 (September 21, 1951).

Sec. 12. [Authority of the Administrator with respect to claims against the United States—Power to sue in the name of the United States.]—(a) The Administrator is hereby authorized to determine, settle, compromise, and pay claims and demands against the United States which are not in excess of $1,000 and are presented to the Administrator in writing within one year from the date of accrual thereof, for any losses, injuries, or damages to persons or property, or for the death of persons, resulting from acts or omissions of employees acting within the scope of their employment pursuant to this Act. The Administrator is also authorized to determine, compromise, and settle any claims and demands of the United States for any losses, injuries, or damages to property under the Administrator's control, against other persons or public or private corporations. The Administrator's determination, compromise, settlement, or payment of any of the claims referred to in this subsection shall be final and conclusive upon all officers of the Government, notwithstanding the provisions of any other Act to the contrary. When claims presented to the Administrator under this subsection arise, in whole or in part, out of any damage done to private property, the Administrator may repair all or any part of such damage in lieu of making such payments.

(b) The Administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, affecting the status or operation of Bonneville project by the United States attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Administrator. (50 Stat. 736; Act of October 23, 1945, 59 Stat. 547; Act of July 26, 1946, 60 Stat. 701; 16 U.S.C. § 832k)

EXPLANATORY NOTES

1946 Amendment. The Act of July 26, 1946, 60 Stat. 701, amended subsection 12(b) to read as it appears above. Before amendment, the subsection read as follows:

"(b) The Administrator may, in the name of the United States, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation, including condemnation proceedings, affecting the status or operation of the Bonneville project by his attorneys: *Provided, however,* That such attorneys shall supply the Attorney General with copies of the pleadings in all such cases and that the handling of litigation which, in the Attorney General's opinion, involves interpretation of the Constitution of the United States or which involves appearance in any United States circuit court of appeals or the United States Supreme Court shall be subject to the Attorney General's direction or supervision. The Administrator may compromise and make final settlement of such litigation and pay the amount due under any compromise or judgment. Complaints in condemnation proceedings permitted by section 2(c) and 2(d) of this Act shall be signed, verified, and filed by the Administrator."

1945 Amendment. The Act of October 23, 1945, 59 Stat. 547, amended section 12 in its entirety. Before amendment, the section read as follows:

"**Sec. 12.** The administrator may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation affecting the status or operation of Bonneville project by the United States Attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the administrator."

Sec. 13. [Savings clause.]—If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. (50 Stat. 736; 16 U.S.C. § 832*l*)

EXPLANATORY NOTES

1945 Amendments Not Included. The Act of October 23, 1945, 59 Stat. 546, which amended several sections of this Act, also amended certain sections of the Internal Revenue Code and the Social Security Act. These amendments deal with employees of the Bonneville Power Administration.

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

Legislative History. H.R. 7642, Public Law 329 in the 75th Congress. H.R. Rept. No. 1090. H.R. Rept. No. 1217 (on H. Res. 277). S. Rept. No. 919 (on S. 2092). H.R. Rept. No. 1507 (conference report).

COMMISSION TO INVESTIGATE PROJECTS

An act to create a commission and to extend further relief to water users on United States reclamation projects and on Indian irrigation projects. (Act of August 21, 1937, ch. 725, 50 Stat. 737)

[**Sec. 1. Commission to investigate projects—To make report to Congress.**]—There is hereby created a commission to be composed of three members appointed by the Secretary of the Interior, all of whom shall have an intimate knowledge of irrigation farming, but who shall not be employees of the Bureau of Reclamation or the Bureau of Indian Affairs of the Department of the Interior, and shall have no financial interest in the matters coming under their jurisdiction. The commission is authorized and directed to investigate the financial, economic, and other conditions of the various United States and Indian reclamation projects, with particular reference to the ability of each such project to make payments of water-right charges without undue burden on the water users, district, association, or other reclamation organization liable for such charges. Such investigation shall include an examination and consideration of any statement filed with the commission, or the Department of the Interior, by any such district, association, or other reclamation organization, or the water users thereof, and, where deemed advisable by the commission and requested by such district, association, or other reclamation organization, said commission may proceed to such project and hold hearings, the proceedings of which shall be reduced to writing and filed with its reports. Said commission, after having made careful investigation and study of the financial, economic, and other conditions of the various United States and Indian reclamation projects and their probable present and future ability to meet such water-right charges, shall report to the Congress as soon as practicable, with its recommendations as to the best, most feasible, and practicable comprehensive permanent plan for such water-right payments with due consideration for the development and carrying on of the reclamation program of the United States, and having particularly in mind the probable ability of such water users, districts, associations, or other reclamation organizations to meet such water-right charges regularly and fully from year to year during periods of prosperity and good prices for agricultural products as well as during periods of decline in agricultural income and unsatisfactory conditions of agriculture. (50 Stat. 737)

Sec. 2. [Appropriation authorized.]—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $30,000, which shall be available for expenditure, as the Secretary of the Interior may direct, for expenses and all necessary disbursements, including salaries, in carrying out the provisions of this Act. The commission is authorized to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this Act without regard to civil-service laws or the Classification Act of 1923, as amended. (50 Stat. 738)

Sec. 3. [Certification by commission of project inability to make payment, if

approved, to act as extension of time for payment.]—If upon investigation the commission shall find that a project, because of partial crop failure due to a water shortage or other causes beyond the control of the water users, is unable to make full payment of the construction charges becoming due and payable for the calendar year 1937, without great hardship or undue burden, the commission is hereby authorized to certify that fact to the Secretary and such certification, if approved by said Secretary, shall operate to grant an extension of time for the payment of such proportion of the construction charges due for the calendar year 1937 as the commission considers just and equitable, the proportion of the charges so extended to be paid at such time as the Secretary may determine. (50 Stat. 738)

Sec. 4. [Provisions repealed.]—Sections 1 and 2 of the Act approved April 14, 1936 (Public, Numbered 519, Seventy-fourth Congress), are hereby repealed. (50 Stat. 738)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of April 14, 1936 (Public, Numbered 519, Seventy-fourth Congress), referred to in section 4, appears herein in chronological order. The 1936 Act also authorized the creation of a Commission to investigate projects. Sections 1 and 2 of the Act were superseded by this Act.

Commission's Report. The Commission authorized to be appointed by this act submitted its report to the Congress in May 1938. The report was printed as House Document No. 673, 75th Congress, 3rd Session.

Legislative History. S. 413, Public Law 331 in the 75th Congress. S. Rept. No. 172. H.R. Rept. No. 1440.

CONSTRUCTION OF SMALL RESERVOIRS

An act to authorize an appropriation for the construction of small reservoirs under the Federal reclamation laws. (Act of August 26, 1937, ch. 827, 50 Stat. 841)

[**$500,000 appropriated from Reclamation fund—No reservoir to exceed $50,000.**]—From the special fund in the Treasury of the United States created by the Act of June 17, 1902, and therein designated "The Reclamation Fund," there is hereby authorized to be appropriated the sum of $500,000 for expenditure by the Secretary of the Interior, under the Federal reclamation laws, in the construction of small storage reservoirs at such locations within the States subject to the Federal reclamation laws, as the said Secretary may select, no reservoir to be constructed hereunder the estimated cost of which exceeds $50,000. (50 Stat. 841)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 2512, Public Law 387 in the 75th Congress. H.R. Rept. No. 689 S. Rept. No. 791. H.R. Rept. No. 1485 (conference report).

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

[Extracts from] An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes. (Act of Aug. 26, 1937, ch. 832, 50 Stat. 844)

* * * * *

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.]—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 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, third, for power. (50 Stat. 850; § 2, Act of October 17, 1940, 54 Stat. 1199)

EXPLANATORY NOTES

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 herein in chronological order.

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 herein in chronological order.

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 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* which was 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," as H.R. Doc. No. 246, 85th Cong., 1st Sess. (1957).

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1. Generally

The Central Valley project is a subsidy, the cost of which will never be paid in full, and it is hardly lack of due process for the government to regulate that which it subsidizes. *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275, 295–6 (1958).

Congress having left the determination of the need for particular property for distribution systems under the Central Valley

project to the Secretary of the Interior, the courts have no right to question the manner in which that official exercised the delegated power. *United States* v. *277.97 Acres of Land*, 112 F. Supp. 159 (S.D. Cal. 1953).

6. Water—Contracts

The master contract of September 12, 1949, with the Santa Barbara County Water Agency, and the five member unit contracts by the Agency with the City of Santa Barbara and the Carpinteria, Goleta, Montecito, and Summerland County Water Districts, were held valid by the United States Supreme Court as against objections to the excess land and other provisions, *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275 (1958), *reversing Santa Barbara County Water Agency* v. *All Persons*, 47 Cal. 2d 699, 306 P. 2d 875 (1957). The contracts subsequently were held valid by the Supreme Court of California on remand, *Santa Barbara County Water Agency* v. *All Persons*, 53 Cal. 2d 743, 3 Cal. Rptr. 348, 350 P. 2d 100 (1960).

Contracts of September 23, 1949, with Ivanhoe Irrigation District and May 14, 1951, with Madera Irrigation District for water service and construction of a distribution system were held valid by the United States Supreme Court as against objections to excess land and other provisions, *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275 (1958), *reversing Ivanhoe Irr. Dist.* v. *All Parties*, 47 Cal. 2d 597, 306 P. 2d 824 (1957) and *Madera Irr. Dist.* v. *All Persons*, 47 Cal. 2d 681, 306 P. 2d 886 (1957). The contracts subsequently were confirmed by the Supreme Court of California on remand, *Ivanhoe Irr. Dist.* v. *All Parties*, 53 Cal. 2d 692, 3 Cal. Rptr. 317, 350 P. 2d 69 (1960).

7.—Exchanges

In view of the provision in section 14 of the Reclamation Project Act of 1939 authorizing contracts for exchange or replacement of water or water rights, water delivered to the Feather Water District in the Sacramento River at the mouth of the Feather River as replacement for water diverted by the District from the Feather River can be considered as "stored waters" of the Central Valley project delivered "for" the lands of the District within the meaning of section 2 of the Act of August 26, 1937, as amended. Memorandum of Associate Solicitor Fisher, July 27, 1959.

8.—Rates

It is clearly within the authority of the Secretary under section 9(c) of the Reclamation Project Act of 1939 to charge different rates for water from the Central Valley project delivered for municipal water supply than for water delivered for irrigation purposes. *City of Fresno* v. *California*, 372 U.S. 627 (1963).

9.—Water rights

In view of the long history of attempts to resolve disputes with water users diverting water from the Sacramento River, some part of which is attributable to the operation of Shasta Reservoir of the Central Valley Project, and in view of the costs and uncertainties of litigation, it is appropriately within the judgment of the Secretary under the authority of section 14 of the Reclamation Project Act of 1939 to waive payment for past diversions as a part of agreements with the diverters requiring payments for future diversions. Dec. Comp. Gen., B–152983 (January 21, 1964).

The substantial reduction in the natural flow of the San Joaquin River as the result of the impoundment and diversion of the flow at Friant Dam upstream constitutes a seizure or taking, in whole or in part, of rights which may exist in the continued flow and use of the water; it does not constitute a trespass against such rights. This seizure was authorized by Congress when it authorized the project, and any relief to which claimants of the rights may be entitled by reason of such taking is by suit against the United States under the Tucker Act, 28 U.S.C. § 1346. *Dugan* v. *Rank*, 372 U.S. 609 (1963). [Ed. note: The Tucker Act is the Act of March 3, 1887, 24 Stat. 505. It authorized suits to be brought in the Court of Claims against the United States in certain cases, including claims founded upon the Constitution. This includes claims based upon the Fifth Amendment provision that private property shall not be taken for public use without just compensation. 28 U.S.C. §1346 relates to the jurisdiction of the Federal District Courts in such cases, and 28 U.S.C. § 1491 relates to the jurisdiction of the Court of Claims. These sections appear herein in the Appendix.]

Where there is an interference or partial taking by the United States of rights to the continued flow of water in the San Joaquin River and to its use as it flows along the landowner's property, the measure of damages is the difference in market value of the claimant's land before and after the interference or partial taking. *Dugan* v. *Rank*, 372 U.S. 609, 624–25 (1963).

A suit by certain individuals claiming water rights in the San Joaquin River asking an injunction against the United States to refrain from interfering with such rights

by the operation of Friant Dam, is not a case involving a *general* adjudication of "all of the rights of various owners on a given stream" (S. Rept. No. 755, 82d Cong., 1st Sess. 9 (1951)) within the meaning of the McCarran amendment (§ 208, Act of July 10, 1952, 66 Stat. 560, 43 U.S.C. § 666) but rather is a private suit to determine water rights solely between the claimants and the United States and the local Bureau of Reclamation officials. Consequently, the consent of the United States to the suit has not been given under the McCarran amendment, and the suit must be dismissed as to the United States. *Dugan* v. *Rank,* 372 U.S. 609, 617–19 (1963).

Section 8 of the Reclamation Act does not mean that state law may operate to prevent the United States from exercising the power of eminent domain to acquire the water rights of others. Rather, the effect of section 8 in such a case is to leave to state law the definition of the property interests, if any, for which compensation must be made. *City of Fresno* v. *California,* 372 U.S. 627, 630 (1963).

Conditions imposed by the California State Water Rights Board purporting to specify either requirements or a time period to which the United States must adhere are not binding on the United States, but will, however, be regarded as recommendations to be considered in the development of Federal water service contracts. Memorandum of Associate Solicitor Weinberg, November 27, 1962, in re water service contract with Fresno Irrigation District.

Even though navigation is mentioned as one of the purposes of the Central Valley Project, Congress realistically elected to treat Friant Dam not as a navigation project but as a reclamation project, with reimbursement to be provided for the taking of water rights recognized under State law, in accordance with section 8 of the Reclamation Act, and this election is confirmed by administrative practice. Accordingly, the judgment of the Court of Claims will be upheld granting compensation to the owners of so-called "uncontrolled grass lands" along the San Joaquin River which depend for water upon seasonal inundations resulting from overflows of the river. *United States* v. *Gerlach Live Stock Co.,* 339 U.S. 725 (1950).

15. Excess lands—Generally

Repeated action by the Congress since the inception of the Central Valley Project constitutes ratification of the administrative construction that the excess land laws apply to the project and confirmation and approval of the contracts executed by the Secretary thereunder. *Ivanhoe Irr. Dist.* v. *McCracken,* 357 U.S. 275, 292–3 (1958).

16.—Recordable contracts

Inasmuch as section 46 of the Omnibus Adjustment Act of 1926 provides only that recordable contracts for the sale of excess lands be "under terms and conditions satisfactory to the Secretary of the Interior," and prescribes no time period within which such sales must be consummated, a ten-year period, if found to be appropriate, is legally permissible. Memorandum of Regional Solicitor Graham, August 1, 1945, reprinted in *Central Valley Project Documents,* Part 2, H.R. Doc. No. 246, 85th Cong., 1st Sess. 642 (1957).

20. Power—Generally

The construction of a steam generating plant to firm up hydroelectric power is included as a part of the Central Valley project which was re-authorized by section 2 of the Act of August 26, 1937, 50 Stat. 850; and there is no constitutional obstacle to the construction of such a plant. Memorandum of Chief Counsel Fix to the Commissioner, May 12, 1949; reprinted in *Hearings on H.R. 3838, the Interior Department Appropriation Bill, 1950, Before a Subcommittee of the Senate Committee on Appropriations,* 81st Cong., 1st Sess. 2529–39 (1949).

21.—Rates

In view of the Secretary's authority under section 2 of the Act of August 26, 1937, 50 Stat. 850, to acquire property for the Central Valley project by any means he deems necessary, including donation, and the broad authority of section 9(c) of the Reclamation Project Act of 1939 to fix rates, the Secretary may grant rate discounts to power customers that reflect the amortization of construction costs of transmission facilities built by the customer and conveyed to the Government or that reflect the operation and maintenance costs of facilities built and retained by the customer. Dec. Comp. Gen. B–62789 (letter of Assistant Comptroller General Weitzel to Chairman John E. Moss, Special Subcommittee on Assigned Power and Land Problems, House Committee on Government Operations, June 28, 1960).

25. Fish and wildlife

The successive "re-authorizations" of the Central Valley project in 1949, 1950 and 1954, were intended, as a drafting technique, to add certain developments, features, or purposes to the then existing project but not, in effect, to post-date the authorizations for construction theretofore conferred. Consequently, the authority in section 2 of the

Coordination Act of 1946 to make nonreimbursable cost allocations to fish and wildlife purposes for projects "hereafter authorized to be constructed" are applicable only to those portions of the Central Valley project the construction of which began after August 14, 1946. Memorandum of Acting Solicitor Armstrong, November 15, 1954.

26. Navigation

If it has been decided not to allocate storage space in Shasta Reservoir to navigation, section 7 of the Flood Control Act of 1944 will not apply to navigation features. Letter of Secretary of the Army Pace to Secretary of the Interior, September 29, 1952.

Sec. 3. [“Marshall Ford Dam,” Colorado River project in Texas authorized—Construction authorized.]—That for the purpose of improving navigation, controlling floods, regulating the flow of streams, providing for storage and for delivery of stored waters, for the reclamation of lands, and other beneficial uses, and for the generation of electric energy as a means of financially aiding and assisting such undertaking, the project known as “Marshall Ford Dam,” Colorado River project, in Texas, is hereby authorized and adopted and all contracts and agreements which have been executed in connection therewith are hereby validated and ratified, and the Secretary of the Interior, acting through such agents as he may designate, is hereby authorized to construct, operate, and maintain all structures and incidental works necessary to such project, and in connection therewith to make and enter into any and all necessary contracts including contracts amendatory of or supplemental to those hereby validated and ratified. (50 Stat. 850)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Supplementary Provision: Reimbursement Required. A provision in the Act of May 10, 1939, 53 Stat. 719, directs the Secretary of the Interior to require reimbursement of construction costs of Marshall Ford Dam. The provision appears herein in chronological order.

Legislative History. H.R. 7051, Public Law 392 in the 75th Congress. H.R. Rept. No. 885. S. Rept. No. 916. H.R. Rept. No. 1488 (conference report).

RELINQUISHMENT OF LANDS ON BLACKFEET INDIAN RESERVATION

An act to authorize the Secretary of the Interior to relinquish in favor of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, the interest in certain land acquired by the United States under the Federal Reclamation Laws. (Act of August 28, 1937, ch. 868, 50 Stat. 864)

[Sec. 1. Authorizing relinquishment to Indians upon repayment to Reclamation Fund—Necessary easements and rights reserved.]—The Secretary of the Interior is hereby authorized to relinquish in favor of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, the interest acquired by the United States for Federal reclamation purposes in the lands within the exterior boundaries of the present Blackfeet Indian Reservation, that were acquired for Federal reclamation purposes and are determined in the opinion of said Secretary not to be needed for such purposes. Such relinquishment shall be conditioned upon the repayment into the reclamation fund of a sum equal to the amount taken therefrom for the purchase of the lands so relinquished, including the amounts paid for the benefit of allottees where the land acquired for Federal reclamation purposes was allotted land. Upon such relinquishment and payment being made, the title to said lands shall be and remain in the United States in trust for the Indians of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana: *Provided,* That in making such relinquishments the Secretary may reserve for Federal reclamation purposes such easements and rights as in his opinon may be required for present or future developments under the Federal reclamation laws, and the amount payable into the reclamation fund on account of such relinquishment shall be reduced by the value of the easements and rights so retained for Federal reclamation purposes, such value to be conclusively ascertained by said Secretary: *Provided further,* That no relinquishments herein authorized shall be effective unless approved in writing by the Blackfeet Tribal Council. (50 Stat. 864)

Sec. 2. [Expenditures by the Secretary authorized.]—The Secretary of the Interior is hereby authorized to expend from any moneys on deposit in the Treasury of the United States to the credit of the Blackfeet Indians not to exceed $30,000 for the purpose of carrying out the purposes of this Act. (50 Stat. 864)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 2774, Public Law 397 in the 75th Congress. S. Rept. No. 950. H.R. Rept. No. 1544.

WAPATO INDIAN IRRIGATION PROJECT

An act amending acts fixing the rate of payment of irrigation construction costs on the Wapato Indian irrigation project, Yakima, Washington, and for other purposes. (Act of February 24, 1938, ch. 33, 52 Stat. 80)

[**Sec. 1. Assessment rate amended.**]—So much of the Act approved February 14, 1920 (41 Stat. 431), as amended by the Act approved May 25, 1922 (42 Stat. L. 595 and 596), as fixes the annual rate of payment of irrigation construction costs or assessments on the Wapato Indian irrigation project on the Yakima Reservation in the State of Washington is hereby amended so as to fix the per-acre per-annum assessment rate at $1.25 against those lands classed as A or B which are subject to construction assessments pursuant to existing law. Such rate is to take effect immediately upon approval of this Act and shall continue until the total cost assessable under existing law against such of the A and B lands shall have been repaid. (52 Stat. 80)

Sec. 2. [**Annual repayment schedule modified.**]—The Secretary of the Interior is hereby authorized and directed to modify the annual repayment schedule set forth in the memorandum agreement of March 9, 1921, approved March 31, 1921, as amended, wherein provision is made among other things for payment of the actual cost of the two hundred and fifty thousand acre feet of water for certain of the lands under the Wapato Indian irrigation project so as to extend payment of the balance of the cost of such water over a twenty-four year period commencing with the payment due December 31, 1937. (52 Stat. 80)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Background. The Wapato Indian Irrigation project, Yakima, Washington, is one of seven divisions of the Yakima project. The Wapato project (or division) is operated by the Bureau of Indian Affairs, but receives its water supply from the Yakima project.

References in the Text. That portion of the Act approved February 14, 1920 (41 Stat. 431), as amended by the Act approved May 25, 1922, (42 Stat. L. 595 and 596), referred to in the text, authorizes the Secretary of the Interior to collect $2.50 per acre from non-Indian landowners on or before December 31 of each calendar year for each acre of land to which water for irrigation purposes is delivered under the Wapato irrigation and drainage system. Such sums, and any collected from Indian allottees, shall be available for expenditure under the direction of the Secretary for continuing construction on said system.

Cross Reference: Appropriation for Additional Water, Wapato Project. The Act of July 1, 1940, 54 Stat. 707, authorizes an appropriation of $800,000 to be credited to the reclamation fund for payment of the cost of providing additional water for the Wapato Indian irrigation project. The 1940 Act appears herein in chronological order.

Legislative History. S. 558, Public Law 433 in the 75th Congress. S. Rept. No. 949. H.R. Rept. No. 1501.

RED RIVER OF THE NORTH COMPACT

An act consenting to an interstate compact between the States of Minnesota, South Dakota, and North Dakota relating to the utilization of, the control of the floods of, and the prevention of the pollution of the waters of the Red River of the North and streams tributary thereto. (Act of April 2, 1938, ch. 59, 52 Stat. 150)

[**Sec. 1. Consent of Congress to the Compact.**]—The consent of Congress is hereby given to the compact and agreement set forth below: *Provided,* That nothing therein contained shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the Red River of the North and streams tributary thereto, or in regard to any of the matters covered by the said compact:

"A COMPACT BETWEEN THE STATE OF SOUTH DAKOTA, THE STATE OF NORTH DAKOTA AND THE STATE OF MINNESOTA

"This compact made and entered into by and between the State of South Dakota, the State of North Dakota and the State of Minnesota, Witnesseth:

"Whereas, the Red River of the North, which has its source in the State of South Dakota, and which flows northward, forming the boundary line between the State of Minnesota and the State of North Dakota, has a drainage area which includes a portion of all three states; and,

"Whereas, the surface waters in said drainage area, if properly conserved and regulated, will produce benefits common to all three of said states; and,

"Whereas, the interests of the people of said three states will be best served by the organization of an interstate authority vested with sufficient power; and,

"Whereas, all three states have mutual interests in the regulation and administration of said surface waters in said drainage area; and

"Whereas, it is highly desirable that there be a single agency of all three of said states empowered to further the aforesaid regulation and administration of said surface waters in the interests of all of said states,

"Now, Therefore, the State of South Dakota, the State of North Dakota and the State of Minnesota, do hereby solemnly covenant and agree, each with the other, as follows:

"ARTICLE I

"The following terms, whenever used in this agreement, shall have the following meanings, unless a different meaning clearly appears in the context:

"(a) The term 'commission' shall mean the Tri-State Waters Commission, the corporation created by this agreement and the acts authorizing the same.

"(b) The term 'acquire' shall mean and include construct, acquire by purchase, lease, devise, gift or the exercise of the rights of eminent domain, or any other mode of acquisition whatsoever.

"(c) The term 'federal agency' shall mean and include the United States of America, the President of the United States of America, the Public Works Ad-

ministration, the Works Progress Administration, and any and every other authority, agency, or instrumentality of the United States of America heretofore or hereafter created or established.

"(d) The term 'real property' shall mean and include lands, structures, franchises, and interests in land, including waters and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages or otherwise, and also claims for damages to real estate.

"(e) The term 'drainage area' shall mean the area from which surface waters drain from the States of South Dakota, Minnesota and North Dakota into the Red River of the North.

"ARTICLE II

"Each of the States of North Dakota, South Dakota and Minnesota undertake to cooperate with the other two states for the most advantageous utilization of the waters of the Red River of the North, for the control of the flood waters of this river and for the prevention of the pollution of such waters.

"ARTICLE III

"To that end the said three states do hereby create a district to be known as the Tri-State Waters Area, which shall comprise that portion of the drainage basin of the Red River of the North lying within the boundaries of the said states.

"ARTICLE IV

"The said three states do hereby create the Tri-State Waters Commission, which shall be a body corporate and shall have the powers, duties and jurisdiction herein set forth and such other powers, duties and jurisdiction as shall hereafter be conferred upon it by acts of the legislatures of each of said three states concurred in, when of a character to require such concurrence, by act of Congress.

"ARTICLE V

"The Tri-State Waters Commission, hereafter in this compact called the Commission, shall consist of nine Commissioners, three from each state, appointed by each state in such manner and for such length of term as may be determined by the legislature thereof. Each Commissioner shall be a citizen of the state from which he is appointed, and at least one Commissioner from each state shall be a resident of the drainage area of the Red River of the North. Each Commissioner may be removed or suspended from office in such manner as shall be provided by the law of the state from which he shall be appointed. Each Commissioner shall receive such compensation as may be provided by the legislature of the state he represents, which compensation shall be paid by such state. Each

Commisioner shall be paid actual expenses necessarily incurred in the performance of his duties as such Commissioner.

"ARTICLE VI

"The Commission shall elect from its number a chairman and vice-chairman and shall appoint and at its pleasure remove an executive secretary and such other officers and assistants as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation.

"It shall adopt a seal and suitable by-laws and shall promulgate rules and regulations for its management and control.

"A majority of the members from each state shall constitute a quorum for the transaction of business, the exercise of any powers, or the performance of any duties, but no action of the Commission shall be binding unless at least two of the members from each state shall vote in favor thereof.

"The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the Governor of each state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the said states which may be necessary to carry out the intent and purpose of this compact, and such changes in the area of the district as may seem desirable.

"The Commission shall not incur any obligations for salaries, office, or other administrative expenses prior to the making of appropriation adequate to meet the same; nor shall the Commission pledge the credit of any of the said states except by and with the authority of the legislatures thereof. Each state reserves the right to provide hereafter by law for the examination and audit of the accounts of the Commission by its comptroller or other official.

"The Commission shall meet and organize within thirty days after the effective date of this compact.

"ARTICLE VII

"It shall be the duty of the Commission to study the various water problems relating to water supply within the Tri-State Waters Area.

"ARTICLE VIII

"Plans for works on boundary waters in said drainage area prepared by the state, municipal or industrial agencies shall receive the approval of the Commission before construction is begun.

"It shall be the duty of the Commission to maintain and control lake levels and stream flow on boundary waters within the area, but such action shall be taken only with the approval of the authorized county or state agencies, in which such lake or stream is located, but said Commission shall have no power or jurisdiction over water levels or stream flow in the Otter Tail River which

is known as that portion of the Red River originating in Becker and Otter Tail counties extending and flowing through in a southerly and southwesterly direction through the counties of Becker, Otter Tail and Wilkin, and emptying into the Red River of the North at the junction of the Boise de Sioux at Breckenridge, Minnesota and its chain of lakes and its tributaries.

"The Commission shall have power to cooperate with any duly authorized federal, state or municipal agency in studies and surveys, construction, maintenance and operation of water projects within the scope of its jurisdiction.

"The Commission shall be authorized to exercise the power of eminent domain, to acquire such real and personal property as may be reasonably necessary to effectuate the purposes of this compact, and to exercise all other powers not inconsistent with the constitutions of the States of North Dakota, South Dakota and Minnesota, or with the Constitution of the United States, which may be reasonably necessary or appropriate for or incidental to the effectuation of its authorized purposes, and generally to exercise in connection with the property and affairs and in connection with property within its control any and all powers which may be exercised by a private corporation in connection with similar property and affairs.

"ARTICLE IX

"The Commission shall study the methods of financing the construction, control, maintenance and operation of projects and shall recommend for enactment to the legislatures of the states concerned such legislation as will effectuate the purposes and ends of the Commission.

"ARTICLE X

"Each state shall bear its proportionate share of the expense of the Commission based on the pro rata value to such state of the activities of the Commission, which expense shall be provided for by appropriation by the legislature.

"ARTICLE XI

"Should any part of this compact be held to be contrary to the constitution of any of said states or of the United States such part of said compact shall become inoperative as to each state but all other severable provisions of this compact shall continue in full force and effect.

"ARTICLE XII

"This compact shall become operative immediately after it has been signed by the Governor of the State of South Dakota, the Governor of the State of North Dakota and the Governor of the State of Minnesota.

"In testimony whereof the Governor of the State of South Dakota, the Governor of the State of North Dakota and the Governor of the State of Minnesota have signed this compact in triplicate and the seals of said states have been thereunto affixed.

"Done this 23rd day of June, in the year of our Lord One Thousand Nine Hundred Thirty-seven.

"LESLIE JENSON
"*Governor of the State of South Dakota*

"WILLIAM LANGER
"*Governor of the State of North Dakota*

"ELMER A. BENSON
"*Governor of the State of Minnesota.*"

Sec. 2. [Reservation clause.]—The right to alter, amend, or repeal this Act is hereby expressly reserved. (52 Stat. 150)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Consent to Interstate Agreements and Projects. Section 5 of the Act of August 8, 1917, 40 Stat. 250, 266, provides as follows:

"Sec. 5. Congress hereby consents that the States of Minnesota, North Dakota, and South Dakota, or any two of them, may enter into any agreement or agreements with each other to aid in improving navigation and to prevent and control floods on boundary waters of said States and the waters tributary thereto. And said States, or any two of them, may agree with each other upon any project or projects for the purpose of making such improvements, and upon the amount of money to be contributed by each to carry out such projects. The Secretary of War is authorized and directed to make a survey of any project proposed, as aforesaid, by said States, or any two of them, to determine the feasibility and practicability thereof and the expenses of carrying the same into effect and what share of such expenses should be borne by the respective States, local interests, or by the National Government. If the Secretary of War approves any such projects, he may authorize the States to make such improvements at their own expense, but under his supervision. That the sum of $25,000, or so much thereof as may be necessary is hereby appropriated, out of any funds in the Treasury of the United States not otherwise appropriated, for the purpose of enabling the Secretary of War to make the surveys and estimates herein contemplated."

Legislative History. S. 1570, Public Law 456 in the 75th Congress. H.R. Rept. No. 1807 (on H.R. 8043).

SHOSHONE POWER PLANT REVENUES

An act providing for the allocation of net revenues of the Shoshone power plant of the Shoshone reclamation project in Wyoming. (Act of April 9, 1938, ch. 132, 52 Stat. 210)

[Sec. 1. Distribution of net revenues.]—The net revenues from the Shoshone power plant of the Shoshone irrigation project, properly and equitably allocable to the unconstructed portions of the Shoshone project from the operation of the Shoshone power plant, shall be applied, first, to the repayment of the proportionate construction cost of the power system; second, to the repayment of the proportionate construction cost of the Shoshone Dam; and, third, thereafter such net revenues shall be paid into the reclamation fund, and that the Secretary of the Interior is hereby authorized and directed to apply the net revenues properly and equitably apportioned or to be apportioned to the Garland and Frannie Divisions of said project, in accord with the terms and provisions of existing contracts with the water users on said project. (52 Stat. 210)

Sec. 2. [Conflicting acts repealed.]—All acts or parts of Acts in conflict herewith are hereby repealed. (52 Stat. 210)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1949 and 1954 Modifications. Section 3 of the Act of October 27, 1949, 63 Stat. 941, 942, and the Act of July 14, 1954, 68 Stat. 471, modify these provisions for the application of Shoshone project power revenues. These acts appear herein in chronological order.

Cross Reference, Annual Appropriation Acts. For a number of years the annual appropriation acts made funds from power revenues of the Shoshone project available for operation and maintenance of the commercial system, as explained in the note under the Act of March 7, 1928, 45 Stat. 230.

Cross Reference, Sale of Facilities. The Act of May 14, 1930, 46 Stat. 309, authorizes the sale of power facilities no longer needed for the Shoshone project. The Act appears herein in chronological order.

Legislative History. H.R. 3786, Public Law 475 in the 75th Congress. H.R. Rept. No. 1446. S. Rept. No. 1543.

Note of Opinion

1. Disposition of power revenues

The water users on the Shoshone project are not entitled to have applied for their benefit any of the net revenues derived from the operation of the Shoshone power plant. Memorandum of Secretary Ickes (September 16, 1940).

AMEND TUCUMCARI PROJECT ACT

An act to amend an act entitled "An Act to authorize the construction of a Federal reclamation project to furnish a water supply for the lands of the Arch Hurley Conservancy District in New Mexico", approved August 2, 1937, ch. 134, 50 Stat. 557. (Act of April 9, 1938, ch. 134, 52 Stat. 211)

The Act entitled "An Act to authorize the construction of a Federal reclamation project to furnish a water supply for the lands of the Arch Hurley Conservancy District in New Mexico", approved August 2, 1937 (Public, Numbered 241), is amended to read as follows:

"**[Project to be found feasible if district can repay amount expended from Reclamation Fund, and if such money plus other money equals construction cost—Repayment contract to be executed—Landowners to sell excess acreage—All owners to contract, if land sold above appraised prices, that one-half such excess be paid United States.]**—The Secretary of the Interior is hereby authorized to construct a Federal reclamation project for the irrigation of the lands of the Arch Hurley Conservancy District in New Mexico under the Federal reclamation laws: *Provided,* That construction work is not to be initiated on said irrigation project until (a) the project shall have been found to be feasible under subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 702), but the project may be found to be financially feasible if the Secretary of the Interior finds that the amount to be expended from the reclamation fund can be repaid by the District, and further that the amount of money to be expended from the reclamation fund, plus the amount of money which has been made available from other sources (for the estimated period of construction), equals the estimated cost of construction; (b) a contract shall have been executed with an irrigation or conservation district embracing the land to be irrigated under said project, which contract shall obligate the contracting district to repay the cost of construction of said project met by expenditure of moneys from the reclamation fund in forty equal annual installments, without interest; (c) contracts shall have been made with each owner of more than one hundred and sixty irrigable acres under said project, by which he, his successors, and assigns shall be obligated to sell all of his land in excess of one hundred and sixty irrigable acres at or below prices fixed by the Secretary of the Interior and within the time to be fixed by said Secretary, no water to be furnished to the land of any such large landowner refusing or failing to execute such contract; and (d) contracts shall have been made with all owners of lands to be irrigated under the project by which they will agree that if their land is sold at prices above the appraised value thereof, approved by said Secretary, one-half of such excess shall be paid to the United States to be applied in the inverse order of the due dates upon the construction charge installments coming due thereafter from the owners of said land." (52 Stat. 211; 43 U.S.C. § 600)

EXPLANATORY NOTES

Reference in the Text. Subsection B of section 4 of the Act of December 5, 1924 (43 Stat. 702), referred to in the text, requires a finding of feasibility before a new project or new division of a project is approved. The Act is the Fact Finders' Act, which appears herein in chronological order.

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of August 2, 1937.

Legislative History. H.R. 8817, Public Law 477 in the 75th Congress. H.R. Rept. No. 1808. S. Rept. No. 1415.

INTERIOR DEPARTMENT APPROPRIATION ACT, 1939

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1939, and for other purposes. (Act of May 9, 1938, ch. 187, 52 Stat. 291)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[**Gila project—Water for Arizona State Experiment Farm.**]—The Secretary of the Interior is authorized to furnish water for the use of the Arizona State Experiment Farm, embracing the west half southwest quarter of Section 28, Township 9 south, Range 23 west, Gila and Salt River meridian, together with such areas as may be added thereto, the cost, not exceeding $750 annually, to be paid from the appropriations for the Gila project. (52 Stat. 321)

* * * * *

[**Increase in Reclamation Fund—Hayden-O'Mahoney Amendment.**]—Increase in the Reclamation Fund: The Secretary of the Treasury is authorized and directed to transfer to the credit of the reclamation fund, created by the Act of June 17, 1902 (32 Stat. 388), a sum equal to the difference between (1) 52½ per centum of the moneys which the Secretary of the Treasury shall determine to have accrued to the United States from lands within the naval petroleum reserves, except those in Alaska, from February 25, 1920, to June 30, 1938, inclusive, and (2) the total of all sums advanced to the reclamation fund under the provisions of the Act entitled "An Act to authorize advances to the reclamation fund, and for the issue and disposal of certificates of indebtedness in reimbursement therefor, and for other purposes", approved June 25, 1910 (36 Stat. 835), as amended, and under the provisions of the Act entitled "An Act to authorize advances to the reclamation fund, and for other purposes", approved March 3, 1931 (46 Stat. 1507), as amended, and not reimbursed by transfer from the reclamation fund to the general funds in the Treasury. The transaction provided for in this section shall be deemed to have effected a complete reimbursement of the general funds in the Treasury of all sums advanced to the reclamation fund under the provisions of such Acts of June 25, 1910, and March 3, 1931, as amended.

All moneys received by the United States in connection with any irrigation projects, including the incidental power features thereof, constructed by the Secretary of the Interior through the Bureau of Reclamation, and financed in whole or in part with moneys heretofore or hereafter appropriated or allocated therefor by the Federal Government, shall be covered into the reclamation fund, except in cases where provision has been made by law or contract for the use of such revenues for the benefit of users of water from such project: *Provided,* That after the net revenues derived from the sale of power developed in connection with any of said projects shall have repaid those construction costs of such project

allocated to power to be repaid by power revenues therefrom and shall no longer be required to meet the contractual obligations of the United States, then said net revenues derived from the sale of power developed in connection with such project shall, after the close of each fiscal year, be transferred to and covered into the General Treasury as "miscellaneous receipts": *Provided further,* That nothing in this section shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended, or to apply to irrigation projects of the Office of Indian Affairs. (52 Stat. 322; 43 U.S.C. §§ 391a–1, 392a)

EXPLANATORY NOTES

Codification. The first paragraph is codified as 43 U.S.C. § 391a–1. The second paragraph is codified as 43 U.S.C. § 392a.

Popular Name. The above paragraphs are popularly known as the "Hayden-O'Mahoney amendment."

References in the Text. Each of the Acts referred to in the Hayden-O'Mahoney amendment appears herein in chronological order. The Boulder Canyon Project Act (45 Stat. 1057), which is referred to by title only, is the Act of December 21, 1928.

NOTES OF OPINIONS

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1. General

The Hayden-O'Mahoney amendment deals with the cash distribution of revenues in the Treasury as between the reclamation fund and the general fund. Its purpose was to assure that the reclamation fund would receive as to each reclamation project an amount of dollars equal to that required to amortize the power investment plus the irrigation assistance. It does not, however, purport to deal with payout requirements of reclamation projects. These, except for special requirements applicable to given projects, are governed by Section 9(c) of the Reclamation Project Act of 1939. Statement furnished by Assistant Secretary Holum for *Hearings on H.R.* 2337, *to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 38 (1964).

The Hayden-O'Mahoney amendment of 1938 amends section 5 of the Act of April 16, 1906, by providing that after net power revenues have repaid project construction costs allocated to be repaid by such revenues, they shall then be covered into the General Treasury as miscellaneous receipts. Solicitor Harper Opinion, M–33504 (September 26, 1944), in re disposition of power revenues from Grand Valley project.

2. Power revenues

The availability of power revenues to aid irrigation has, in one form or another, been a part of general reclamation law almost since its beginning. This is evident from section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; the Act of February 24, 1911, 36 Stat. 930, 43 U.S.C. § 522; and subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, 43 U.S.C. § 501. This general trend has been reinforced by the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the Act of May 9, 1938, 52 Stat. 322, 43 U.S.C. § 392a, and a provision in the Interior Department Appropriation Act, 1947, Act of July 1, 1946, 60 Stat 366, as well as section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1193, 43 U.S.C. § 485h. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration (section 7 of the Bonneville Project Act, section 9(c) of the Reclamation Project Act of 1939, and section 5 of the Flood Control Act of 1944) require that the costs of each project to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied. Statement furnished by Assistant Secretary Holum in

regard to statutory authority for revised procedure for presenting Bonneville Power Administration rate and repayment data on a consolidated system basis, printed in *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 36–38 (1964).

The requirements of the Hayden-O'Mahoney amendment are satisfied as to each reclamation project involved in the power marketing operation of the Bonneville Power Administration when each reclamation project has been compensated by being credited with so much of BPA's power revenues as have, over a reasonable period, repaid that portion of the project's investment allocated to power together with the irrigation assistance. Statement furnished by Assistant Secretary Holum for *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 38 (1964).

Under section 9(c) of the Reclamation Project Act of 1939, as construed consistently with the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the minimum rates for the sale of power must be such as will cover (1) an appropriate share of annual operation and maintenance costs and (2) an amount equal to 3 per cent per annum of the original power construction costs; however, if the 3 per cent factor is not enough to return power construction costs plus the irrigation subsidy (the amount of irrigation construction costs beyond the ability of the water users to repay) within a reasonable period of time, then the rates must be increased accordingly. There is no statutory obligation for the Government to recover a profit (in the form of interest) on the investment in power construction costs, and therefore all of the power revenues are available to return power construction costs and the irrigation subsidy. Three per cent per annum is a minimum rate of return which continues without regard to pay-out. Solicitor Harper Opinion, M–33473. (September 24, 1944) and M–33473 (Supplemental) (September 10, 1945). [Editor's Note: Although this opinion has not specifically been overruled, it is not followed in two respects. First, the 3 per cent factor used in section 9(c) is regarded as annual interest on the unamortized balance of power construction costs, rather than as a constant annual percentage of the original power costs. Second, the revenues represented by the interest component (that part of power revenues attributable to a recovery of interest on the power construction costs) are not considered to be available to return irrigation costs. This latter policy was adopted following a period of controversy culminated by the recommendation of the House Appropriations Committee against use of the interest component to return irrigation costs. H.R. Rept. No. 314, 83rd Congress, 1st Sess. 12 (1953).]

After repayment of construction charges of the Grand Valley Project and operation and maintenance costs during the repayment period, the net power revenues will be required under the Hayden-O'Mahoney amendment, to be covered into the General Treasury as miscellaneous receipts. Solicitor Harper Opinion, M–33504 (September 26, 1944).

3. Army projects

Inasmuch as the Hayden-O'Mahoney amendment does not apply to facilities constructed by the Department of the Army, an appropriate allocation of revenues should be made to the Department of the Army powerplants in the Missouri River Basin project, and as required by general provisions of law the sum represented thereby must be deposited in the general fund of the Treasury. Testimony of Assistant Solicitor Weinberg, *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works,* 85th Cong., 1st Sess., pt. 1, 341–42 (1957). *Accord:* Letter of Administrative Assistant Secretary Beasley to Mr. A. T. Samuelson, General Accounting Office, April 22, 1957; reprinted in *Joint Hearings, id.* at 364.

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).

4. **Headwater benefits**

Moneys received from power licenses, under assessments made by the Federal Power Commission pursuant to section 10(f) of the Federal Power Act, for headwater benefits attributable to Reclamation reservoirs, shall be paid into the reclamation fund in accordance with the Hayden-O'Mahoney amendment of 1938. Dec. Comp. Gen., B-156498 (May 24, 1966).

5. **Exceptions**

The legislative history of the Hayden-O'Mahoney amendment indicates that the type of contract which was intended to be excepted from its application was that authorized to be entered into under subsection I of section 4 of the Act of December 5, 1924, that is, one where the power development has been financed by the Government and the water users have obligated themselves in fact to repay all of the costs. Solicitor Harper Opinion, M-33504 (September 26, 1944), in re disposition of net power revenues from the Grand Valley project.

* * * * *

GENERAL FUND, CONSTRUCTION

* * * * *

[Central Valley project—Relocation authority—Acquisition of property—Contracts for work to be done—Rights-of-way.]—Central Valley project, California, $9,000,000, together with the unexpended balance of the appropriation for this project contained in the Interior Department Appropriation Act, fiscal year 1938, with authority in connection with the construction of the Central Valley project, California, (1) to purchase or condemn and to improve suitable land for relocation of highways, roadways, railroads, telegraph, telephone, or electric transmission lines or other properties the relocation of which, in the judgment of the Secretary of the Interior, will be necessitated by construction or operation and maintenance of said project, (2) in full or part payment for said properties to be relocated to enter into contracts with the owners of said properties to be relocated whereby they undertake in whole or in part the property acquisition and work involved in relocation and, in said Secretary's discretion, to pay in advance for said work undertaken by said owners; and (3) to convey or exchange acquired rights-of-way or other lands or rights-of-way owned or held by the United States for use in connection with said project, or to grant perpetual easements therein or thereover, or to undertake improvement or construction work connected with said relocations, for the purpose of effecting completely said relocation; (52 Stat. 324)

* * * * *

Sec. 3. [Short title.]—This Act may be cited as the "Interior Department Appropriation Act, 1939". (52 Stat. 342)

EXPLANATORY NOTES

Codification. Only the Hayden-O'Mahoney amendment of this Act is codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 9621, Public Law 497 in the 75th Congress. H.R. Rept. No. 1855. S. Rept. No. 1566. H.R. Rept. No. 2172 (conference report).

COLUMBIA RIVER FISHERY DEVELOPMENT

An act to provide for the conservation of the fishery resources of the Columbia River, establishment, operation, and maintenance of one or more stations in Oregon, Washington, and Idaho, and for the conduct of necessary investigations, surveys, stream improvements, and stocking operations for these purposes. (Act of May 11, 1938, ch. 193, 52 Stat. 345.)

[Sec. 1. Establishment of salmon cultural stations in Columbia River Basin.]—The Secretary of the Interior is authorized and directed to establish one or more salmon-cultural stations in the Columbia River Basin in each of the States of Oregon, Washington, and Idaho. Any sums appropriated for the purpose of establishing such stations may be expended, and such stations shall be established, operated, and maintained, in accordance with the provisions of the Act entitled "An Act to provide for a five-year construction and maintenance program for the United States Bureau of Fisheries", approved May 21, 1930, insofar as the provisions of such Act are not inconsistent with the provisions of this Act. (52 Stat. 345; 16 U.S.C. § 755)

Sec. 2. [Investigations, biological surveys, and experiments authorized.]—The Secretary of the Interior is further authorized and directed (1) to conduct such investigations, and such engineering and biological surveys and experiments, as may be necessary to direct and facilitate conservation of the fishery resources of the Columbia River and its tributaries; (2) to construct, install and maintain devices in the Columbia River Basin for the improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects, and for facilitating free migration of fish over obstructions and (3) to perform all other activities necessary for the conservation of fish in the Columbia River Basin in accordance with law. (52 Stat. 345; 16 U.S.C § 756)

Sec. 3. [Appropriation.]—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $500,000 or so much thereof as may be necessary, to carry out the purposes of this Act (52 Stat. 345; 16 U.S.C. § 757)

Explanatory Notes

Popular Name. The above statute is popularly known as the Mitchell Act.

Transfer of Functions. When enacted, the authority now vested in the Secretary of the Interior by this Act was vested in the Secretary of Commerce. Section 4(e) of Reorganization Plan No. II of 1939, 53 Stat. 1433, however, transferred the Bureau of Fisheries, its personnel and functions, from the Department of Commerce to the Department of the Interior. The Bureau of Fisheries was consolidated with the Biological Survey, to be known as the Fish and Wildlife Service, pursuant to Section 3 of Reorganization Plan No. III of 1940, 5 Stat. 1232.

Reference in the Text. The Act entitle "An Act to provide for a five-year construc tion and maintenance program for th United States Bureau of Fisheries", ap proved May 21, 1930, referred to in th text, authorizes appropriations for the estab lishment of fish cultural stations, substatior and laboratories in various states. The Ac provides, among other things, that befor a station or laboratory is established in State, it must enact legislation authorizin the United States Commissioner of Fisheri

or his agents to conduct fish hatching and culture, etc., in any manner and at any time he considers proper. The Act is found at 46 Stat. 371; it is not codified.

Cross Reference, Anadromous Fish Act. The Act of October 30, 1965, 79 Stat. 1125, popularly known as the Anadromous Fish Act, authorizes a program of fish conservation within the several states and the Great Lakes, other than the Columbia River basin area, similar to the program authorized by this Act. The 1965 Act appears herein in chronological order.

Legislative History. S. 2307, Public Law 502 in the 75th Congress. S. Rept. 1077. H.R. Rept. 2235.

FORT PECK PROJECT

An act to authorize the completion, maintenance, and operation of the Fort Peck project for navigation, and for other purposes. (Act of May 18, 1938, ch. 250, 52 Stat. 403)

[**Sec. 1. Secretary of War to complete Fort Peck project—Bureau of Reclamation to transmit and sell electric energy not required in operation of dam or for navigation.**]—For the purpose of improving navigation on the Missouri River, and for other purposes incidental thereto, the dam and appurtenant works now under construction at Fort Peck, Montana, and a suitable power plant for the production of hydroelectric power (which dam, power plant, and appurtenant works are hereinafter called Fort Peck project) shall be completed, maintained, and operated under the direction of the Secretary of War and the supervision of the Chief of Engineers, subject to the provisions of this Act relating to the powers and duties of the Bureau of Reclamation (hereinafter called the Bureau), as provided for in section 2 (a), respecting the transmission and sale of electric energy generated at said project. The Secretary of War shall provide, construct, operate, maintain, and improve at Fort Peck project such machinery, equipment, and facilities for the generation of electric energy as the Bureau may deem necessary to develop such electric energy as rapidly as markets may be found therefor. The electric energy thus generated and not required for the operation of the dam at such project and the navigation facilities employed in connection therewith shall be delivered to the Bureau for disposition as provided in this Act. (52 Stat. 403; 16 U.S.C. § 833)

Sec. 2. [**(a) Secretary of War to provide and maintain adequate station space and equipment required by Bureau; (b) Bureau to provide, operate, and maintain transmission lines; (c) Secretary of the Interior to acquire in name of United States necessary real and personal property; (d) Secretary of Interior to acquire necessary property including patent rights; and (e) Secretary of Interior to sell, lease, or dispose of personal property not required.**]—(a) The electric energy generated in the operation of the said Fort Peck project shall be disposed of by the Bureau as hereinafter provided. The Bureau shall exercise the powers and perform the duties provided for in this Act under the supervision and direction of the Secretary of the Interior in accordance with the Act of May 26, 1926 (44 Stat. 657). The Bureau shall, as hereinafter provided, make all arrangements for the sale and disposition of electric energy generated at the Fort Peck project not required for the operation of the dam at such project and the navigation facilities employed in connection therewith. The form of administration herein established for the Fort Peck project is intended to be provisional pending the establishment of a permanent administration for Fort Peck and other projects in the Missouri River Basin. The Secretary of War shall install and maintain additional machinery, equipment, and facilities for the generation of electric energy at the Fort Peck project when in the judgment of the Bureau such additional generating facilities are desirable to meet actual or potential market requirements for such electric energy. The Secretary of War

shall schedule the operations of the several electrical generating units and appurtenant equipment of the Fort Peck project in accordance with the requirements of the Bureau. The Secretary of War shall provide and maintain for the use of the Bureau at said Fort Peck project adequate station space and equipment, including such switches, switchboards, instruments, and dispatching facilities as may be required by the Bureau for proper reception, handling, and dispatching of the electric energy produced at the said project, together with transformers and other equipment required by the Bureau for the transmission of such energy from that place at suitable voltage to the markets which the Bureau desires to serve.

(b) In order to encourage the widest possible use of all electric energy that can be generated and marketed and to provide reasonable outlets therefor, and to prevent the monopolization thereof by limited groups, the Bureau is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, and facilities and structures appurtenant thereto, as it finds necessary, desirable, or appropriate for the purpose of transmitting electric energy, available for sale, from the Fort Peck project to existing and potential markets, and for the purpose of interchange of electric energy, to interconnect the Fort Peck project with either private or with other Federal projects and publicly owned power systems now or hereafter constructed.

(c) The Secretary of the Interior is authorized, in the name of the United States, to acquire, by purchase, lease, condemnation, or donation, such real and personal property, or any interest therein, including lands, easements, rights-of-way, franchises, electric transmission lines, substations, and facilities and structures appurtenant thereto, as he finds necessary or appropriate to carry out the purposes of this Act. Title to all property and property rights acquired by said Secretary shall be taken in the name of the United States.

(d) The Secretary of the Interior shall have power to acquire any property or property rights, including patent rights, which in his opinion are necessary to carry out the purposes of this Act, by purchase, lease, donation, or by the exercise of the right of eminent domain and to institute condemnation proceedings therefor in the same manner as is provided by law for the condemnation of real estate.

(e) The Secretary of the Interior is authorized, in the name of the United States, to sell, lease, or otherwise dispose of such personal property as in his judgment is not required for the purposes of this Act and such real property and interests in land acquired in connection with construction or operation of electric transmission lines or substations as in his judgment are not required for the purposes of this Act.

(f) Subject to the provisions of this Act, the Bureau is authorized in the name of the United States, to negotiate and enter into such contracts, agreements, and arrangements as it shall find necessary or appropriate to carry out the purposes of this Act. (52 Stat. 404; 16 U.S.C. § 833a)

EXPLANATORY NOTE

Reference in the Text. The Act of May 26, 1926 (44 Stat. 657), referred to in the text, authorizes the appointment of a Commissioner of Reclamation by the President. The Act appears herein in chronological order.

Sec. 3. [Definitions.]—As employed in this Act, the term "public body," or "public bodies," means States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof.

As employed in this Act, the term "cooperative," or "cooperatives," means any form of nonprofit-making organization or organizations of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost. (52 Stat. 405; 16 U.S.C. § 833b)

Sec. 4. [Preference to public bodies and cooperatives.]—In order to insure that the facilities for the generation of electric energy at the Fort Peck project shall be operated for the benefit of the general public, and particularly of domestic and rural consumers, the Bureau shall at all times, in disposing of electric energy generated at said project, give preference and priority to public bodies and cooperatives. (52 Stat. 405; 16 U.S.C. § 833c)

Sec. 5. [Bureau to prepare schedules of rates—Rates to become effective when approved by Federal Power Commission—Rates may be modified.]—Schedules of rates and charges for electric energy produced at the Fort Peck project and sold to purchasers as in this Act provided shall be prepared by the Bureau and become effective upon confirmation and approval thereof by the Federal Power Commission. Subject to confirmation and approval by the Federal Power Commission, such rate schedules may be modified from time to time by the Bureau and shall be fixed and established with a view to encouraging the widest possible diversified use of electric energy. The said rate schedules may provide for uniform rate or rates uniform throughout prescribed transmission areas in order to extend the benefits of an integrated transmission system and encourage the equitable distribution of the electric energy developed at the Fort Peck project. (52 Stat. 405; 16 U.S.C. § 833d)

Sec. 6. [Rates to be drawn having regard to recovery of cost of production, transmission, and amortization—Rate schedules to be based upon allocation of costs by Federal Power Commission.]—It is the intent of Congress that rate schedules for the sale of electric energy which is or may be generated at the Fort Peck project in excess of the amount required for operating the dam and appurtenant works at said project shall be determined with due regard to and predicated upon the fact that such electric energy is developed from water power created as an incident to the construction of the dam in the Missouri River at the Fort Peck project for the purposes set forth in section 1 of this Act. Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of Fort Peck project) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment over a reasonable period of years. Rate schedules shall be based upon an allocation of costs made by the Federal Power Commission. In computing the cost of electric energy developed from water power created as an incident to and a byproduct of the construction of Fort Peck project, the Federal Power Commission may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production

of electric energy and other purposes as the power development may fairly bear as compared with such other purposes. (52 Stat. 405; 16 U.S.C. § 833e)

NOTE OF OPINION

1. Irrigation pumping power

In setting rates for the sale of electric power from the Fort Peck project, a special rate may be set for irrigation pumping power, and interest need not be recovered on construction costs attributable to such power. Memorandum of Chief Counsel Cheadle, April 7, 1944.

Sec. 7. [Advertising required on purchases or contracts—(1), (2), and (3) exceptions.]—Notwithstanding any other provision of law, all purchases and contracts made by the Bureau or the Secretary of War for supplies or for services, except for personal services, shall be made after advertising, in such manner and at such times, sufficiently in advance of opening bids, as the Bureau or Secretary of War, as the case may be, shall determine to be adequate to insure notice and opportunity for competition. Such advertisement shall not be required, however, when (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed $500; in which cases such purchase of supplies or procurement of services may be made in the open market in the manner common among businessmen. In comparing bids and in making awards, the Bureau or the Secretary of War, as the case may be, may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, and ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications. (52 Stat. 406; 16 U.S.C. § 833f)

Sec. 8. [(a) Bureau to keep accounts of all funds expended or received; (b) Bureau may expend for necessary facilities.]—(a) The Bureau, subject to the requirements of the Federal Water Power Act, shall keep complete and accurate accounts of operations, including all funds expended and received in connection with transmission and sale of electric energy generated at the Fort Peck project.

(b) The Bureau may make such expenditures for offices, vehicles, furnishings, equipment, supplies, and books; for attendance at meetings; and for such other facilities and services as it may find necessary for the proper administration of this Act. (52 Stat. 406; 16 U.S.C. § 833g)

(c) **[Annual report.]**—*Repealed.*

EXPLANATORY NOTE

Reporting Requirement Discontinued. The Act of August 30, 1954, 68 Stat. 966, 968, repealed the requirement for the annual report and financial statement under subsection 9(c). The subsection read: "In December of each year, the Secretary of the Interior shall file with the Congress a financial statement and a complete report as to the transmission and sale of electric energy generated at the Fort Peck project during the preceding governmental fiscal year." The 1954 Act appears herein in chronological order.

Sec. 9. [Appointment of attorneys, engineers, and other experts—Services of regular employees may be utilized—Bureau may utilize and charge for facilities of the Bureau.]—The Secretary of the Interior, the Secretary of War, and the Federal Power Commission, respectively, shall appoint such attorneys, engineers, and other experts as may be necessary for carrying out the functions entrusted to them under this Act, and fix their salaries in accordance with the Classification Act of 1949 as amended. In the administration of this Act the services of regular employees in the Bureau may be utilized and an equitable part of the salaries of such employees whose services are thus utilized may be charged by the Bureau to the operating costs of the power features of the Fort Peck project. The Bureau similarly may utilize and charge for facilities of the Bureau which economically can be used in connection with the administration of this Act. (52 Stat. 406; Act of October 28, 1949, 63 Stat. 972; 16 U.S.C. § 833h)

EXPLANATORY NOTE

1949 Amendment. The Classification Act of 1949, enacted October 28, 1949, 63 Stat. 954, 972, 5 U.S.C. § 1071 *et seq.*, amended section 9 by application of its provisions. Among other things, it established a standard schedule of rates of basic compensation for certain Federal employees and repealed the Classification Act of 1923, as amended. Before enactment of the Classification Act of 1949, section 9 of this act referred to the Classification Act of 1923, and authorized the appointment of attorneys, engineers, other experts, officers and employees, without regard to the Civil Service laws, and provided that the salaries of attorneys, engineers and other experts be fixed at not to exceed $7,500 per annum.

Sec. 10. [Receipts to be covered into Treasury—Treasury to set up a continuing fund for credit of Bureau.]—All receipts from transmission and sale of electric energy generated at the Fort Peck project shall be covered into the Treasury of the United States to the credit of miscellaneous receipts, save and except that the Treasury shall set up and maintain from such receipts a continuing fund of $500,000, to the credit of the Bureau and subject to expenditure by it, to defray the operating expense of generation and transmission of power delivered to the Bureau for disposal under this Act, to defray emergency expenses and to insure continuous operation. There is hereby authorized to be appropriated from time to time, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act, including installation of equipment and machinery for the generation of electric energy, and facilities for its transmission and sale. (52 Stat. 406; 16 U.S.C. § 833i)

Sec. 11. [Secretary of Interior may bring suits at law or in equity.]—The Secretary of the Interior may, in the name of the United States, under the supervision of the Attorney General, bring such suits at law or in equity as in his judgment may be necessary to carry out the purposes of this Act; and he shall be represented in the prosecution and defense of all litigation affecting the status or operation of the Fort Peck project by the United States attorneys for the districts, respectively, in which such litigation may arise, or by such attorney or attorneys as the Attorney General may designate as authorized by law, in conjunction with the regularly employed attorneys of the Bureau. (52 Stat. 407; 16 U.S.C. § 833j)

Sec. 12. [**Savings clause.**]—If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. (52 Stat. 407; 16 U.S.C. § 833k)

EXPLANATORY NOTE

Legislative History. S. 2650, Public Law 529 in the 75th Congress. S. Rept. No. 1074. H.R. Rept. No. 1504.

NOTE OF OPINION

1. Missouri River Basin project

The Fort Peck project, including the reservoir as well as the power plant, was incorporated as an integral part of the Missouri River Basin project authorized by Section 9 of the Flood Control Act of 1944 for purposes of determining project feasibility and repayment, establishing power rates, water regulation, and so forth. Memorandum of comments transmitted with letter from Administrative Assistant Secretary Beasley to Mr. Adolph T. Samuelson, General Accounting Office, November 26, 1956; 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 358 (1957).

DEFER CHARGES OF GEM AND ONTARIO-NYSSA IRRIGATION DISTRICTS

An act to provide for allowing to the Gem Irrigation District and Ontario-Nyssa Irrigation District of the Owyhee project, terms and payment dates for charges deferred under the Reclamation Moratorium Acts similar to those applicable to the deferred construction charges of other projects under said Acts, and for other purposes. (Act of June 15, 1938, ch. 440, 52 Stat. 703.)

[Deferred charges payable at the end of the districts' construction charge payment period.]—That the charges of the Gem Irrigation District and of the Ontario-Nyssa Irrigation District, that were postponed under the Moratorium Acts of April 1, 1932 (47 Stat. 75), March 3, 1933 (47 Stat. 1427), March 27, 1934 (48 Stat. 500), and June 13, 1935 (49 Stat. 337), shall be payable at the end of the districts' construction charge payment period, subject to the same terms and conditions as applicable to the construction charges postponed under the said Moratorium Acts. (52 Stat. 703)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

References in the Text. Each of the Moratorium Acts referred to in the text appears herein in chronological order.

Legislative History. H.R. 10488, Public Law 636 in the 75th Congress. H.R. Rept. No. 2516.

RELIEF FOR HOLDERS OF NOTES AND WARRANTS OF VERDE RIVER IRRIGATION AND POWER DISTRICT

An act for the relief of the holders of the unpaid notes and warrants of the Verde River Irrigation and Power District, Arizona. (Act of June 15, 1938, ch. 453, 52 Stat. 703.)

[**Payment in settlement of notes and warrants authorized.**]—The Federal Emergency Administrator of Public Works is hereby authorized to pay, in full settlement of all such claims against the United States, out of any unexpended fund under his control, not to exceed $46,024.41 in making settlements with the holders of the unpaid notes and warrants of the Verde River Irrigation and Power District issued in payment for property, services, or supplies furnished, in furtherance of the Verde reclamation project, Arizona, to the district during the period from November 2, 1933, when an allotment of $4,000,000 for the construction of the Verde project was authorized by the said Administrator, to October 3, 1934, when said allotment was canceled: *Provided,* That any expenditures of the district not incurred as a result of the proposed construction of said Verde reclamation project with funds of the Federal Emergency Administration of Public Works shall not be approved for payment under this Act: *Provided further,* That in making said settlements with the holders of said notes and warrants, the Administrator shall consider the reasonable value of the services performed or materials furnished, for which said notes or warrants were given, and where said notes or warrants have been transferred by the original holders, the Administrator shall also consider the price or prices paid by the transferees. (52 Stat. 703)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Payment of Claims. The Secretary on January 23, 1939, approved the appointment of a special examining board to examine the claims and determine the amounts to be paid on each claim. The board's report of April 29, 1939, was approved by the Federal Emergency Administrator of Public Works on June 30, 1939. Allotment of funds was made by the Federal Works Agency August 2, 1939. All warrants have now been paid.

Legislative History. S. 3002, Public Law 637 in the 75th Congress. S. Rept. No. 1391. H.R. Rept. No. 2291.

EXCESS LANDS, COLORADO-BIG THOMPSON PROJECT

An act providing that excess-land provisions of Federal reclamation laws shall not apply to certain lands that will receive a supplemental water supply from the Colorado-Big Thompson project. (Act of June 16, 1938, ch. 485, 52 Stat. 764.)

[Excess land laws waived.]—The excess-land provisions of the Federal reclamation laws shall not be applicable to lands which now have an irrigation water supply from sources other than a Federal reclamation project and which will receive a supplemental supply from the Colorado-Big Thompson project. (52 Stat. 764; 43 U.S.C. § 386)

Explanatory Notes

Authorization. The Colorado-Big Thompson project was authorized by a finding of feasibility by the Secretary of the Interior, approved by the President on December 21, 1937, pursuant to section 4 of the Act of June 25, 1910, and subsection B of section 4 of the Act of December 5, 1924 (Fact Finders' Act). Both the 1910 and 1924 Acts appear herein in chronological order.

Legislative History. S. 4027, passed in lieu of H.R. 10713, Public Law 665 in the 75th Congress. H.R. Rept. No. 2620 (on H.R. 10713). S. Rept. No. 1921 (on S. 4027).

SALE OF SURPLUS POWER, UNCOMPAHGRE VALLEY PROJECT

An act to authorize the sale of surplus power developed under the Uncompahgre Valley reclamation project, Colorado. (Act of June 22, 1938, ch. 577, 52 Stat. 941)

[**Sale or development of surplus power authorized.**]—Whenever a development of power is necessary for the irrigation of lands under the Uncompahgre Valley reclamation project, Colorado, or an opportunity is afforded for the development of power under said project, the Secretary of the Interior is authorized to enter into a contract for a period not exceeding forty years for the sale or development of any surplus power. The provisions of such contract shall be such as the said Secretary may deem to be equitable: *Provided,* That no such contract shall be made without the approval of the Uncompahgre Valley Water Users' Association, which, prior to any development of power on said project, shall be required to contract with the United States to repay the cost thereof, on such terms and conditions and with such provisions for the disposal of the annual net power profits as the said Secretary may deem to be equitable, and with or without interest on the construction cost as the said Secretary may determine: *And provided further,* That if the said association is not required to pay interest on the construction cost of the power plant and power system, the net earnings of the power plant and system, after the association shall have paid the full cost thereof, and its project construction charge indebtedness to the United States shall be payable into the reclamation fund, unless Congress shall hereafter otherwise direct. (52 Stat. 941)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 7764. Public Law 698 in the 75th Congress. H.R. Rept. No. 1704. S. Rept. No. 2035.

FLOOD CONTROL ACT OF 1938

[**Extracts from**] An act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes. (Act of June 28, 1938, ch. 795, 52 Stat. 1215)

[**Sec. 1. Jurisdiction of Secretary of the Army.**]—Hereafter, Federal investigations and improvements of rivers and other waterways for flood control and allied purposes shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and supervision of the Chief of Engineers. (52 Stat. 1215; Act of August 18, 1941, 55 Stat. 638; Act of August 4, 1954, 68 Stat. 668; 33 U.S.C. § 701b)

EXPLANATORY NOTE

1954 Amendment. Section 7 of the Act of August 4, 1954, the Watershed Protection and Flood Prevention Act, repealed the authority formerly contained in this section and section 2 of the Flood Control Act of June 22, 1936, of the Secretary of Agriculture over Federal investigations of watersheds and measures for run-off and water flow retardation and soil erosion prevention on watersheds. However, similar authority contained in section 2 of the Flood Control Act of 1944 was preserved, as well as emergency authority provided in section 7 of the Flood Control Act of 1938, 52 Stat. 1215, as amended by section 216 of the Act of May 17, 1950, 64 Stat. 163. Moreover, the 1954 Act and other Acts provide general authority for the Secretary of Agriculture with respect to these matters. The 1954 Act and extracts from the 1936 and 1944 Acts appear herein in chronological order.

Sec. 2. [Acquisition by the United States of title to land, easements and rights-of-way.]—Section 3 of the Act of June 22, 1936 (Public, Numbered 738, Seventy-fourth Congress), as heretofore amended and as herein further modified, shall apply to all flood control projects, except as otherwise specifically provided by law.

That in case of any dam and reservoir project, or channel improvement or channel rectification project for flood control, herein authorized or heretofore authorized by the Act of June 22, 1936 (Public, Numbered 738, Seventy-fourth Congress), as amended, and by the Act of May 15, 1928 (Public, Numbered 391. Seventieth Congress) as amended by the Act of June 15, 1936 (Public, Numbered 678, Seventy-fourth Congress), as amended, title to all lands, easements, and rights-of-way for such project shall be acquired by the United States or by States, political subdivisions thereof or other responsible local agencies and conveyed to the United States, and provisions (a), (b), and (c) of section 3 of said Act of June 22, 1936, shall not apply thereto. Notwithstanding any restrictions, limitations, or requirement of prior consent provided by any other Act, the Secretary of War is hereby authorized and directed to acquire in the name of the United States title to all lands, easements, and rights-of-way necessary for any dam and reservoir project or channel improvement or channel rectification project for flood control, with funds heretofore or hereafter appropriated or made available for such projects, and States, political subdivisions thereof, or other responsible local agencies, shall be granted and reimbursed, from such funds, sums equivalent to actual expenditures deemed reasonable by the Secretary of

War and the Chief of Engineers and made by them in acquiring lands, easements, and rights-of-way for any dam and reservoir project, or any channel improvement or channel rectification project for flood control heretofore or herein authorized: *Provided,* That no reimbursement shall be made for any indirect or speculative damages: *Provided further,* That lands, easements and rights-of-way shall include lands on which dams, reservoirs, channel improvements, and channel rectifications are located; lands or flowage rights in reservoirs and highway, railway, and utility relocation. (52 Stat. 1215; Act of August 11, 1939, 53 Stat. 1415; 33 U.S.C. § 701c–1)

EXPLANATORY NOTES

Reference in the Text. The Act approved June 22, 1936 (Public Law, Numbered 738, Seventy-fourth Congress), referred to in the text, is the Flood Control Act of 1936. Extracts from the Act, including section 3 referred to, appear herein in chronological order.

Reference in the Text. The Act of May 15, 1928 (Public, Numbered 391, Seventieth Congress) as amended by the Act of June 15, 1936 (Public, Numbered 678, Seventy-fourth Congress), as amended, referred to in the text, is an act for the control of floods on the Mississippi River and its tributaries. The Act is codified in title 33, section 702a, *et seq.,* United States Code.

Sec. 3. [Evacuation of areas to reduce project costs.]—In any case where the construction cost of levees or flood walls included in any authorized project can be substantially reduced by the evacuation of a portion or all of the area proposed to be protected and by the elimination of that portion or all of the area from the protection to be afforded by the project, the Chief of Engineers may modify the plan of said project so as to eliminate said portion or all of the area: *Provided,* That a sum not substantially exceeding the amount thus saved in construction cost may be expended by the Chief of Engineers, or in his discretion may be transferred to any other appropriate Federal agency for expenditure, toward the evacuation of the locality eliminated from protection and the rehabilitation of the persons so evacuated: *And provided further,* That the Chief of Engineers may, if he so desires, enter into agreement with States, local agencies, or the individuals concerned for the accomplishment by them, of such evacuation and rehabilitation and for their reimbursement from said sum for expenditures actually incurred by them for this purpose. (52 Stat. 1216; 33 U.S.C. § 701i)

Sec. 4. [Projects authorized.]—

* * * * *

RED RIVER BASIN

[Denison Reservoir.]—The Denison Reservoir on Red River in Texas and Oklahoma for flood control and other purposes as described in House Document Numbered 541, Seventy-fifth Congress, third session, with such modifications thereof as in the discretion of the Secretary of War and the Chief of Engineers may be advisable, is adopted and authorized at an estimated cost of $54,000,000; *Provided,* That in the consideration of benefits in connection with the Denison

Reservoir all benefits that can be assigned to the proposed Altus project and other such projects in Oklahoma shall be reserved for said projects.

[**Lugert–Altus project.**]—The Lugert–Altus Flood Control and Reclamation Reservoir located on the North Fork of the Red River in Oklahoma, is hereby authorized for construction at an estimated cost of $2,497,000, on the following basis as to a division of the cost of construction:

(a) The Chief of Engineers shall report to the President on or before November 1, 1938, the value of said Lugert Reservoir as a flood control works, and the value so reported shall be the maximum amount herein authorized to be appropriated as a charge against any funds appropriated and available for the construction for flood control projects.

(b) The remainder of the estimated cost of such Lugert Reservoir, namely, the estimated total cost of the reservoir, less the amount reported by the Chief of Engineers as the value of said reservoir as a flood control project, is also hereby authorized to be appropriated out of the special fund in the Treasury of the United States created by the Act of June 17, 1902 (43 U.S.C. 391, 411), and therein designated "the reclamation fund" for the construction of said Lugert Reservoir for reclamation and irrigation as reported in Senate Document Numbered 153, Seventy-fifth Congress, third session, and as further authorized by the last paragraph on page 37 of Public Act Numbered 497, Seventy-fifth Congress, third session, providing that the construction of said Lugert Reservoir and Altus reclamation project shall not be undertaken until the Chief of Engineers and the Secretary of the Interior join in an agreement as to the division of cost of the construction of said reservoir as provided herein.

[**Jurisdiction of Oklahoma and Texas.**]—The Government of the United States acknowledges the right of the States of Oklahoma and Texas to continue to exercise all existing proprietary or other rights of supervision of and jurisdiction over the waters of all tributaries of Red River within their borders above Denison Dam site and above said dam, if and when constructed, in the same manner and to the same extent as is now or may hereafter be provided by the laws of said States, respectively, and all of said laws as they now exist or as same may be hereafter amended or enacted and all rights thereunder, including the rights to impound or authorize the retardation or impounding thereof for flood control above the said Denison Dam and to divert the same for municipal purposes, domestic uses, and for irrigation, power generation, and other beneficial uses, shall be and remain unaffected by or as a result hereof. All such rights are hereby saved and reserved for and to the said States and the people and the municipalities thereof, and the impounding of any such waters for any and all beneficial uses by said States or under their authority may be as freely done after the passage hereof as the same may now be done. (52 Stat. 1219)

EXPLANATORY NOTES

Reference in the Text. The last paragraph on page 37 of Public Act Numbered 497, Seventy-fifth Congress, third session, referred to in the text, is an item in the 1939 Interior Department Appropriation Act, approved May 9, 1938, 52 Stat. 291, 324, which is an appropriation for the Bureau of Reclamation for the conduct of investigations, including investigations in the so-called "Dust Bowl", in cooperation with the Corps of Engineers, the Farm Security Administration and other Federal agencies,

of irrigation, flood control and resettlement possibilities of proposed projects, and specifically appropriates $25,000 for the investigation of the Altus project, Oklahoma.

Cross Reference, Name Changed. The Act of May 16, 1947, 61 Stat. 99, provides that the Lugert-Altus irrigation project, Oklahoma, shall be known as the W. C. Austin project. The 1947 Act appears herein in chronological order.

WILLAMETTE RIVER BASIN

The general comprehensive plan for flood control, navigation, and other purposes in the Willamette River Basin as set forth in House Document Numbered 544, Seventy-fifth Congress, third session, is approved and for the initiation and partial accomplishment of the plan recommended for initial development in said document there is hereby authorized $11,300,000; the reservoirs and related works to be selected and approved by the Chief of Engineers. (52 Stat. 1222)

Explanatory Notes

Not Codified. Extracts from section 4 shown here are not codified in the U.S. Code.

Subsequent Modifications and Authorizations. Subsequent statutory modifications and authorizations relating to the Willamette River Basin are found in the following Acts: Flood Control Act of 1941, enacted August 18, 1941, 55 Stat. 638; Flood Control Act of 1944, enacted December 22, 1944, 58 Stat. 887; Flood Control Act of 1946, enacted July 24, 1946, 60 Stat. 641; Flood Control Act of 1950, enacted May 17, 1950, 64 Stat. 168; Flood Control Act of 1954, enacted September 3, 1954, 68 Stat. 1256; Flood Control Act of 1958, enacted July 3, 1958, 72 Stat. 300; Flood Control Act of 1960, enacted July 14, 1960, 74 Stat. 480; Flood Control Act of 1962, enacted October 23, 1962, 76 Stat. 1173; and the Act Authorizing Additional Appropriations for the Prosecution of Comprehensive Plans for Certain River Basins, enacted December 30, 1963, 77 Stat. 841.

Legislative History. H.R. 10618, Public Law 761 in the 75th Congress. H.R. Rept. No. 2353. S. Rept. No. 1868. H.R. Rept. No. 2746 (conference report).

PARKER DAM POWER PROJECT APPROPRIATION

[Extract from] An act making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1939, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1939, and June 30, 1940, and for other purposes. (Act of May 2, 1939, ch. 107, 53 Stat. 626.)

* * * * *

BUREAU OF RECLAMATION, GENERAL FUND, CONSTRUCTION

[**Parker Dam power project.**]—Parker Dam power project, Arizona: For continuation of construction of the Parker power plant, transmission lines, substations, and appurtenant works, fiscal years 1939 and 1940, $4,000,000, from the general fund of the Treasury, to be repaid from net revenues received under contracts made pursuant to the authority of the Act of August 30, 1935 (49 Stat. 1039). (53 Stat. 633)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of August 30, 1935 (49 Stat. 1039), referred to in the text, is the Rivers and Harbors Act of 1935. Section 2 of the Act authorized construction of the Parker Dam. Section 2 has been extracted from the Act and appears herein in chronological order.

Cross Reference, Parker-Davis Project. The Act of May 28, 1954, 68 Stat. 143, authorized the Parker Dam power project and the Davis Dam project to be consolidated and administered as a single project to be known as the Parker-Davis project, Arizona-California-Nevada. The Act appears herein in chronological order.

Legislative History. H.R. 5219, Public Law 61 in the 76th Congress. H.R. Rept. No. 260. S. Rept. No. 257. H.R. Rept. No. 510 (conference report).

INTERIOR DEPARTMENT APPROPRIATION ACT, 1940

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1940, and for other purposes. (Act of May 10, 1939, ch. 119, 53 Stat. 685)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[Kendrick project—Power revenues.]—Kendrick project, Wyoming: Not to exceed $100,000 from the power revenues shall be available during the fiscal year 1940, for the operation and maintenance of the power system; (53 Stat. 715)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes of the Kendrick project is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781.

* * * * *

[Minidoka project—Power revenues.]—***Repealed.***

EXPLANATORY NOTE

Provision Repealed. The Act of May 31, 1962, authorizing the execution of amendatory contracts between the United States and (1) the Burley Irrigation District, and (2) the Minidoka Irrigation District, repealed the proviso contained in this Act which read as follows: "That expenditures from this or any other appropriation for the installation of an additional unit in the Minidoka power plant shall be reimbursed wholly from power revenues derived from operation of said unit and after such reimbursement said revenues shall be the property of the United States." (53 Stat. 716) In regard to another proviso relating to the Minidoka project repealed by the 1962 Act, see the explanatory note following the item relating to the Minidoka project in the Act of March 7, 1928. Both the 1928 and the 1962 Acts appear herein in chronological order.

* * * * *

[Boulder Canyon project—Payment to Boulder City School District.]—Boulder Canyon project: . . . there shall also be available from power and other revenues not to exceed $550,000 for operation and maintenance of the Boulder Canyon Dam, power plant, and other facilities, including payment to the Boulder City School District, as reimbursement for instruction during the 1938–1939 and 1939–1940 school years in the schools operated by said district of each pupil who is a dependent of any employee of the United States living in or in the immediate vicinity of Boulder City, in the sum of $45 per semester per pupil in average daily attendance at said schools, payable after the term of instruction in any semester has been completed, under regulations to be prescribed by the Secretary of the Interior, and in addition thereto the sum of $25,000 shall be available from such revenues for the construction of school buildings; . . . (53 Stat. 718)

EXPLANATORY NOTE

Provision Repeated. The same authorization for payments to the Boulder City School District is contained in each subsequent annual Interior Department Appropriation Act through the Act of July 1, 1946, 60 Stat. 368, with the following modifications: the Act of July 2, 1942, 56 Stat. 535, but no other act extends the per capita payment to dependents of employees "of defense plant corporation or a defense plant operated by or for the account of said corporation"; and the Act of July 1, 1946, 60 Stat. 368, makes the appropriation from the Colorado River dam fund. Additional payments for school buildings or equipment are authorized in the Act of June 18, 1940, 54 Stat. 437, and the Act of June 28, 1941, 55 Stat. 335.

* * * * *

GENERAL FUND, CONSTRUCTION

[**Pine River project—Marshall Ford Dam—Costs not reimbursable under reclamation law.**]—For continuation of construction of the following projects . . . in not to exceed the following amounts, respectively, . . . to be reimbursable (except as to the Pine River project, Colorado, and the Colorado River project, Texas) under the reclamation law:

* * * * *

Pine River project, Colorado, $1,000,000;

Colorado River project, Texas, $5,000,000, together with the unexpended balance of the appropriation of $2,030,000 under this head in the Interior Department Appropriation Act, fiscal year 1939: *Provided,* That the Secretary of the Interior by contracts entered into pursuant to the authority of the Act of August 26, 1937 (50 Stat. 844, 850), shall require reimbursement of expenditures for construction of Marshall Ford Dam, to the extent and in the manner determined by him; (53 Stat. 719)

EXPLANATORY NOTES

Provision Repeated—Pine River project. A similar reference to the Pine River project is contained in the Interior Department Appropriation Act, 1941, Act of June 18, 1940, 54 Stat. 438.

Provision Repeated—Marshall Ford Dam. A similar provision relating to reimbursement contracts for Marshall Ford Dam is contained in the Interior Department Appropriation Act, 1941, Act of June 18, 1940, 54 Stat. 438. A brief reference to the exemption of the Colorado River project from the reimbursability requirements of reclamation law also is contained in the earlier Interior Department Appropriation Act, 1939, Act of May 9, 1938, 52 Stat. 324.

Reference in the Text. The Act of August 26, 1937, referred to in the text, is the Rivers and Harbors Act of 1937. Section 3 of the Act, relating to Marshall Ford Dam, appears herein in chronological order.

* * * * *

WATER CONSERVATION AND UTILITY PROJECTS

For construction, in addition to labor and materials to be supplied by the Works Progress Administration, of water conservation and utilization projects, including acquisition of water rights, rights-of-way, and other interests in land, in the Great Plains and arid and semiarid areas of the United States, to be immediately available, $5,000,000, to be allocated by the President, in such amounts as he deems necessary, to such Federal Departments, establishments, and

other agencies as he may designate, and to be reimbursed to the United States by the water users on such projects in not to exceed forty annual installments: *Provided,* That expenditures from Works Progress Administration funds shall be subject to such provisions with respect to reimbursability as the President may determine. (53 Stat. 719)

EXPLANATORY NOTES

Supplementary Provision: Water Conservation and Utilization Act. The Act of August 11, 1939, as amended, provides broadened authority for an extended program of construction and operation of water conservation and utilization projects. The act appears herein in chronological order.

Popular Names. The above authority in the appropriation act of May 10, 1939, is variously referred to as the Water Conservation and Utilization Act, the 1940 water conservation appropriation, or the Great Plains projects program. The Act of August 11, 1939, as amended, is variously referred to as the Case-Wheeler Act, the Wheeler-Case Act, or the Water Conservation and Utilization Act. Projects constructed under both authorities are generally called water conservation and utilization projects and are considered to be part of the same program.

Cross Reference, Water Facilities Act. The Act of August 28, 1937, 50 Stat. 869, popularly known as the Water Facilities Act, authorized the Secretary of Agriculture to construct or to assist in the construction of facilities for water storage and utilization in arid and semiarid areas of the United States. The Act of August 17, 1954, 68 Stat. 734, terminated the construction phase of the program, expanded the purposes to include land conservation and improvement projects, authorized the Secretary of Agriculture to make loans and to insure loans for purposes of the Act, and extended the coverage of the program to all of the States and Territories. This authority in turn was repealed and replaced by Title III of the Act of August 8, 1961, Public Law 87–128, 75 Stat. 294, 307, 7 U.S.C. §§ 1921–91. Extracts from this title, which may be cited separately as the Consolidated Farmers Home Administration Act of 1961, appear herein in chronological order.

Sec. 5. [Short title.]—This Act may be cited as the "Interior Department Appropriation Act, 1940". (53 Stat. 738)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 4852, Public Law No. 68, 76th Congress. H.R. Rept. No. 161. S. Rept. No. 282. H.R. Rept. No. 497 (conference report).

RIO GRANDE COMPACT

An act giving the consent and approval of Congress to the Rio Grande compact signed at Santa Fe, New Mexico, on March 18, 1938. (Act of May 31, 1939, ch. 155, 53 Stat. 785)

[**Consent of Congress granted.**]—The consent and approval of Congress is hereby given to the compact signed by the commissioners for the States of Colorado, New Mexico, and Texas at Santa Fe, New Mexico on March 18, 1938, and thereafter approved by the legislatures of the States of Colorado, New Mexico, and Texas, which compact reads as follows:

Rio Grande Compact

The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes, and to that end, through their respective Governors, have named as their respective Commissioners:

For the State of Colorado—M. C. Hinderlider

For the State of New Mexico—Thomas M. McClure

For the State of Texas—Frank B. Clayton

who, after negotiations participated in by S. O. Harper, appointed by the President as the representative of the United States of America, have agreed upon the following articles to-wit:

ARTICLE I

(a) The State of Colorado, the State of New Mexico, the State of Texas, and the United States of America, are hereinafter designated "Colorado," "New Mexico," "Texas," and the "United States," respectively.

(b) "The Commission" means the agency created by this Compact for the administration thereof.

(c) The term "Rio Grande Basin" 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.

(d) The "Closed Basin" means that part of the Rio Grande Basin in Colorado where the streams drain into the San Luis Lakes and adjacent territory, and do not normally contribute to the flow of the Rio Grande.

(e) The term "tributary" means any stream which naturally contributes to the flow of the Rio Grande.

(f) "Transmountain Diversion" is water imported into the drainage basin of the Rio Grande from any stream system outside of the Rio Grande Basin, exclusive of the Closed Basin.

(g) "Annual Debits" are the amounts by which actual deliveries in any calendar year fall below scheduled deliveries.

(h) "Annual Credits" are the amounts by which actual deliveries in any calendar year exceed scheduled deliveries.

(i) "Accrued Debits" are the amounts by which the sum of all annual debits exceeds the sum of all annual credits over any common period of time.

(j) "Accrued Credits" are the amounts by which the sum of all annual credits exceeds the sum of all annual debits over any common period of time.

(k) "Project Storage" is the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande Project, but not more than a total of 2,638,860 acre-feet.

(l) "Usable Water" is all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.

(m) "Credit Water" is that amount of water in project storage which is equal to the accrued credit of Colorado, or New Mexico, or both.

(n) "Unfilled Capacity" is the difference between the total physical capacity of project storage and the amount of usable water then in storage.

(o) "Actual Release" is the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.

(p) "Actual Spill" is all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.

(q) "Hypothetical Spill" is the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet had been released therefrom at rates proportional to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs; in computing hypothetical spill the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following the effective date of this Compact, and thereafter the initial condition shall be the amount of usable water in project storage at the beginning of the calendar year following each actual spill.

ARTICLE II

The Commission shall cause to be maintained and operated a stream gaging station equipped with an automatic water stage recorder at each of the following points, to wit:

(a) On the Rio Grande near Del Norte above the principal points of diversion to the San Luis Valley;

(b) On the Conejos River near Mogote;

(c) On the Los Pinos River near Ortiz;

(d) On the San Antonio River at Ortiz;

(e) On the Conejos River at its mouths near Los Sauces;

(f) On the Rio Grande near Lobatos;
(g) On the Rio Chama below El Vado Reservoir;
(h) On the Rio Grande at Otowi Bridge near San Ildefonso;
(i) On the Rio Grande near San Acacia;
(j) On the Rio Grande at San Marcial;
(k) On the Rio Grande below Elephant Butte Reservoir;
(l) On the Rio Grande below Caballo Reservoir.

Similar gaging stations shall be maintained and operated below any other reservoir constructed after 1929, and at such other points as may be necessary for the securing of records required for the carrying out of the Compact; and automatic water stage recorders shall be maintained and operated on each of the reservoirs mentioned, and on all others constructed after 1929.

Such gaging stations shall be equipped, maintained, and operated by the Commission directly or in cooperation with an appropriate Federal or State agency, and the equipment, method and frequency of measurement at such stations shall be such as to produce reliable records at all times.

ARTICLE III

The obligation of Colorado to deliver water in the Rio Grande at the Colorado-New Mexico State Line, measured at or near Lobatos, in each calendar year, shall be ten thousand acre feet less than the sum of those quantities set forth in the two following tabulations of relationship, which correspond to the quantities at the upper index stations:

Discharge of Conejos River

[Quantities in thousands of acre-feet]

Conejos index supply (1):	Conejos River at Mouths (2)	Conejos index supply (1)—Con.	Conejos River at Mouths (2)
100	0	450	232
150	20	500	278
200	45	550	326
250	75	600	376
300	109	650	426
350	147	700	476
400	188		

Intermediate quantities shall be computed by proportional parts.

(1) Conejos Index Supply is the natural flow of Conejos River at the U.S.G.S. gaging station near Mogote during the calendar year, plus the natural flow of Los Pinos River at the U.S.G.S. gaging station near Ortiz and the natural flow of San Antonio River at the U.S.G.S. gaging station at Ortiz, both during the months of April to October, inclusive.

(2) Conejos River at Mouths is the combined discharge of branches of this river at the U.S.G.S. gaging stations near Los Sauces during the calendar year.

Discharge of Rio Grande exclusive of Conejos River

[Quantities in thousands of acre-feet]

Rio Grande at Del Norte (3):	Rio Grande at Lobatos less Conejos at Mouths (4)	Rio Grande at Del Norte (3)—Con.	Rio Grande at Lobatos less Conejos at Mouths (4)
200	60	750	229
250	65	800	257
300	75	850	292
350	86	900	335
400	98	950	380
450	112	1,000	430
500	127	1,100	540
550	144	1,200	640
600	162	1,300	740
650	182	1,400	840
700	204		

Intermediate quantities shall be computed by proportional parts.

(3) Rio Grande at Del Norte is the recorded flow of the Rio Grande at the U.S.G.S. gaging station near Del Norte during the calendar year (measured above all principal points of diversion to San Luis Valley) corrected for the operation of reservoirs constructed after 1937.

(4) Rio Grande at Lobatos less Conejos at Mouths is the total flow of the Rio Grande at the U.S.G.S. gaging stations near Lobatos, less the discharge of Conejos River at its Mouths, during the calendar year.

The application of those schedules shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) any new or increased depletion of the run-off above inflow index gaging stations; and (c) any transmountain diversions into the drainage basin of the Rio Grande above Lobatos.

In the event any works are constructed after 1937 for the purpose of delivering water into the Rio Grande from the Closed Basin, Colorado shall not be credited with the amount of such water delivered, unless the proportion of sodium ions shall be less than forty-five percent of the total positive ions in that water when the total dissolved solids in such water exceeds three hundred fifty parts per million.

ARTICLE IV

The obligation of New Mexico to deliver water in the Rio Grande at San Marcial, during each calendar year, exclusive of the months of July, August, and

September, shall be that quantity set forth in the following tabulation of relationship, which corresponds to the quantity at the upper index station:

Discharge of Rio Grande at Otowi Bridge and at San Marcial exclusive of July, August, and September

[Quantities in thousands of acre-feet]

Otowi index supply (5):	San Marcial index supply (6)	Otowi index supply (5)—Con.	San Marcial index supply (6)
100	0	1,300	1,042
200	65	1,400	1,148
300	141	1,500	1,257
400	219	1,600	1,370
500	300	1,700	1,489
600	383	1,800	1,608
700	469	1,900	1,730
800	557	2,000	1,856
900	648	2,100	1,985
1,000	742	2,200	2,117
1,100	839	2,300	2,253
1,200	939		

Intermediate quantities shall be computed by proportional parts.

(5) The Otowi Index Supply is the recorded flow of the Rio Grande at the U.S.G.S. gaging station at Otowi Bridge near San Ildefonso (formerly station near Buckman) during the calendar year, exclusive of the flow during the months of July, August, and September, corrected for the operation of reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and Otowi Bridge.

(6) San Marcial Index Supply is the recorded flow of the Rio Grande at the gaging station at San Marcial during the calendar year exclusive of the flow during the months of July, August, and September.

The application of this schedule shall be subject to the provisions hereinafter set forth and appropriate adjustments shall be made for (a) any change in location of gaging stations; (b) depletion after 1929 in New Mexico at any time of the year of the natural run-off at Otowi Bridge; (c) depletion of the run-off during July, August, and September of tributaries between Otowi Bridge and San Marcial, by works constructed after 1937; and (d) any transmountain diversions into the Rio Grande between Lobatos and San Marcial.

Concurrent records shall be kept of the flow of the Rio Grande at San Marcial, near San Acacia, and of the release from Elephant Butte Reservoir, to the end that the records at these three stations may be correlated.

ARTICLE V

If at any time it should be the unanimous finding and determination of the Commission that because of changed physical conditions, or for any other reason, reliable records are not obtainable or cannot be obtained, at any of the stream-gaging stations herein referred to, such stations may, with the unanimous approval of the Commission, be abandoned, and with such approval another station, or other stations, shall be established and new measurements shall be substituted which, in the unanimous opinion of the Commission, will result in

substantially the same results, so far as the rights and obligations to deliver water are concerned, as would have existed if such substitution of stations and measurements had not been so made.

ARTICLE VI

Commencing with the year following the effective date of this Compact, all credits and debits of Colorado and New Mexico shall be computed for each calendar year; provided, that in a year of actual spill no annual credits nor annual debits shall be computed for that year.

In the case of Colorado, no annual debit nor accrued debit shall exceed 100,000 acre-feet, except as either or both may be caused by hold-over storage of water in reservoirs constructed after 1937 in the drainage basin of the Rio Grande above Lobatos. Within the physical limitations of storage capacity in such reservoirs, Colorado shall retain water in storage at all times to the extent of its accrued debit.

In the case of New Mexico, the accrued debit shall not exceed 200,000 acre-feet at any time, except as such debit may be caused by hold-over storage of water in reservoirs constructed after 1929 in the drainage basin of the Rio Grande between Lobatos and San Marcial. Within the physical limitations of storage capacity in such reservoirs, New Mexico shall retain water in storage at all times to the extent of its accrued debit. In computing the magnitude of accrued credits or debits, New Mexico shall not be charged with any greater debit in any one year than the sum of 150,000 acre-feet and all gains in the quantity of water in storage in such year.

The Commission by unanimous action may authorize the release from storage of any amount of water which is then being held in storage by reason of accrued debits of Colorado or New Mexico; provided, that such water shall be replaced at the first opportunity thereafter.

In computing the amount of accrued credits and accrued debits of Colorado or New Mexico, any annual credits in excess of 150,000 acre-feet shall be taken as equal to that amount.

In any year in which actual spill occurs, the accrued credits of Colorado, or New Mexico, or both, at the beginning of the year shall be reduced in proportion to their respective credits by the amount of such actual spill; provided, that the amount of actual spill shall be deemed to be increased by the aggregate gain in the amount of water in storage, prior to the time of spill, in reservoirs above San Marcial constructed after 1929; provided, further, that if the Commissioners for the States having accrued credits authorize the release of part, or all, of such credits in advance of spill, the amount so released shall be deemed to constitute actual spill.

In any year in which there is actual spill of usable water, or at the time of hypothetical spill thereof, all accrued debits of Colorado, or New Mexico, or both, at the beginning of the year shall be cancelled.

In any year in which the aggregate of accrued debits of Colorado and New Mexico exceeds the minimum unfilled capacity of project storage, such debits shall be reduced proportionally to an aggregate amount equal to such minimum unfilled capacity.

To the extent that accrued credits are impounded in reservoirs between San Marcial and Courchesne, and to the extent that accrued debits are impounded in reservoirs above San Marcial, such credits and debits shall be reduced annually to compensate for evaporation losses in the proportion that such credits or debits bore to the total amount of water in such reservoirs during the year.

ARTICLE VII

Neither Colorado nor New Mexico shall increase the amount of water in storage in reservoirs constructed after 1929 whenever there is less than 400,000 acre-feet of usable water in project storage; provided, that if the actual releases of usable water from the beginning of the calendar year following the effective date of this Compact, or from the beginning of the calendar year following actual spill, have aggregated more than an average of 790,000 acre-feet per annum, the time at which such minimum stage is reached shall be adjusted to compensate for the difference between the total actual release and releases at such average rate; provided, further, that Colorado or New Mexico, or both, may relinquish accrued credits at any time, and Texas may accept such relinquished water, and in such event the state, or states, so relinquishing shall be entitled to store water in the amount of the water so relinquished.

ARTICLE VIII

During the month of January of any year the Commissioner for Texas may demand of Colorado and New Mexico, and the Commissioner for New Mexico may demand of Colorado, the release of water from storage reservoirs constructed after 1929 to the amount of the accrued debits of Colorado and New Mexico, respectively, and such releases shall be made by each at the greatest rate practicable under the conditions then prevailing, and in production to the total debit of each, and in amounts, limited by their accrued debits, sufficient to bring the quantity of usable water in project storage to 600,000 acre-feet by March first and to maintain this quantity in storage until April thirtieth, to the end that a normal release of 790,000 acre-feet may be made from project storage in that year.

ARTICLE IX

Colorado agrees with New Mexico that in event the United States or the State of New Mexico decides to construct the necessary works for diverting the waters of the San Juan River, or any of its tributaries, into the Rio Grande, Colorado hereby consents to the construction of said works and the diversion of waters from the San Juan River, or the tributaries thereof, into the Rio Grande in New Mexico, provided the present and prospective uses of water in Colorado by other diversions from the San Juan River, or its tributaries, are protected.

ARTICLE X

In the event water from another drainage basin shall be imported into the Rio Grande Basin by the United States or Colorado or New Mexico, or any of

them jointly, the State having the right to the use of such water shall be given proper credit therefor in the application of the schedules.

ARTICLE XI

New Mexico and Texas agree that upon the effective date of this Compact all controversies between said States relative to the quantity or quality of the water of the Rio Grande are composed and settled; however, nothing herein shall be interpreted to prevent recourse by a signatory state to the Supreme Court of the United States for redress should the character or quality of the water, at the point of delivery, be changed hereafter by one signatory state to the injury of another. Nothing herein shall be construed as an admission by any signatory state that the use of water for irrigation causes increase of salinity for which the user is responsible in law.

ARTICLE XII

To administer the provisions of this Compact there shall be constituted a Commission composed of one representative from each state, to be known as the Rio Grande Compact Commission. The State Engineer of Colorado shall be ex officio the Rio Grande Compact Commissioner for Colorado. The State Engineer of New Mexico shall be ex officio the Rio Grande Compact Commissioner for New Mexico. The Rio Grande Compact Commissioner for Texas shall be appointed by the Governor of Texas. The President of the United States shall be requested to designate a representative of the United States to sit with such Commission, and such representative of the United States, if so designated by the President shall act as Chairman of the Commission without vote.

The salaries and personal expenses of the Rio Grande Compact Commissioners for the three States shall be paid by their respective States, and all other expenses incident to the administration of this Compact, not borne by the United States, shall be borne equally by the three States.

In addition to the powers and duties hereinbefore specifically conferred upon such Commission, and the members thereof, the jurisdiction of such Commission shall extend only to the collection, correlation, and presentation of factual data and the maintenance of records having a bearing upon the administration of this Compact, and, by unanimous action, to the making of recommendations to the respective States upon matters connected with the administration of this Compact. In connection therewith, the Commission may employ such engineering and clerical aid as may be reasonably necessary within the limits of funds provided for that purpose by the respective States. Annual reports compiled for each calendar year shall be made by the Commission and transmitted to the Governors of the signatory States on or before March first following the year covered by the report. The Commission may, by unanimous action, adopt rules and regulations consistent with the provisions of this Compact to govern their proceedings.

The findings of the Commission shall not be conclusive in any court or tribunal which may be called upon to interpret or enforce this Compact.

ARTICLE XIII

At the expiration of every five-year period after the effective date of this Compact, the Commission may, by unanimous consent, review any provisions hereof which are not substantive in character and which do not affect the basic principles upon which the Compact is founded, and shall meet for the consideration of such questions on the request of any member of the Commission; provided, however, that the provisions hereof shall remain in full force and effect until changed and amended within the intent of the Compact by unanimous action of the Commissioners and until any changes in this Compact are ratified by the legislatures of the respective states and consented to by the Congress, in the same manner as this Compact is required to be ratified to become effective.

ARTICLE XIV

The schedules herein contained and the quantities of water herein allocated shall never be increased nor diminished by reason of any increases or diminution in the delivery or loss of water to Mexico.

ARTICLE XV

The physical and other conditions characteristic of the Rio Grande and peculiar to the territory drained and served thereby, and to the development thereof, have actuated this Compact and none of the signatory states admits that any provisions herein contained establishes any general principle or precedent applicable to other interstate streams.

ARTICLE XVI

Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties or to the Indian tribes, or as impairing the rights of the Indian tribes.

ARTICLE XVII

This Compact shall become effective when ratified by the legislatures of each of the signatory States and consented to by the Congress of the United States. Notice of ratification shall be given by the Governor of each State to the Governors of the other States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of each of the signatory States of the consent of the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this Compact in quadruplicate original, one of which shall be deposited in the archives of the Department of State of the United States of America and shall be deemed the authoritative original, and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, in the State of New Mexico, on the 18th day of March, in the year of our Lord, One Thousand Nine Hundred and Thirty-eight.

M. C. HINDERLIDER,
THOMAS M. MCCLURE,
FRANK B. CLAYTON.

Approved:
S. O. HARPER.

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Consent to Negotiate Compact. The Act of March 2, 1929, 45 Stat. 1502, granted the consent of Congress to the negotiation of a compact between the States of Colorado, New Mexico and Texas with respect to the waters of the Rio Grande River.

Cross Reference, Temporary Rio Grande Compact. The Act of June 17, 1930, 46 Stat. 767, granted the consent of Congress to a temporary compact between the States of Colorado, New Mexico and Texas with respect to the waters of the Rio Grande River above Fort Quitman, Texas. The 1930 Act, including the text of the temporary compact, appears herein in chronological order.

Legislative History. H.R. 4997, Public Law 96 in the 76th Congress. H.R. Rept. No. 525. S. Rept. No. 445.

NOTES OF OPINIONS

Rio Grande Project 1
United States as party 2

1. Rio Grande project

An analysis of the Rio Grande Compact shows convincingly that the water of the river belonging to Texas is definitely committed to the service of the Rio Grande reclamation project. *El Paso County Water Improvement District No. 1,* 133 F. Supp. 894, 907 (W.D. 1955), *affirmed on other grounds,* 243 F. 2d 927 (5th Cir. 1957), *cert. denied* 355 U.S. 820 (1957).

2. United States as party

A complaint by Texas against New Mexico involving the Rio Grande was dismissed because of the absence of the United States as an indispensable party. *Texas* v. *New Mexico,* 352 U.S. 991 (1957) (memorandum).

RELIEF TO WATER USERS

An act to authorize further relief to water users on United States reclamation projects and on Indian reclamation projects. (Act of May 31, 1939, ch. 156, 53 Stat. 792)

[**Sec. 1. Secretary of Interior authorized to determine if project unable to pay 1938 charges—Extension of time for payment—Charges so extended to be paid as Secretary determines.**]—The Secretary of the Interior is hereby authorized and directed to determine as to each United States and Indian reclamation project whether any of the water users' organizations or water users, as the case may be, owing construction charges to the United States on each such project are unable, due to partial crop failure attributable to a water shortage or due to other causes beyond the control of the water users, to pay without great hardship or undue burden the full amount of the construction charges due and payable for the calendar year 1938 and of any unpaid construction charges required to be paid as a condition precedent to delivery of water in 1939. Said Secretary shall base his determinations on such data furnished by water users' organizations and water users and on such investigations and reports by the Bureau of Reclamation and the Office of Indian Affairs as he deems necessary. As to any such water users' organization or water user who according to the said Secretary's determination is unable to pay in full the construction charges due and payable for the calendar year 1938 and any unpaid construction charges required to be paid as a condition precedent to delivery of water in 1939, said Secretary is hereby authorized to grant an extension of time for the payment of such proportion of said charges as in his judgment in each case is just and equitable: *Provided,* That said Secretary may make any extension granted pursuant to the authority of this Act subject to such conditions as in his judgment are desirable in the interest of the United States. The charges so extended shall be paid at such time or times as the said Secretary may determine. (53 Stat. 792)

Sec. 2. [**Definitions.**]—As used in this Act the term "United States reclamation project" shall mean any irrigation project constructed by the United States, or in connection with which there has been executed a repayment contract with the United States, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), or any Act amendatory thereof or supplementary thereto; the term "Indian reclamation project" shall mean any irrigation project constructed by the United States under the direction of the Office of Indian Affairs, or in connection with which there has been executed a repayment contract with the United States, pursuant to Acts of Congress relating to Indian reclamation projects; and the term "construction charges" shall mean the installments on the principal obligations due each year to the United States under water-right applications, repayment contracts, orders of the Secretary of the Interior, or other forms of obligations entered into pursuant to said Federal reclamation laws, or Acts of Congress relating to Indian reclamation projects. (53 Stat. 793)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Extension of Authority. The Secretary's authority under this Act was extended by section 17 of the Reclamation Project Act of 1939, as explained in the notes thereunder.

Legislative History. H.R. 5076, Public Law 97 in the 76th Congress. H.R. Rept. No. 362. S. Rept. No. 451.

NOTE OF OPINION

1. Project covered

There is authority under this Act for the Secretary to grant extensions of time for the payment of construction charges of the Milk River project, Montana, which are not yet due and payable. Memorandum of Bureau of Reclamation, April 30, 1942, approved June 4, 1942.

RECLAMATION PROJECT ACT OF 1939

An act to provide a feasible and comprehensive plan for the variable payment of construction charges on United States reclamation projects, to protect the investment of the United States in such projects, and for other purposes. (Act of August 4, 1939, ch. 418, 53 Stat. 1187)

[Sec. 1. Repayment problems—Variable payments of construction charges—Revision of obligation to pay construction charges.]—For the purpose of providing for United States reclamation projects a feasible and comprehensive plan for an economical and equitable treatment of repayment problems and for variable payments of construction charges which can be met regularly and fully from year to year during periods of decline in agricultural income and unsatisfactory conditions of agriculture as well as during periods of prosperity and good prices for agricultural products, and which will protect adequately the financial interest of the United States in said projects, obligations to pay construction charges may be revised or undertaken pursuant to the provisions of this Act. (53 Stat. 1187; 43 U.S.C. § 485)

NOTE OF OPINION

1. Purpose

A principal purpose of the Reclamation Project Act of 1939 was to place water users repayment on a basis of payment ability rather than to burden them with all costs. Solicitor Barry Opinion, 68 I.D. 305, 310 (1961), in re Columbia Basin repayment problems.

Sec. 2. [Definitions of terminology employed.]—As used in this Act—

(a) The term "Federal reclamation laws" shall mean the Act of June 17, 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

(b) The term "Secretary" shall mean the Secretary of the Interior.

(c) The term "project" shall mean any reclamation or irrigation project, including incidental features thereof, authorized by the Federal reclamation laws, or constructed by the United States pursuant to said laws, or in connection with which there is a repayment contract executed by the United States, pursuant to said laws, or any project constructed or operated and maintained by the Secretary through the Bureau of Reclamation for the reclamation of arid lands or other purposes.

(d) The term "construction charges" shall mean the amounts of principal obligations payable to the United States under water-right applications, repayment contracts, orders of the Secretary, or other forms of obligation entered into pursuant to the Federal reclamation laws, excepting amounts payable for water rental or power charges, operation and maintenance and other yearly service charges, and excepting also any other operation and maintenance, interest, or other charges which are not covered into the principal sums of the construction accounts of the Bureau of Reclamation.

(e) The term "repayment contract" shall mean any contract providing for payment of construction charges to the United States.

(f) The term "project contract unit" shall mean a project or any substantial area of a project which is covered or is proposed to be covered by a repayment contract. On any project where two or more repayment contracts in part cover the same area and in part different areas, the area covered by each such repayment contract shall be a separate project contract unit. On any project where there are either two or more repayment contracts on a single project contract unit or two or more project contract units, the repayment contract or project contract units may be merged by agreements in form satisfactory to the Secretary.

(g) The term "organization" shall mean any conservancy district, irrigation district, water users' association, or other organization, which is organized under State law and which has capacity to enter into contracts with the United States pursuant to the Federal reclamation laws.

(h) The term "division of a project" shall mean any part of a project designated as a division by order of the Secretary or any phase or feature of project operations given a separate designation as a division by order of the Secretary for the purposes of orderly and efficient administration.

(i) The term "development unit" shall mean a part of a project which, for purposes of orderly engineering or reclamation development, is designated as a development unit by order of the Secretary.

(j) The term "irrigation block" shall mean an area of arid or semiarid lands in a project in which, in the judgment of the Secretary, the irrigable lands should be reclaimed and put under irrigation at substantially the same time, and which is designated as an irrigation block by order of the Secretary. (53 Stat. 1187; Act of August 8, 1958, 72 Stat. 543; 43 U.S.C. § 485a)

Explanatory Note

1958 Amendment. Section 3 of the Act of August 8, 1958, repealed subsection (h) of section 2 and relettered the subsections following accordingly. The repealed subsection read as follows: "(h) The term 'annual returns' shall mean the amount of the annual gross crop returns per acre of the area in cultivation within the project contract unit involved; and the term 'normal returns' for any year shall mean the weighted average of the annual returns of those ten years, of the thirteen-year period covering said year and the twelve years preceding it, in which the annual returns are the highest." These definitions relate to the "normal and percentage plan" of repayment which had been authorized by section 4. Inasmuch as the 1958 Act also repealed section 4, the need for these definitions was eliminated. In place of the "normal and percentage plan," the 1958 Act provided for a variable repayment plan.

Notes of Opinions

Organization 2
Project 1

1. Project

The definition of the term "project" in section 2 of the Reclamation Project Act of 1939 includes projects not under the reclamation laws that are constructed or operated and maintained by the Secretary of the Interior through the Bureau of Reclamation for other agencies, such as the Lower Two Medicine Dam on the Blackfeet Indian Irrigation project. Consequently, the provisions of section 12 of the Act authorize the inclusion of the usual contingency-upon-appropriations clause in the construction contract. Memorandum of Associate Solicitor Hogan, October 6, 1966.

2. Organization

The reasoning of the Solicitor's memorandum opinion, M–28771 (October 10, 1936), in re the Public Irrigation District for the Pine River Project, Colorado, that the term "irrigation district", as used in section 46 of the Omnibus Adjustment Act, means that an organization must have the power of taxation in order to enter into a

repayment contract, is no longer valid, for section 2(g) of the Reclamation Project Act of 1939 defines "organization" in a broader sense; and a still broader definition is given in section 2(c) of the Small Reclamation Projects Act. Memorandum of Associate Solicitor Hogan, August 17, 1964, in re Louden Irrigating Canal and Reservoir Company.

Sec. 3. [Secretary authorized to amend contracts for repayment of construction charges—Period of repayment not to exceed forty years from date when first installment was due.]—In connection with any repayment contract or other form of obligation, existing on the date of this Act, to pay construction charges, providing for repayment on the basis of a definite period, the Secretary is hereby authorized, upon request by the water users involved or their duly authorized representatives for amendment under this section of said contract or other form of obligation, and if in the Secretary's judgment such amendment is both practicable and in keeping with the general purpose of this Act, to amend said contract or other form of obligation so as to provide that the construction charges remaining unaccrued on the date of the amendment, or any later date agreed upon, shall be spread in definite annual installments on the basis of a longer definite period fixed in each case by the Secretary: *Provided,* That for any construction charges said longer period shall not exceed forty years, exclusive of 1931 and subsequent years to the extent of moratoria or deferments of construction charges due and payable for such years effected pursuant to Acts of Congress, from the date when the first installment of said construction charges became due and payable under the original obligation to pay said construction charges and in no event shall the unexpired part of said longer period exceed double the number of remaining years, as of the date of the amendment made pursuant to this Act, in which installments of said construction charges would become due and payable under said existing repayment contract or other form of obligation to pay construction charges. (53 Stat. 1188; 43 U.S.C. § 485b)

EXPLANATORY NOTE

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaceu "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act thus being extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Sec. 4. [Normal and percentages plan.]—***Repealed.***

EXPLANATORY NOTE

Section Repealed. The Act of August 8, 1958, which is found herein in chronological order, repealed section 4, as amended. The same Act amended paragraph (3) of section 9, subsection (d), thus authorizing a variable repayment plan in place of the "normal and percentage plan" provided for in section 4. The repealed section read as follows:

Sec. 4(a). In connection with any existing project on which construction charges are payable to the United States, the Secretary is hereby authorized to negotiate and enter into a contract or an amendatory contract, in a form satisfactory to him, with an organization, satisfactory in form and powers to him, representing the water users of the project contract unit involved, which contract shall provide for the payment of construction charges on said project contract unit in the manner hereinafter provided in this section. The negotiation and execution of such a contract shall be undertaken only upon request by duly authorized representatives of the water users involved for such a contract and upon a determination by the Secretary that, in his judgment, such a contract is both practicable and in keeping with the general purpose of this Act.

(b) All of the construction charges for the project contract unit remaining unaccrued on the date of the contract entered into pursuant to this section or on any later date agreed upon shall be merged in a total and general repayment obligation of the organization. Said repayment obligation of said organization shall be scheduled in such annual installments as, in the judgment of the Secretary, constitute an equitable, practicable, and definite consolidated schedule of the existing obligations in said project contract unit to pay construction charges: *Provided,* That said schedule of installments shall be so arranged that in the judgment of the Secretary it does not involve for any of said construction charges merged into said general obligation an extension of the time permitted under the existing obligations for payment of said charges excepting the adjustment of the repayment period permitted for certain charges by the last sentence of this subsection. For the purpose of scheduling said installments of said general obligation in accordance with this subsection, in connection with each project contract unit under an existing contract made pursuant to section 4 of the Act of December 5, 1924 (43 Stat. 672, 701), the Secretary shall fix a weighted average gross crop return per acre, of which 5 per centum shall be the measure for determining the schedule of the unaccrued construction charges in a definite number of annual installments. In the event the said existing obligations to pay construction charges in said project contract unit or units are based in part on section 4 of the Act of December 5, 1924 (43 Stat. 672, 701), and in part on other Acts of the Federal reclamation laws, said charges may be consolidated into two general repayment contract obligations of said organization, each of which shall be scheduled in such installments as, in the judgment of the Secretary, constitute an equitable, practicable, and definite consolidated schedule of all of the respective parts of said existing obligations to pay construction charges. Any of said unaccrued construction charges, which under said existing obligations are payable on the basis of a definite period, first may be adjusted by the Secretary, if in his judgment such adjustment is both practicable and in keeping with the general purpose of this Act, to a repayment basis of a longer definite period fixed in each case by him: *Provided,* That for any such construction charges said longer period shall not exceed the limitations contained in the proviso of section 3 of this Act.

(c) For each project contract unit where a repayment contract is entered into pursuant to this section, a census of annual returns shall be taken each year. The normal returns each year, for each such project contract unit, shall be determined by the Secretary: *Provided,* That in any year, if the Secretary deems it necessary, an estimate of the annual returns of that year, in lieu of a final determination thereof, shall be considered with the annual returns of the preceding twelve years: *Provided further,* That in the event records of annual returns of the lands involved are not available for twelve preceding years, the Secretary, until such records for twelve preceding years have been established, in his discretion may consider established annual returns of other and similar lands in other and similar project contract units for the purpose of determining each year the normal returns. The estimates and final determinations of annual returns and the determinations of normal returns provided for in this Act shall be made by the Secretary with such assistance from the water users and organization involved as he requests, and said estimates and determinations made by him shall be conclusive.

(d) For each project contract unit where a repayment contract is entered into pursuant to this section, each year the percent of the normal returns for said year by which the annual returns of said year exceed or are less than said normal returns shall be determined by the Secretary. For each unit or major fraction of a unit of said percentage of said increase or decrease there shall be an increase or decrease, respectively, of 2 per centum in the amount or amounts of the installment or installments for said year under the organization's obligation or obligations as determined under subsections (b) and (e) of this section. Said latter amount or amounts as thus increased or decreased shall be the payment or payments of construction charges due and payable for said year, except

that in no event shall the amount of the said payment or payments due and payable for any year be less than 15 per centum nor, as determined by the Secretary, more than from 150 to 200 per centum, inclusive, of the amount or amounts of the installment or installments for said year under the organization's obligation or obligations as determined under subsections (b) and (e) of this section. The Secretary is hereby authorized to amend any repayment contracts heretofore or hereafter entered into pursuant to the provisions of this section to conform to the provisions of this amendment.

(e) In each contract entered into pursuant to this section, there shall be such provisions as the Secretary deems equitable, necessary, and proper to provide that any part of the amount of any installment of an organization's obligation, as determined under subsection (b) of this section, which, in the year for which said installment is designated under said subsection (b) does not, by reason of the operation of subsection (d) of this section, become due and payable as construction charges for said year, shall be added to an installment or installments of subsequent years for which installments are designated under said subsection (b) or shall be established as an installment or installments or parts thereof of years subsequent to the last year for which an installment is designated under said subsection (b), or both; and there shall be similar provisions respecting any such part of the amount of any installment modified or established under this subsection: *Provided,* That under this subsection no installment may be revised to or established in an amount exceeding the amount of the largest installment as determined under said subsection (b), and there shall be included in the contract such provisions as the Secretary deems proper for offsetting the increases and decreases in annual installments which result from the operation of said subsection (d).

(f) In any contract entered into pursuant to the authority of this section, it shall be provided that from and after the date of the last installment of the organization's repayment contract obligation or obligations as determined under subsection (b) of this section, a charge of 3 per centum per annum shall be payable by the organization on any balance or balances of said organization's obligation or obligations which have not become due and payable by reason of the operation of subsection (d) of this section, until the same have become due and payable as construction charges under said subsection (d), and said charge of 3 per centum shall be payable by the organization to the United States on the same dates as, and in addition to, the annual payments otherwise required under this section.

(g) There may be included in any contract entered into pursuant to the authority of this section provisions requiring the organization to vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the irrigation thereof: *Provided,* That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization, or any party or any land therein, of the organization's general obligation to repay to the United States in full the total amount of the organization's repayment contract obligation or obligations as determined under subsection (b) of this section.

Explanatory Notes

1945 Amendment. Section 1 of the Act of April 24, 1945, 59 Stat. 75, amended subsection 4(d) by adding after the words "15 per centum", the phrase "nor, as determined by the Secretary, more than from 150 to 200 per centum, inclusive," and by adding the last sentence in the subsection. The 1954 amendment thus put a ceiling of 150–200 per centum on the increase of the annual installment over the normal installment. The 1945 Act appears herein in chronological order.

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act thus being extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Reference in the Text. Section 4 of the Act of December 5, 1924 (43 Stat. 672, 701), referred to in the text of subsection 4(b), is the Fact Finders' Act. The Act appears herein in chronological order.

NOTE OF OPINION

1. Contracts

A repayment contract entered into under subsection 9(d) which prescribes a formula pursuant to which the amount of each annual installment is to be determined, which formula has no relationship to the "normal and percentages plan" authorized by Congress in subsection 9(d) and section 4 for variable payments, is not in conformity with the requirements of the Reclamation Project Act of 1939. Solicitor White Opinion, 60 I.D. 150 (1948), in re proposed contract with Savage Irrigation District.

Sec. 5. [Payments to be due contemporaneous with receipt of crop returns—Assessment to be made prior to dates of payment to United States—Secretary may provide deferments to prevent inequitable pyramiding of charges.]—The Secretary in his discretion may require, in connection with any contract entered into pursuant to the authority of this Act, that the contract provide (1) that the payments for each year to be made to the United States shall become due and payable on such date or dates, not exceeding two, in each year as the Secretary determines will be substantially contemporaneous with the time or times in each year when water users receive crop returns and (2) if the contract be with an organization, that assessments or levies for the purpose of obtaining moneys sufficient to meet the organization's payments under said contract shall be made and shall become due and payable within a certain period or periods of time prior to the date or dates on which the organization's payments to the United States are due and payable, said period or periods of time to be agreed upon in each said contract.

The Secretary may provide such deferments of construction charges as in his judgment are necessary to prevent said requirements from resulting in inequitable pyramiding of payments of said charges. (53 Stat. 1191; 43 U.S.C. § 485d)

Sec. 6. [Secretary to require proper accounting, protection of project lands against improper use of water, advance payment operation and maintenance charges, and penalize delinquencies in payment construction or operation and maintenance charges—No water to lands in arrears operation and maintenance or to lands in arrears more than 12 months construction charges.]—In connection with any contract, relating to construction charges, entered into pursuant to the authority of this Act, the Secretary is hereby authorized to require such provisions as he deems proper to secure the adoption of proper accounting, to protect the condition of project works and to provide for the proper use thereof, and to protect project lands against deterioration due to improper use of water. Any such contract shall require advance payment of adequate operation and maintenance charges. The Secretary is further authorized, in his discretion, to require such provisions as he deems proper to penalize delinquencies in payments of construction charges or operation and maintenance charges: *Provided,* That in any event there shall be penalties imposed on account of delinquencies of not less than one-half of 1 per centum per month of the delinquent charge from and after the date when such charge becomes due and payable: *Provided further,* That any such contract shall require that no water shall be delivered to lands or parties which are in arrears in the advance payment of operation and maintenance or toll charges, or to lands or parties which are in arrears for more than twelve months in the payment of construction charges due from such lands

or parties to the United States or to the organization in which the lands or parties are included, or to any lands or parties included in an organization which is in arrears in the advance payment of operation and maintenance or toll charges or in arrears more than twelve months in the payment of construction charges due from such organization to the United States. (53 Stat. 1191; 43 U.S.C. § 485e)

NOTE OF OPINION

1. Contracts covered

A water supply contract for municipal or miscellaneous purposes under section 9(c)(1) of the Reclamation Project Act of 1939 is a contract "relating to construction charges" within the meaning of section 6, and therefore, it must include payment of operation and maintenance costs as provided in section 6 even though section 9(c)(1) does not mention such costs. Memorandum of Chief Counsel Fix to Commissioner, March 26, 1947.

Sec. 7. (a) [Investigation of repayment problems where contract not practicable under secs. 3 and 4.]—The Secretary is hereby authorized and directed to investigate the repayment problems of any existing project contract unit in connection with which, in his judgment, a contract under section 3 or 4 of this Act would not be practicable nor provide an economically sound adjustment, and to negotiate a contract which, in his judgment, both would provide fair and equitable treatment of the repayment problems involved and would be in keeping with the general purpose of this Act.

EXPLANATORY NOTE

Reference in the Text. Section 4, referred to in the text, was repealed by section 3 of the Act of August 8, 1958, 72 Stat. 542. **The 1958 Act appears herein in chronological order.**

(b) [Where repayment contract not executed, allocations of costs may be made—Secretary may fix development period for each irrigation block of not to exceed 10 years—Water to be delivered on toll charge basis.]—For any project, division of a project, development unit of a project, or supplemental works on a project, now under construction or for which appropriations have been made, and in connection with which a repayment contract has not been executed, allocations of costs may be made in accordance with the provisions of section 9 of this Act and a repayment contract may be negotiated, in the discretion of the Secretary, (1) pursuant to the authority of subsection (a) of this section or (2) in accordance, as near as may be, with the provisions in subsection 9(d) or 9(e) of this Act. In connection with any such project, division, or development unit, on which the majority of the lands involved are public lands of the United States, the Secretary, prior to entering into a repayment contract, may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first year in which water is delivered for the lands in said block: *Provided,* That in the event a development period is fixed prior to execution of a repayment contract, execution thereof shall be a condition precedent to delivery of water after the close of the development period. During any such development period water shall be delivered to the lands in the irrigation block involved only on a toll-charge basis, at a charge per annum per acre-foot to be fixed by the Secretary each year and to be collected in advance of delivery

of water. Pending negotiation and execution of a repayment contract for any other such project, division, or development unit, water may be delivered for a period of not more than five years from the date of this Act on the same toll-charge basis. Any such toll charges collected and which the Secretary determines to be in excess of the cost of operation and maintenance during the toll-charge period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(c) **[Execution of contracts only after approval by Act of Congress—Subsequent amendatory contracts may be executed without approval by Congress.]**—The Secretary from time to time shall report to the Congress on any proposed contracts negotiated pursuant to the authority of subsection (a) or (b)(1) of this section, and he may execute any such contract on behalf of the United States only after approval thereof has been given by Act of Congress. Contracts, so approved, however, may be amended from time to time by mutual agreement and without further approval by Congress if such amendments are within the scope of authority heretofore or hereafter granted to the Secretary under any Act, except that amendments providing for repayment of construction charges in a period of years longer than authorized by this Act, as it may be amended, shall be effective only when approved by Congress. (53 Stat. 1192; Act of April 24, 1945, 59 Stat. 76; 43 U.S.C. § 485f)

Explanatory Notes

1945 Amendment. The Act of April 24, 1945, 59 Stat. 75, amended subsection 7(c) by adding to it the last sentence of the subsection which authorizes the amendment of certain contracts without further Congressional approval. The 1945 Act appears herein in chronological order.

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act thus being extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Editor's Note, Contracts Approved by Act of Congress. Numerous Acts of Congress have been passed pursuant to this subsection. References to these statutes are indexed under the names of the individual projects involved.

Notes of Opinions

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Under construction 1

1. Under construction

The Columbia Basin project was a project under construction but for which no repayment contract had been made at the time of enactment of the Reclamation Project Act of 1939, and therefore it was a project for which, pursuant to section 7(b) of that act, the Secretary was authorized to allocate costs pursuant to section 9(a) and to negotiate repayment contracts pursuant to section 9(d) or 9(e). Solicitor Barry Opinion, 68 I.D. 305, 306 (1961), in re Columbia Basin repayment problems.

2. Approval by Congress

A contract containing a clause terminating excess land limitations upon payment of construction charges is considered not to be affected by the 1961 Solicitor's Opinion holding that payout does not suspend application of excess land laws to pre-existing holdings if such contract has been approved

by Congress, even though it was submitted to Congress for some other reason such as under section 7 of the Reclamation Project Act of 1939. Letter from Secretary Udall to Chairman Wayne Aspinall, House Committee on Interior and Insular Affairs, April 11, 1962, note No. 2.

Sec. 8. (a) **[Classification or reclassification of lands at 5-year intervals.]**—The Secretary is hereby authorized and directed in the manner hereinafter provided to classify or to reclassify, from time to time but not more often than at five-year intervals, as to irrigability and productivity those lands which have been, are, or may be included within any project.

(b) **[No classification unless requested by organization of water users.]**—No classification or reclassification pursuant to the authority of this Act shall be undertaken unless a request therefor, by an organization or duly authorized representatives of the water users, in the form required by subsection (c) of this section has been made of the Secretary. The Secretary shall plan the classification work, undertaken pursuant to the authority of this section, in such manner as in his judgment will result in the most expeditious completion of the work.

(c) **[Water users organization to furnish list of lands considered nonproductive.]**—In any request made to the Secretary for a land classification or reclassification under this section, the organization or representatives of the water users shall furnish a list of those lands which are considered to be of comparatively low productivity or to be nonproductive, and of those lands which are considered to be of greater or lesser productivity than indicated by existing classifications, if any, made pursuant to the Federal reclamation laws, and shall furnish also such data relating thereto as the Secretary by regulation may require.

(d) **[Secretary to determine if classification justified.]**—Upon receipt of any such request the Secretary shall make a preliminary determination whether the requested land classification or reclassification probably is justified by reason of the conditions of the lands involved and other pertinent conditions of the project, including its contractual relations with the United States.

(e) **[Classification to be undertaken if justified.]**—If the Secretary finds probable justification and if the advance to the United States hereinafter required is made, he shall undertake as soon as practicable the classification or reclassification of the lands listed in the request, and of any other lands which have been, are, or may be included within the project involved and which in his judgment should be classified or reclassified.

(f) **[Classification to be reported to Congress with recommendations for remedial legislation.]**—As soon as practicable after completion of the classification work undertaken pursuant to this section or from time to time, the Secretary shall report to Congress on the classifications and reclassifications made and shall include in his report, as to each project involved, his recommendations, if any, for remedial legislation.

(g) **[One-half expense classification to be charged operation and maintenance nonreimbursable—one-half to be paid in advance by water users.]**—One-half of the expense involved in any classification work undertaken pursuant to this section shall be charged to operation and maintenance administration nonreimbursable; and one-half shall be paid in advance by the organization involved. On determining probable justification for the requested classification or

reclassification as provided in this section, the Secretary shall estimate the cost of the work involved and shall submit a statement of the estimated cost to said organization. Said organization, before commencement of the work, shall advance to the United States one-half of the amount set forth in said statement and also shall advance one-half of the amount of supplementary estimates of costs which the Secretary may find it necessary to make from time to time during the progress of the work; and said amounts shall be and remain available for expenditure by the Secretary for the purposes for which they are advanced, until the work is completed or abandoned. After completion or abandonment of the work, the Secretary shall determine the actual cost thereof; and said organization shall pay any additional amount required to make its total payments hereunder equal to one-half of the actual cost or shall be credited with any amount by which advances made by it exceed one-half of said actual cost, as the case may be.

(h) **[If classification necessary preliminary to contract under secs. 3 or 4, Secretary may require classification.]**—If in the judgment of the Secretary a classification or reclassification pursuant to the provisions of this section is a necessary preliminary to entering into a contract under section 3 or 4 of this Act, he may require the same as a condition precedent to entering into such a contract.

EXPLANATORY NOTE

Reference in the Text. Section 4, referred to in the text, was repealed by section 3 of the Act of August 8, 1958, 72 Stat. 542. The 1958 Act appears herein in chronological order.

(i) **[No modification of obligation without express authority of Congress.]**—No modification of any existing obligation to pay construction charges on any project shall be made by reason of any classification or reclassification undertaken pursuant to this section without express authority therefor granted by Congress upon recommendations of the Secretary made in a report under subsection (f) of this section. (53 Stat. 1192; 43 U.S.C. § 485g)

NOTE OF OPINION

1. Reclassification authority

If lands, being classified or reclassified in accordance with the procedure prescribed in section 8(i) of the Reclamation Project Act of 1939 (53 Stat. 1187), are proposed to be classed as temporarily unproductive with the object of suspending the payment of construction charges to the United States as to such lands while in that class, authority to make the adjustment of the repayment contract with the United States necessary to reflect such suspension must be granted by Congress. Memorandum of Acting Chief Counsel Fix, August 21, 1944.

Sec. 9. (a) **[No expenditures for construction until after investigation and report to President and Congress—If proposed construction found feasible by Secretary and repayable allocations equal estimated cost, construction may be authorized—If allocations do not equal cost construction may only be undertaken after provision by Congress.]**—No expenditures for the construction of any new project, new division of a project, or new supplemental works on a project shall be made, nor shall estimates be submitted therefor, by the Secretary until after he has made an investigation thereof and has submitted to the President and to the Congress his report and findings on—

(1) The engineering feasibility of the proposed construction;

(2) The estimated cost of the proposed construction;

(3) The part of the estimated cost which can properly be allocated to irrigation and probably be repaid by the water users;

(4) The part of the estimated cost which can properly be allocated to power and probably be returned to the United States in net power revenues;

(5) The part of the estimated cost which can properly be allocated to municipal water supply or other miscellaneous purposes and probably be returned to United States.

If the proposed construction is found by the Secretary to have engineering feasibility and if the repayable and returnable allocations to irrigation, power, and municipal water supply or other miscellaneous purposes found by the Secretary to be proper, together with any allocation to flood control or navigation made under subsection (b) of this section, equal the total estimated costs of construction as determined by the Secretary, then the new project, new division of a project, or supplemental works on a project, covered by his findings, shall be deemed authorized and may be undertaken by the Secretary. If all such allocations do not equal said total estimated cost, then said new project, new division, or new supplemental works may be undertaken by the Secretary only after provision therefore has been made by Act of Congress enacted after the Secretary has submitted to the President and the Congress the report and findings involved. (53 Stat. 1193; 43 U.S.C. § 485h(a))

EXPLANATORY NOTE

1944 Supplementary Provision: Federal and State Review; Congressional Authorization. Section 1(c) of the Flood Control Act of December 22, 1944, requires that project reports shall be reviewed by the Secretary of the Army and by the affected States, and provides that if objections are set forth, the proposed works shall not be deemed authorized except by Act of Congress. The 1944 Act appears herein in chronological order.

NOTES OF OPINIONS

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1. Purpose

Subsections 9(a) and 9(c) of the Reclamation Project Act of 1939, although related, serve two different purposes: Subsection 9(a) embodies the test for feasibility, while subsection 9(c) contains the criteria for rates to be charged by the Secretary for the sale of power. Solicitor Harper Opinion, M–33473 (September 29, 1944).

A principal purpose of the Reclamation Project Act of 1939 was to place water users' repayment on a basis of payment ability rather than to burden them with all costs. Solicitor Barry Opinion, 68 I.D. 305, 310 (1961), in re Columbia Basin repayment problems.

2. Construction with other laws

Allocations of cost of the Columbia Basin (Grand Coulee) Project and the establishment of the rate schedule for the sale of power therefrom are governed by the provisions of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1193), notwithstanding the broad power vested in the President "to make and enter into any and all necessary contracts" in connection with the project, by section 2 of the Act of August 30, 1935 (49 Stat. 1039), since section 1 of the Columbia Basin Project Act, approved March 10, 1943 (Public Law 8, 78th Cong.), "authorized and reauthorized" the

project as one "subject to the Reclamation Project Act of 1939." Solicitor Harper Opinion, M-33473 (September 29, 1944).

3. Finding of feasibility

A finding of feasibility prepared pursuant to section 9(a) of the Reclamation Project Act of 1939 does not itself commit the United States to complete the project regardless of cost and to apply power revenues to repay all costs above the estimates made in the finding. Solicitor Barry Opinion, 68 I.D. 305, 312 (1961), in re Columbia Basin repayment problems.

Section 9(a) of the Reclamation Act of 1939 authorizes the Secretary to make a finding of feasibility on a single-purpose power project. Memorandum of Chief Counsel Fix, February 15, 1950, in re Alcova power plant.

The provision in the Interior Appropriation Act for 1950 making $100,000 available for the emergency reconstruction of the northwest unit pipeline of the Grants Pass irrigation district was intended as an authorization for the work as well as an appropriation, as shown by the legislative history and the inclusion of the word "emergency". Consequently the requirement of section 9(a) of the Reclamation Project Act of 1939 for a finding of feasibility does not apply as a condition precedent to the expenditure of funds. Memorandum of Chief Counsel Fix, September 21, 1949.

4. Costs, what constitutes

Section 9(a) of the Reclamation Project Act of 1939 provides for estimates of costs and estimates of repayments, while the requirements of repayment and return are dealt with in subsections 9(c), 9(d), and 9(e) in terms of actual costs. Solicitor Barry Opinion, 68 I.D. 305, 310 (1961), in re Columbia Basin repayment problems.

The provision of section 208 of the Flood Control Act of 1962, relating to the non-reimbursability of Federal costs of relocating roads to current standards, must be construed *in pari materia* with section 9 and section 14 of the Reclamation Project Act of 1939. This means that (1) the cost of relocating a road in kind is included as a part of total project cost to be allocated as provided in section 9 of the 1939 Act; (2) the additional cost of constructing the substitute road to current standards under section 208 is a non-reimbursable federal cost; and (3) the further cost of constructing the road to a still higher standard requested by the State must be paid by the State. Memorandum of Associate Solicitor Weinberg, December 6, 1962.

If an upstream project, such as the proposed Central Arizona project and Bridge Canyon project in the Lower Colorado River Basin, interferes with the statutory responsibility of the Secretary to recover the costs of Hoover Dam by June 1, 1987, or to recover the costs of Davis and Parker Dams within a reasonable period of time, then the cost of such interference should be included as one of the "costs" of the new upstream development under section 9(a) of the Reclamation Project Act of 1939. Memorandum of Chief Counsel Fix, October 9, 1947.

5. Allocation of costs

Subsection 9(a) speaks of two kinds of allocations of estimated costs with respect to irrigation, power, municipal water supply, and other miscellaneous purposes. One is an allocation in an accounting or engineering sense, and the other is an allocation only in the sense of an assignment of amounts to be returned from the sources named. In some cases the amount that can be returned will be less than the amount properly allocable, and in other cases it will be more. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

6. Repayment

The availability of power revenues to aid irrigation has, in one form or another, been a part of general reclamation law almost since its beginning. This is evident from section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; the Act of February 24, 1911, 36 Stat. 930, 43 U.S.C. § 522; and subsection I, section 4, of the Act of December 5, 1924, 43 Stat. 703, 43 U.S.C. § 501. This general trend has been reinforced by the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the Act of May 9, 1938, 52 Stat. 322, 43 U.S.C. § 392a, and a provision in the Interior Department Appropriation Act, 1947, Act of July 1, 1946, 60 Stat. 366, as well as section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1193, 43 U.S.C. § 485h. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

The practice of using power revenues to assist in the payment of irrigation costs and in determining whether a project will probably return its cost to the United States originated with section 5 of the Act of April 16, 1906, 34 Stat. 116, 117, 43 U.S.C. § 522; was followed in a number of subse-

quent enactments, including section 9 of the Reclamation Project Act of 1939, Act of August 4, 1939, 53 Stat. 1187, 1193, 43 U.S.C. § 485h; and has repeatedly been recognized and accepted by Congress. Letter from Acting Commissioner Markwell to Rep. Leroy Johnson, April 2, 1948.

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 885 (1948).

The Reclamation Project Act (53 Stat. 1193), specifies no period within which there must be repaid that portion of the costs "properly chargeable to irrigation but which are beyond the ability of the water users to repay" (the irrigation subsidy). The repayment period accordingly may be such as the Secretary of the Interior in his discretion shall determine to be proper for each project, within the useful life of that project. Solicitor Harper Opinion, M-33473 (Supplemental) (September 10, 1945).

Except for contracts under subsections 9(c)(1) and 9(d), which are governed by a 40-year maximum limit, there is no legal objection under general reclamation law to utilizing a depreciation method for repayment of Federal investment, that is, repayment within the useful life of the property. Memorandum of Chief Counsel Fisher to Commissioner, April 10, 1952.

7. Authorization

A project is an authorized project when a report thereon under section 9(a) has been submitted as provided in that section, and therefore the initial appropriation for such project is not subject to a point of order. Ruling of Chairman of the Committee of the Whole House on the State of the Union, May 14, 1941, Cong. Rec. p. 4138.

Section 9(a) of the Reclamation Project Act of 1939, as amended, makes provision for the administrative authorization (without further Congressional action) of projects, parts of projects, and individual units embracing one or more of the purposes of irrigation, flood control, navigation, power, fish and wildlife, and municipal water supply or other miscellaneous purposes. These purposes stand on a par with each other, and there can be no question that the language covers construction of single-purpose or multiple-purpose projects that do not include the function of irrigation. Solicitor Bennett Opinion, 65 I.D. 129 (1958), in re authority to investigate Pleasant Valley Development.

(b) [Secretary may allocate part of cost to flood control or navigation—Consult with Chief of Engineers—Perform investigations under cooperative agreement with Secretary of War.]—In connection with any new project, new division of a project, or supplemental works on a project there may be allocated to flood control or navigation the part of said total estimated cost which the Secretary may find to be proper. Items for any such allocations made in connection with projects which may be undertaken pursuant to subsection (a) of this section shall be included in the estimates of appropriations submitted by the Secretary for said projects, and funds for such portions of the projects shall not become available except as directly appropriated or allotted to the Department of the Interior. In connection with the making of such an allocation, the Secretary shall consult with the Chief of Engineers and the Secretary of War, and may perform any of the necessary investigations or studies under a cooperative agreement with the Secretary of War. In the event of such an allocation the Secretary of the Interior shall operate the project for purposes of flood control or navigation, to the extent justified by said allocation thereof. (53 Stat. 1194; 43 U.S.C. § 485h(b))

NOTES OF OPINIONS

Effect of allocation 2
Report 3
Supplemental works 1

1. Supplemental works

The distribution system for Coachella Valley, with respect to which an appropriation had been made prior to the enactment of the Reclamation Project Act of 1939 but a repayment contract had not been executed, is a "supplemental work" within the meaning of section 9 of the Act with respect to which costs may be allocated to flood control on a nonreimbursable basis. Solicitor White Opinion, M–34900 (March 27, 1947), in re flood protection works in Coachella Valley.

2. Effect of allocation

Section 7 of the Flood Control Act of 1944, which requires the operation of Federal reservoirs for flood control or navigation under regulations issued by the Secretary of the Army, applies only to reservoirs in which storage has been allocated to flood control or navigation, and does not apply to reservoirs for which only costs, not storage, have been allocated to either purpose. In the latter case, the Secretary of the Interior is charged by section 9(b) of the Reclamation Project Act of 1939 with the responsibility for operating the project for such purposes. Memorandum of Chief Counsel Fisher, April 30, 1952, in re operation of Shasta Dam, Central Valley project, for navigation. *Accord:* Memorandum of Chief Counsel Fix, May 2, 1946, in re application of section 7 of the Flood Control Act of 1944.

3. Report

The Secretary is required by section 9(b) of the Reclamation Project Act of 1939 to consult with the Chief of Engineers and the Secretary of the Army with regard to the allocation of costs of the emergency reconstruction of Ochoco Dam to flood control; but because this work was authorized by the Interior Appropriation Act for 1949, it is not legally necessary to submit a report on such allocation to Congress. Memorandum of Acting Chief Counsel Devries, August 4, 1949.

(c) **[Sales or leases of water or power—Appropriate share of cost to be repaid in not to exceed 40 years—Preference to municipalities and other public corporations and agencies.]**—The Secretary is authorized to enter into contracts to furnish water for municipal water supply or miscellaneous purposes: *Provided,* That any such contract either (1) shall require repayment to the United States, over a period of not to exceed forty years from the year in which water is first delivered for use of the contracting party, with interest not exceeding the rate of 3½ per centum per annum if the Secretary determines an interest charge to be proper, of an appropriate share as determined by the Secretary of that part of the construction costs allocated by him to municipal water supply or other miscellaneous purposes; or (2) shall be for such periods, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, and shall require the payment of said rates each year in advance of delivery of water for said year. Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years, and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper: *Provided further,* That in said sales or leases preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to

the Rural Electrification Act of 1936 and any amendments thereof. Nothing in this subsection shall be applicable to provisions in existing contracts, made pursuant to law, for the use of power and miscellaneous revenues of a project for the benefit of users of water from such project. The provisions of this subsection respecting the terms of sales of electric power and leases of power privileges shall be in addition and alternative to any authority in existing laws relating to particular projects. No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes. (53 Stat. 1194; 43 U.S.C. § 485h(c))

EXPLANATORY NOTES

Supplementary Provision: Right of Renewal; First Right to Share of Water Supply. The Act of June 21, 1963, directs the Secretary of the Interior, upon request, to provide for renewal of water supply contracts under clause (2), and to grant parties to water supply contracts under clauses (1) or (2) a stated share of project water supply available for municipal, domestic or industrial use. The Act appears herein in chronological order.

Reference in the Text. The Rural Electrification Act of 1936, referred to in the text, was enacted May 20, 1936, 49 Stat. 1363, and has been amended at intervals since its enactment. The Act as amended is found in title 7, United States Code, section 901, *et seq.*

Administrative Practice: Charging of Interest. Since 1949 it has been the policy of the Department, as a general rule, that costs allocated to municipal water supply should be repaid with interest on the unpaid balance. See Memorandum of Secretary Krug to Commissioner, October 12, 1949.

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1. Generally

Subsections 9(a) and 9(c) of the Reclamation Project Act of 1939, although related, serve two different purposes: Subsection 9(a) embodies the test for feasibility, while subsection 9(c) contains the criteria for rates to be charged by the Secretary for the sale of power. Solicitor Harper Opinion, M–33473 (September 29, 1944).

The Hayden-O'Mahoney amendment deals with the cash distribution of revenues in the Treasury as between the reclamation fund and the general fund. Its purpose was to assure that the reclamation fund would receive as to each reclamation project an amount of dollars equal to that required to amortize the power investment plus the irrigation assistance. It does not, however, purport to deal with payout requirements of reclamation projects. These, except for special requirements applicable to given projects, are governed by Section 9(c) of the Reclamation Project Act of 1939. Statement furnished by Asst. Secretary Holum for *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 38 (1964).

5. Power—Exceptions

On July 1, 1941, the Secretary approved a rate schedule for the sale of commercial electrical energy from the Minidoka project. The approval was based on a financial study which assumed and expressly stated that contracts with water users organizations for the furnishing of power for pumping, as a part of the project irrigation operations, are not sales of electric power within the meaning of Section 9(c) of the Reclamation Project Act of 1939.

6.—Falling water

The reference in section 9(c) to the "lease of power privileges," as distinguished from the "sale of electric power" is suffi-

ciently broad to comprehend a so-called sale of falling water or other contractual arrangements to utilize power head and storage at, or operationally in conjunction with, Federal reclamation dams. Memorandum of Solicitor Armstrong to Commissioner of Reclamation, April 12, 1955.

7.—Contracts

In view of the Secretary's authority under section 2 of the Act of August 26, 1937, 50 Stat. 850, to acquire property for the Central Valley project by any means he deems necessary, including donation, and the broad authority of section 9(c) of the Reclamation Project Act of 1939 to fix rates, the Secretary may grant rate discounts to power customers that reflect the amortization of construction costs of transmission facilities built by the customer and conveyed to the Government or that reflect the operation and maintenance costs of facilities built and retained by the customer. (Dec. Comp. Gen. B–62789, letter of Assistant Comptroller General Weitzel to Chairman John E. Moss, Special Subcommittee on Assigned Power and Land Problems, House Committee on Government Operations, June 28, 1960).

Under the authority of the Act of March 4, 1921, 41 Stat. 1404, to accept and expend advances as if appropriated, and the broad authority of section 9(c) of the Reclamation Project Act of 1939 to fix the rates at which electric power is sold, the Secretary is authorized to enter into a contract with a commercial customer of the Kendrick project whereby the customer advances the cost of constructing the necessary feeder transmission facilities, the Bureau constructs the facilities, and power is sold to the customer at a discount rate until the customer has paid the United States, in the form of the reduced rate plus the advanced funds, the same amount for the power received as it would have paid at standard rates if the Bureau had constructed the facilities with appropriated funds. Dec. Comp. Gen. B–62789 (January 9, 1947).

In an appropriate case the Commissioner of Reclamation may condition the sale of temporary, withdrawable Central Valley project power to a potential municipal customer on the customer's demonstrating, by some appropriate means, that it has an ability to obtain a source of power to meet its requirements upon the withdrawal of the Bureau's supply. Memorandum of Associate Solicitor Fisher to the Commissioner of Reclamation, May 6, 1960.

8.—Rates

Although the principles stated in section 9(c) of the Reclamation Project Act of 1939 pertaining to power rates are stated in terms of the minimum charge for power, they are also clearly intended to set the maximum charge. The Government of the United States markets power to serve the public interest, not to make a profit. We believe that the public interest is best served by marketing power at the lowest rate consistent with orderly repayment of all proper costs, and we believe that is what Congress intended. Letter of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage project.

The provisions relating to power marketing and power rates in section 9(c) of the Reclamation Project Act of 1939, section 5 of the Flood Control Act of 1944, and section 6 of the Bonneville Power Act are *in pari materia,* and each may be examined to shed light on the Congressional intent with respect to the others. Indeed, as a practical matter, as illustrated by the Bonneville Power Administration, because a single system may be used to market power from three different sources, the three statutes have to be read together and interpreted as establishing identical criteria for power rates. Consequently, the mandate of the Flood Control Act of 1944 to market power from Army projects "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles," applies also to power marketed from reclamation projects under reclamation law. Letter of Secretary Udall to Representative Aspinall, May 15, 1965, in re basis for establishing power rates for the Colorado River Storage Project.

Under section 9(c) of the Reclamation Project Act of 1939, as construed consistently with the Hayden-O'Mahoney amendment to the Interior Department Appropriation Act, 1939, the minimum rates for the sale of power must be such as will cover (1) an appropriate share of annual operation and maintenance costs and (2) an amount equal to 3 percent per annum of the original power construction costs; however, if the 3 percent factor is not enough to return power construction costs plus the irrigation subsidy (the amount of irrigation construction costs beyond the ability of the water users to repay) within a reasonable period of time, then the rates must be increased accordingly. There is no statutory obligation for the Government to recover a profit (in the form of interest) on the investment in power construction costs, and therefore all of the power revenues are available to return power construction costs and the irrigation subsidy. Three percent per

annum is a minimum rate of return which continues without regard to pay-out. Solicitor Harper Opinion, M–33473 (September 29, 1944) and M–33473 (Supplemental) (September 10, 1945). [Editor's Note: Although this opinion has not specifically been overruled, it is not followed in two respects. First, the 3 percent factor used in section 9(c) is regarded as annual interest on the unamortized balance of power construction costs, rather than as a constant annual percentage of the original power costs. Second, the revenues represented by the interest component (that part of power revenues attributable to a recovery of interest on the power construction costs) are not considered to be available to return irrigation costs. This latter policy was adopted following a period of controversy culminated by the recommendation of the House Appropriations Committee against use of the interest component to return irrigation costs. H.R. Rept. No. 314, 83rd Congress, 1st Sess. 12 (1953).]

9.—Repayment

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 885 (1948).

There is no limitation in reclamation law on the number of years in which power costs have to be paid out. The 40-year limit specified in section 9(c) of the Reclamation Project Act of 1939 is a limit on the length of a contract for the sale of power, but not a limit on payout. Fifty years have been selected as a matter of policy but not of law. Testimony of Assistant Solicitor Weinberg, *Missouri Basin Water Problems: Joint Hearings Before the Senate Committees on Interior and Insular Affairs and Public Works,* 85th Cong., 1st Sess. 334 (1957).

There is no specific statutory period under the Reclamation Project Act of 1939 (53 Stat. 1193), within which the costs allocated to be repaid from net power revenues thereunder must be repaid. The repayment period accordingly may be such as the Secretary of the Interior in his discretion shall determine to be proper for each project, within the useful life of that project. Solicitor Harper Opinion, M–33473 (Supplemental) (September 10, 1945).

Neither the Hayden-O'Mahoney amendment nor the power marketing statutes involved in the power operations of the Bonneville Power Administration (section 7 of the Bonneville Project Act, section 9(c) of the Reclamation Project Act of 1939, and section 5 of the Flood Control Act of 1944) require that the costs of each project to be met from power revenues have to be amortized on the basis of a fixed annual obligation. The legal requirements are satisfied if such costs are returned within a reasonable period of years whatever accounting procedure is applied. Statement furnished by Assistant Secretary Holum in regard to statutory authority for revised procedure for presenting Bonneville Power Administration rate and repayment data on a consolidated system basis, printed in *Hearings on H.R. 2337, to Provide for the Construction of the Lower Teton Division, Teton Basin Federal Reclamation Project, Before the Irrigation and Reclamation Subcommittee of the House Committee on Interior and Insular Affairs,* 88th Cong., 2d Sess. 36–38 (1964).

Except for contracts under subsections 9(c)(1) and 9(d), which are governed by a 40-year maximum limit, there is no legal objection under general reclamation law to utilizing a depreciation method for repayment of Federal investment, that is, repayment within the useful life of the property. Memorandum of Chief Counsel Fisher to Commissioner, April 10, 1952.

10.—Preference customers

The Bureau of Reclamation has authority to contract with the Arizona Power Pooling Association—a proposed nonprofit corporation formed by Arizona preference customers for the purpose of representing them collectively as a purchasing agent under their Colorado River Storage project allotments to obtain the maximum benefits of their respective diversities—as a preference customer. Memorandum of Acting Associate Solicitor Coulter to Commissioner of Reclamation, February 25, 1965.

The Navajo Indian Tribe qualifies as a preference customer for the purchase of power marketed by the Bureau of Reclamation under section 9(c) of the Reclamation Project Act of 1939. Memorandum of Associate Solicitor Weinberg, April 14, 1961.

12.—Transmission lines

The Secretary of the Interior has authority under subsection 2(b), 2(f), 5(a), 5(b) and 9(b) of the Bonneville Project Act; section 5 of the Flood Control Act of 1944; sections 9(c) and 14 of the Reclama-

tion Project Act of 1939; and section 2 of the Act of August 30, 1935, 49 Stat. 1039, reauthorizing the Grand Coulee Dam project, to construct transmission lines between the Pacific Northwest and the Pacific Southwest. Solicitor Barry Opinion, 70 I.D. 237 (1963).

Power marketing and transmission operations of the Bureau of Reclamation under the reclamation laws have not been considered to be restricted to the reclamation states, and this administrative construction of the law has been concurred in by action of the Congress in appropriating funds for transmission lines in states such as Iowa and Minnesota. Memorandum of Associate Solicitor Weinberg to Director, Division of Budget and Finance, July 23, 1962, in re authority to construct the Creston-Fairport intertie.

15. Water—Municipal water supply

Section 4 of the Act of April 16, 1906, authorizes the furnishing of project water to a town in the immediate vicinity of the project which has a pre-existing water right in the same source of water as the project source. The authority to furnish water in such a case under the 1906 Act is neither repealed by, nor subject to the conditions of, the Act of February 25, 1920, 41 Stat. 451, or section 9(c) of the Reclamation Project Act of 1939. Memorandum of Acting Commissioner Lineweaver to Regional Director, Boise, September 26, 1950, in re contracts with cities of Culver and Metolius, Deschutes Project, Oregon.

16.—Miscellaneous purposes

A contract to permit the Public Service Company of Colorado to divert water from a canal of the Grand Valley project for cooling purposes may be entered into pursuant to the Act of February 25, 1920, or under section 9(c) or section 10 of the Reclamation Project Act of 1939. Revenues arising from the furnishing of water for this purpose should be credited as a tail end reduction of the water users organizations repayment obligation for construction and rehabilitation and betterment costs. Memorandum of Associate Solicitor Fisher, October 26, 1956.

17.—Contracts

Although section 5(d) of the Colorado River Storage Project Act fixed an over-all period of 50-years for return with interest of costs allocated to municipal water, the Act permits no other payment arrangements than those provided by section 9(c)(1) and 9(c)(2) of the Reclamation Project Act of 1939. Thus, although more than one contract covering such costs may be signed, none can have a term greater than 40 years. A 9(c)(2) contract may be entered into for the maximum 40-year period, followed by either a 9(c)(1) or 9(c)(2) contract for 10 years. If the first contract is written under 9(c)(1), however, it would require that full repayment be accomplished in the permissible 40-year period. Memorandum of Associate Solicitor Fisher, March 5, 1958, and Memorandum of Acting Associate Solicitor Weinberg, September 20, 1957, in re contract negotiations for Vernal Unit.

A water supply contract for municipal or miscellaneous purposes under section 9(c)(1) of the Reclamation Project Act of 1939 is a contract "relating to construction charges" within the meaning of section 6, and therefore, it must include payment of operation and maintenance costs as provided in section 6 even though section 9(c)(1) does not mention such costs. Memorandum of Chief Counsel Fix to Commissioner, March 26, 1947.

18.—Rates

It is clearly within the authority of the Secretary under section 9(c) of the Reclamation Project Act of 1939 to charge different rates for water from the Central Valley project delivered for municipal water supply than for water delivered for irrigation purposes. *City of Fresno* v. *California*, 372 U.S. 627 (1963).

The Secretary has discretion to charge interest in a water supply contract for municipal or miscellaneous purposes under section 9(c)(2) of the Reclamation Project Act of 1939. Although interest is not specifically mentioned, it is one of the items which properly can be included within the classification of "fixed charges." Memorandum of Chief Counsel Fix to Commissioner, March 26, 1947.

(d) **[No water delivered until repayment contract executed providing (1) development period for each irrigation block, (2) construction cost allocable to irrigation to be included in general repayment obligation—Distribution of construction charges on account productivity of land and benefits accruing, (3) repayment in annual installments over period not exceeding 40 years, (4) first annual installment on date fixed by Secretary.]**—No water may be delivered for irrigation of lands in connection with any new project, new division of a

project, or supplemental works on a project until an organization, satisfactory in form and powers to the Secretary, has entered into a repayment contract with the United States, in a form satisfactory to the Secretary, providing among other things—

(1) That the Secretary may fix a development period for each irrigation block, if any, of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said block; and that during the development period water shall be delivered to the lands in the irrigation block involved at a charge per annum per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water: *Provided,* That where the lands included in an irrigation block are for the most part lands owned by the United States, the Secretary, prior to execution of a repayment contract, may fix a development period, but in such case execution of such a contract shall be a condition precedent to delivery of water after the close of the development period: *Provided further,* That when the Secretary, by contract or by notice given thereunder, shall have fixed a development period of less than ten years, and at any time thereafter but before commencement of the repayment period conditions arise which in the judgment of the Secretary would have justified the fixing of a longer period, he may amend such contract or notice to extend such development period to a date not to exceed ten years from its commencement, and in a case where no development period was provided, he may amend such contract within the same limits: *Provided further,* That when the Secretary shall have deferred the payment of all or any part of any installments of construction charges under any repayment contract pursuant to the authority of the Act of September 21, 1959 (73 Stat. 584), he may, at any time prior to the due date prescribed for the first installment not reduced by such deferment, and by agreement with the contracting organization, terminate the supplemental contract by which such deferment was effected, credit the construction payments made, and exercise the authority granted in this section. After the close of the development period, any such charges collected and which the Secretary determines to be in excess of the cost of the operation and maintenance during the development period shall be credited to the construction cost of the project in the manner determined by the Secretary.

(2) That the part of the construction costs allocated by the Secretary to irrigation shall be included in a general repayment obligation of the organization; and that the organization may vary its distribution of construction charges in a manner that takes into account the productivity of the various classes of lands and the benefits accruing to the lands by reason of the construction: *Provided,* That no distribution of construction charges over the lands included in the organization shall in any manner be deemed to relieve the organization or any party or any land therein of the organization's general obligation to the United States.

(3) That the general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period of not more than 40 years, exclusive of any development period fixed under paragraph (1) of this subsection, for any project contract unit or, if the

project contract unit be divided into two or more irrigation blocks, for any such block, or as near to said period of not more than forty years as is consistent with the adoption and operation of a variable payment formula which, being based on full repayment within such period under average conditions, permits variance in the required annual payments in the light of economic factors pertinent to the ability of the organization to pay.

(4) That the first annual installment for any project contract unit, or for any irrigation block, as the case may be, shall accrue, on the date fixed by the Secretary, in the year after the last year of the development period or, if there be no development period, in the calendar year after the Secretary announces that the construction contemplated in the repayment contract is substantially completed or is advanced to a point where delivery of water can be made to substantially all of the lands in said unit or block to be irrigated; and if there be no development period fixed, that prior to and including the year in which the Secretary makes said announcement water shall be delivered only on the toll charge basis hereinbefore provided for development periods.

(5) *Repealed.*

(53 Stat. 1195; Act of August 8, 1958, 72 Stat. 542; Act of August 28, 1962, 76 Stat. 407; 43 U.S.C. § 485h(d))

EXPLANATORY NOTES

1962 Amendments. Section 1 of the Act of August 28, 1962, authorizes the Secretary of the Interior, prior to the commencement of the development period authorized by subsection 9(d)(1), to amend repayment contracts to provide for irrigation blocks, or add to or modify existing blocks. Section 2 of the Act added the second and third provisos in subsection 9(d)(1). The Act appears herein in chronological order.

1962 Amendment. Section 3 of the Act of August 28, 1962, authorizes the annual installment provided for in subsection 9(d)(3) to be paid in two parts. The Act appears herein in chronological order.

1958 Amendment. Section 1 of the Act of August 8, 1958, amended paragraph (3), subsection (d) of section 9 to read as it appears above, thereby authorizing a variable repayment plan in place of the "normal and percentage plan" of repayment formerly authorized by section 4, which was repealed by the 1958 act. The original language read as follows: "The general repayment obligation of the organization shall be spread in annual installments, of the number and amounts fixed by the Secretary, over a period not exceeding forty years, exclusive of any development period fixed under subsection (d)(1) of this section, for any project contract unit, or for any irrigation block, if the project contract unit be divided into two or more irrigation blocks." The 1958 Act appears herein in chronological order.

Provision Repealed. Section 3 of the Act of August 8, 1958, repealed paragraph (5), subsection (d) of section 9, the text of which appears below. It also repealed section 4, which authorized the "normal and percentage plan" referred to below. In place of that plan, the same Act amended paragraph (3) of section 9, subsection (d), to provide for a variable plan of repayment.

"(5) Either (A) that each year the installment of the organization's repayment obligation scheduled for such year shall be the construction charges due and payable by the organization for such year; or (B) that each year the installment for such year of the organization's repayment obligation shall be increased or decreased on the basis of the normal and percentages plan provided in section 4 of this Act for modification of existing obligations to pay construction charges, and the amount of the annual installment of the organization's obligation, as thus increased or decreased, shall be the construction charges due and payable for such year. Under (B) of this subsection the provisions of section 4 of this Act shall be applicable, as near as may be, to the repayment contract made in connection with the new project, new division of a project or supplemental works on a project; and the organization shall make payments on the basis therein provided until its general repayment obligation has become due and payable to the United States in full."

The 1958 Act appears herein in chronological order.

Supplementary Provision: Variable Payment Plan. Section 2 of the Act of August 8, 1958, provides as follows: "The benefits of a variable payment plan as provided in the amendment to paragraph (3) of section 9, subsection (d), of the Reclamation Project Act of 1939 contained in section 1 of this Act may be extended by the Secretary to any organization with which he contracts or has contracted for the repayment of construction costs allocated to irrigation on any project undertaken by the United States, including contracts under the Act of August 11, 1939 (53 Stat. 1418), as amended, and contracts for the storage of water or for the use of stored water under section 8 of the Act of December 22, 1944 (58 Stat. 887, 891). In the case of any project for which a maximum repayment period longer than that prescribed in said paragraph (3) has been or is allowed by Act of Congress, the period so allowed may be used by the Secretary in lieu of the forty-year period provided in said amendment to paragraph (3)."

The 1958 Act appears herein in chronological order. The Act of August 11, 1939 (53 Stat. 1418), as amended, which is the Water Conservation and Utilization Act, and extracts (including section 8) from the Act of December 22, 1944 (58 Stat. 887, 891), which is the Flood Control Act of 1944, both referred to in this note, are found herein in chronological order.

Supplementary Provisions: Administration of Contracts. The Act of July 2, 1956, 70 Stat. 483, is an act relating to the administration of contracts under this subsection and subsection (e). The 1956 Act appears herein in chronological order.

Reference in the Text. The Act of September 21, 1959 (73 Stat. 584), referred to in the text, amended subsection 17(b) of this Act. The amended subsection authorizes the Secretary to defer the payment on installments of construction charges under any repayment contract or other form of obligation as he deems necessary to adjust such installments to amounts within the probable ability of the water users to pay. The 1959 Act appears herein in chronological order.

NOTES OF OPINIONS

Additional costs 2
Costs, what constitutes 1
Repayment 3–8
Generally 3
Installments 4
Ownership of facilities 9
Water rights 10

1. Costs, what constitutes

The reference in subsection 9(d)(2) to "the part of the construction costs allocated by the Secretary to irrigation" is to the amount assigned by the Secretary to be repaid by the irrigators and not to the total costs allocated to irrigation in the accounting or engineering sense. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

2. Additional costs

Where a repayment contract is entered into with the water users, based on estimates of costs at that time, and provides for a determination by the Secretary as to continuation of work when increased costs reach a ceiling fixed in the contract, the Secretary may require an additional obligation to be assumed by water users as a condition to continuation of construction when that ceiling is reached. In reaching a decision the Secretary must consider the ability of water users to bear increased costs as well as the ability of purchasers of power to absorb them. Solicitor Barry Opinion, 68 I.D. 305 (1961), in re Columbia Basin repayment problems.

The Coachella Valley County Water District is not required to pay for the additional costs—i.e., those in excess of the $13,500,000 fixed in the repayment contract of December 22, 1947—incurred by the United States in completing the distribution system pursuant to the provision in the Interior Department Appropriation Act, 1952, and subsequent appropriations. *United States* v. *Coachella Valley County Water District,* 111 F. Supp. 172 (S.D. Cal. 1953).

3. Repayment—Generally

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommittee; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3, at 885 (1948).

The last sentence of section 9(e) does

not require that the entire cost of a distribution system must be covered by a repayment contract under section 9(d), and therefore, surplus power and municipal and industrial water supply revenues may be applied to assist in payout of part of the distribution system costs. Memorandum of Chief Counsel Fisher, September 12, 1952, in re procedure on use of surplus power revenues for assistance in financing irrigation distribution systems.

The Department of the Interior is without authority to charge interest on the return of costs allocated to irrigation because Congress has not specifically authorized such charge. Letter of Acting Commissioner Lineweaver to Mr. William A. Owen, February 12, 1952.

Except for contracts under subsections 9(c)(1) and 9(d), which are governed by a 40-year maximum limit, there is no legal objection under general reclamation law to utilizing a depreciation method for repayment of Federal investment, that is, repayment within the useful life of the property. Memorandum of Chief Counsel Fisher to Commissioner, April 10, 1952.

The estimated accumulated revenues representing the interest component on the sale of power from the Columbia Basin project are not available to reduce the average amount per acre of construction cost contracted to be repaid by the project water users. Solicitor Barry Opinion, 68 I.D. 305, 306–09 (1961).

4.—Installments

The verb "to fix", as used in that part of subsection (d), section 9, Reclamation Project Act of 1939, stating that the general repayment obligation of a contracting organization "shall be spread in annual installments, of the number and amounts fixed by the Secretary," means to establish definitely, so that the contracting parties know how many installments are contemplated by the contract and how much money is involved in each installment. Solicitor White Opinion, 60 I.D. 150 (1948), in re proposed contract with Savage Irrigation District.

A repayment contract entered into under subsection 9(d) which prescribes a formula pursuant to which the amount of each annual installment is to be determined, which formula has no relationship to the "normal and percentages plan" authorized by Congress in subsection 9(d) and section 4 for variable payments, is not in conformity with the requirements of the Reclamation Project Act of 1939. Solicitor White Opinion, 60 I.D. 150 (1948), in re proposed contract with Savage Irrigation District.

9. Ownership of facilities

A repayment contract is not invalid because of absence of provision that the district will obtain title to the distribution system when its obligation therefor has been totally discharged. *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275, 289–9(1958).

While water users under section 9 contracts acquire a water right, they acquire no equity in the physical assets of the project which would be required to be reflected as such in the balance sheets of the Bureau of Reclamation. No legal objection is perceived, therefore, to considering receipts from both section 9(d) and section 9(e) contracts as income. Dec. Comp. Gen. B–91527–O.M. (January 18, 1950).

10. Water rights

Objections of appellees that contracts executed under section 9 of the Reclamation Project Act of 1939 are invalid because they imply that water users are not entitled to water rights beyond the 40-year terms of the contracts and because they do not make clear that the districts and landowners become free of indebtedness upon repayment, are answered by the Act of July 2, 1956, 70 Stat. 483. *Ivanhoe Irr. Dist.* v. *McCracken*, 357 U.S. 275, 297–8 (1958).

(e) **[Short- or long-term contracts to furnish water for irrigation—Payment in advance of delivery of water—Cost of works to be covered by repayment contract under subsec. (d).]**—In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and

allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d). (53 Stat. 1196; 43 U.S.C. § 485h(e))

EXPLANATORY NOTE

Supplementary Provisions: Administration of Contracts. The Act of July 2, 1956, 70 Stat. 483, is an act relating to the administration of contracts under this subsection and subsection (d). The 1956 Act appears herein in chronogical order.

NOTES OF OPINIONS

Contracts 1
Repayment 2
Water rights 3

1. Contracts

Contracts executed under section 9(e) of the Reclamation Project Act of 1939 are not invalid because of failure to recite a definite sum as being the total amount due for water supply facilities. *Ivanhoe Irr. Dist.* v. *McCracken,* 357 U.S. 275, 298 (1958).

Objections of appellees that contracts executed under section 9(e) of the Reclamation Project Act of 1939 are invalid because they imply that water users are not entitled to water rights beyond the 40-year terms of the contracts and because they do not make clear that the districts and landowners become free of indebtedness upon repayment, are answered by the Act of July 2, 1956, 70 Stat. 483. *Ivanhoe Irr. Dist.* v. *McCracken,* 357 U.S. 275, 297–8 (1958).

2. Repayment

There is no legal requirement that contracts entered into under subsection 9(e) must provide for recovery within 40 years of the construction costs connected with water supply and allocated to irrigation. Solicitor White Opinion, 60 I.D. 180 (1948).

Subsections (c), (d), and (e) require repayment or return of all actual costs, not estimated costs, allocated to irrigation. The requirement for full return of such costs can be met by assigning for return from power revenues, where such revenues are available, all increased costs properly allocable to irrigation but which are beyond the water users' ability to pay. Memorandum of Chief Counsel Fix to Commissioner, April 20, 1948, at 26, in re questions of law raised by House Appropriations Subcommitte; reprinted in *Hearings on Interior Department Appropriation Bill for 1949 Before a House Appropriations Subcommittee,* 80th Cong., 2d Sess., pt. 3 at 885 (1948).

3. Water rights

While water users under section 9 contracts acquire a water right, they acquire no equity in the physical assets of the project which would be required to be reflected as such in the balance sheets of the Bureau of Reclamation. No legal objection is perceived, therefore, to considering receipts from both section 9(d) and section 9(e) contracts as income. Dec. Comp. Gen. B–91527–O.M. (January 18, 1950).

Sec. 10. [Removal of sand, gravel, and other minerals from withdrawn lands without competitive bidding—Authority to grant leases, licenses, easements, and rights-of-way.]—The Secretary, in his discretion, may (a) permit the removal, from lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project, of sand, gravel, and other minerals and building materials with or without competitive bidding: *Provided,* That removals may be permitted without charge if for use by a public agency in the construction of public roads or streets within any project or in its immediate vicinity; and (b) grant leases and licenses for periods not to exceed fifty

years, and easements or rights-of-way with or without limitation as to period of time affecting lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project: *Provided,* That, if a water users' organization is under contract obligation for repayment on account of the project or division involved, easements or rights-of-way for periods in excess of twenty-five years shall be granted only upon prior written approval of the governing board of such organization. Such permits or grants shall be made only when, in the judgment of the Secretary, their exercise will not be incompatible with the purposes for which the lands or interests in lands are being administered, and shall be on such terms and conditions as in his judgment will adequately protect the interests of the United States and the project for which said lands or interests in lands are being administered. (53 Stat. 1196; Act of August 18, 1950, 64 Stat. 463; 43 U.S.C. § 387)

Explanatory Notes

1950 Amendment. The Act of August 18, 1950, 64 Stat. 463, amended clause (b) by removing the 50-year limitation on easements and rights-of-way and adding the proviso requiring consent of the water users' organization for easements or rights-of-way for periods in excess of 25 years. As originally enacted in 1939, clause (b) of section 10 read as follows:

"(b) grant leases, licenses, easements, or rights-of-way, for periods not to exceed fifty years, affecting lands or interests in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project."

Codification. The second sentence of the original section was omitted from the section as codified at 43 U.S.C. § 387. This omission is believed to be erroneous, however, particularly in view of the statement in the letters of the Secretary of the Interior transmitting to the House and Senate the draft of bill which became the basis for the 1950 amendment, that the legislation "will in no way affect" the second sentence. H.R. Rept. No. 450 (1949). S. Rept. No. 1942 (1950), 81st Congress. The sentence has been reinstated in the supplement to the 1964 edition of the U.S. Code.

Prior Act: Sale of Railroad. The Act of August 11, 1916, 39 Stat. 506, authorized the Secretary of the Interior to appraise and sell the Boise and Arrowrock Railroad. which was constructed by the Reclamation Service in connection with the construction of the Arrowrock Dam, Boise project, and was no longer needed for that purpose. The railroad was 17 miles in length and connected the Oregon Short Line Railway and the site of the Arrowrock Dam. After an attempt to lease the railway failed, the Department requested legislative authority to sell it.

Prior Acts: Sale of Lands to Railroad Companies. The Act of February 26, 1917, 39 Stat. 940, authorized the sale and conveyance of certain lands of the Milk River project, Montana, to the Great Northern Railway Company for division terminal yards and other railway purposes. The Act of December 17, 1919, 41 Stat. 1453, authorized the sale and conveyance of certain lands of the Minidoka project, Idaho, to the Oregon Short Line Railroad Company for railroad purposes "at a price to be fixed by the Secretary of the Interior in order to return the expenditure heretofore made or proposed for the irrigation of the lands at not less than $50 per acre . . .".

Notes of Opinions

Easements and rights-of-way 3
Leases and licenses 2
Removal of materials 1

1. Removal of materials

Under the Act of February 8, 1905, and the Act of March 3, 1891, as amended, the Bureau may issue a permit to an irrigation district to remove clay without charge from public lands to be used in connection with the operation and maintenance of drainage facilities of a federal reclamation project. This authority is not repealed by section 10(a) of the Reclamation Project Act of 1939. Memorandum of Acting Associate Solicitor Coulter, August 11, 1966, in re request of Yuma Mesa Irrigation and Drainage District.

A private person may not be permitted under this section to remove sand, gravel and other materials without charge. *Shotwell* v. *United States,* 163 F. Supp. 907 (E.D. Wash. 1958).

Where authority to grant permits for removal of sand and gravel had been delegated and redelegated to district manager, other personnel of the Bureau of Reclamation were without authority to grant permission for such removal. *Shotwell* v. *United States,* 163 F. Supp. 907(E.D. Wash. 1958).

2. Leases and licenses

Under section 10 of the Reclamation Project Act of 1939 there is authority to lease reclamation withdrawn or acquired lands for 50 years for recreation purposes without monetary consideration. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, January 24, 1964, in re Park Moabi lease along the Lower Colorado River.

Under the authority of section 10 of the Reclamation Project Act of 1939, the Secretary is empowered to offer trespassers on reclamation withdrawn land along the Lower Colorado River an opportunity to enter into agreements under which they would pay a reasonable charge for past occupancy and receive permits for continued occupancy under reasonable terms while the lands involved are being placed under a permanent land-use program. Letter of Secretary Udall to the Comptroller General, April 20, 1961.

A permit to search for hidden treasures on reclamation withdrawn lands may be issued under section 10 of the Reclamation Project Act of 1939. The permit should provide for a minimum charge and a sufficient return if treasure is located, and no reservation should be contained recognizing any claim of the State of California to any treasure discovered. Memorandum of Acting Associate Solicitor Weinberg, September 10, 1959.

Under section 10 of the Reclamation Project Act of 1939 the United States may issue a permit or license to School District No. 7 of Natrona County, Wyoming, to connect its water and sewer lines to Reclamation systems. Memorandum of Associate Solicitor Fisher, August 7, 1958, in re use of service facilities, Alcova Dam and Reservoir.

A contract to permit the Public Service Company of Colorado to divert water from a canal of the Grand Valley project for cooling purposes may be entered into pursuant to the Act of February 25, 1920, or under section 9(c) or section 10 of the Reclamation Project Act of 1939. Revenues arising from the furnishing of water for this purpose should be credited as a tail end reduction of the water users organizations repayment obligation for construction and rehabilitation and betterment costs. Memorandum of Associate Solicitor Fisher, October 26, 1956.

3. Easements and rights-of-way

The Secretary is authorized under section 10 of the Reclamation Project Act of 1939 to grant to a county, with the consent of the water users, a permanent easement in an access road constructed as a part of a project, and under section 14 of the 1939 Act, to make an advance payment to the county in recognition of the saving to the government of costs of maintenance and repair of the road. Dec. Comp. Gen. B–109485 (July 22, 1952), in re contract with Shasta County.

Section 10 gives the Secretary of the Interior authority to grant, or to deny a request for, a right-of-way for a railroad company across lands within a reclamation withdrawal. Moreover, the act specifically authorizes the Secretary to impose terms and conditions upon the rights granted by him "as in his judgment will adequately protect the interests of the United States," and a requirement for a stipulation on fair employment practices would be within this authority. *Southern Pacific Railroad Company,* A–26143 (August 20, 1951).

Sec. 11. [Sale of property, appraised not to exceed $300, under Acts of February 2, 1911, and May 20, 1920.]—The Secretary in his discretion, in any instances where property to be sold under the Act of February 2, 1911 (36 Stat. 895), or the Act of May 20, 1920 (41 Stat. 605), is appraised at not to exceed $300, may sell said property at public or private sale without complying with the provisions of said Acts as to notice, publication, and mode of sale. (53 Stat. 1197; 43 U.S.C. § 375a)

EXPLANATORY NOTE

References in the Text. The Act of February 2, 1911 (36 Stat. 895), referred to in the text, authorizes the sale of lands acquired for reclamation purposes and not needed for such purposes. The Act of May 20, 1920 (41 Stat. 605), also referred to in

the text, authorizes the sale of withdrawn lands, not otherwise reserved, that have been improved at the expense of the reclamation fund, but are no longer needed for the purpose for which they were withdrawn. Both acts appear herein in chronological order.

Sec. 12. [Liability of United States on contracts for services, supplies, etc., contingent upon appropriations.]—When appropriations have been made for the commencement or continuation of construction or operation and maintenance of any project, the Secretary may, in connection with such construction or operation and maintenance, enter into contracts for miscellaneous services, for materials and supplies, as well as for construction, which may cover such periods of time as the Secretary may consider necessary but in which the liability of the United States shall be contingent upon appropriations being made therefor. (53 Stat. 1197; 43 U.S.C. § 388)

EXPLANATORY NOTES

Cross Reference, Loans for Local Distribution Systems. Provisos in each annual Public Works Appropriation Act beginning with the Act of September 10, 1959, 73 Stat. 495, provide that loans beyond the current fiscal year for the construction of local distribution systems under the Act of July 4, 1955, 69 Stat. 244, are subject to the same conditions as stated in section 12 of the Reclamation Project Act of 1939, that is that they shall be contingent upon appropriations being made therefor. The 1955 Act and the relevant extract from the 1959 Act appear herein in chronological order.

Cross Reference, Prior Law. Section 16 of the Reclamation Extension Act of August 13, 1914, which appears herein in chronological order, was interpreted generally as limiting the contracting authority of the Bureau of Reclamation to an annual basis and within current annual appropriations.

NOTES OF OPINIONS

Application 1
Construction with other laws 2

1. Application

The definition of the term "project" in section 2 of the Reclamation Project Act of 1939 includes projects not under the reclamation laws that are constructed or operated and maintained by the Secretary of the Interior through the Bureau of Reclamation for other agencies, such as the Lower Two Medicine Dam on the Blackfeet Indian Irrigation project. Consequently, the provisions of section 12 of the Act authorize the inclusion of the usual contingency-upon-appropriations clause in the construction contract. Memorandum of Associate Solicitor Hogan, October 6, 1966.

2. Construction with other laws

Provisions in the Interior Department Appropriation Act, 1949, authorizing the Commissioner of Reclamation to enter into contracts with respect to construction of the Cachuma Unit, Santa Barbara project, and the Palisades project, up to certain amounts over and above the amount of the appropriations for the projects, fully obligate the United States to pay the contractors up to the stated amounts and are additional to the authority in section 12 of the Reclamation Project Act of 1939 to this extent. Dec. Comp. Gen., B–79145 (September 10, 1948).

Sec. 13. [Supplies, equipment, services, not in excess of $300, may be procured in open market.]—The purchase of supplies and equipment or the procurement of services for the Bureau of Reclamation at the seat of government and elsewhere may be made in the open market without compliance with section 3709 or section 3744 of the Revised Statutes of the United States, in the manner common among businessmen, when the aggregate payment for the purchase or the services does not exceed $300 in any instance. (53 Stat. 1197; 41 U.S.C. § 16d note)

EXPLANATORY NOTE

References in the Text. Section 3709 of the Revised Statutes (41 U.S.C. § 5), referred to in the text, deals with competitive bidding. The section is found herein in the Appendix. Section 3744 of the Revised Statutes required that contracts made by the Secretaries of War, Navy and Interior be in writing, and that copies of these contracts be filed in the returns office of the Department of the Interior. Section 3744 of the Revised Statutes was repealed by the Act of October 21, 1941, 55 Stat. 743.

Sec. 14. [Authority to purchase or condemn lands for relocating highways, roadways, railroads, telegraph, telephone, and electric transmission lines—Exchange Government properties—Grant perpetual easements—Exchange or replacement of water, water rights, or electric energy.]—The Secretary is hereby authorized, in connection with the construction or operation and maintenance of any project, (a) to purchase or condemn suitable lands or interests in lands for relocation of highways, roadways, railroads, telegraph, telephone, or electric transmission lines, or any other properties whatsoever, the relocation of which in the judgment of the Secretary is necessitated by said construction or operation and maintenance, and to perform any or all work involved in said relocations on said lands or interests in lands, other lands or interests in lands owned and held by the United States in connection with the construction or operation and maintenance of said project, or properties not owned by the United States; (b) to enter into contracts with the owners of said properties whereby they undertake to acquire any or all property needed for said relocation, or to perform any or all work involved in said relocations; and (c) for the purpose of effecting completely said relocations, to convey or exchange Government properties acquired or improved under (a) above, with or without improvements, or other properties owned and held by the United States in connection with the construction or operation and maintenance of said project, or to grant perpetual easements therein or thereover. Grants or conveyances hereunder shall be by instruments executed by the Secretary without regard to provisions of law governing the patenting of public lands.

The Secretary is further authorized, for the purpose of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for exchange or replacement of water, water rights, or electric energy, or for the adjustment of water rights, as in his judgment are necessary and in the interests of the United States and the project. (53 Stat. 1197; 43 U.S.C. § 389)

EXPLANATORY NOTE

Prior Acts: Exchanges of Lands. The Act of August 9, 1921, 42 Stat. 147, authorized an exchange of lands between the United States and the Swan Land and Cattle Company, Limited. The Act of February 25, 1925, 43 Stat. 970, authorized an exchange of lands between the United States and Anton Hiersche. Both exchanges were for the purpose of acquiring lands needed by the United States for construction, operation and maintenance of the North Platte project, Nebraska-Wyoming.

NOTES OF OPINIONS

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Generally 1
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Roads 2

1. Relocations—Generally

The Secretary of the Interior is without authority to compensate a church under

section 14 of the Reclamation Project Act of 1939 for the cost of relocating church buildings that were constructed pursuant to a special use permit issued by the Forest Service, which is revocable at will, on lands covered by a reclamation withdrawal. Memorandum of Associate Solicitor Fritz to Field Solicitor, Billings, January 7, 1955, in re parcel number 10, Pactola Dam and Reservoir.

Section 14 authorizes negotiation for relocation of a facility by its owner, as well as relocation by the Bureau; and a contract may be entered into to pay the owner a fixed sum for this work, rather than a sum based on actual cost, where analysis shows this to be in the best interests of the government. Memorandum of Assistant Commissioner Markwell to Regional Director, Denver, November 28, 1951.

2.—Roads

The provision of section 208 of the Flood Control Act of 1962, relating to the nonreimbursability of Federal costs of relocating roads to current standards, must be construed *in pari materia* with section 9 and and section 14 of the Reclamation Project Act of 1939. This means that (1) the cost of relocating a road in kind is included as a part of total project cost to be allocated as provided in section 9 of the 1939 Act; (2) the additional cost of constructing the substitute road to current standards under section 208 is a non-reimbursable federal cost; and (3) the further cost of constructing the road to a still higher standard requested by the State must be paid by the State. Memorandum of Associate Solicitor Weinberg, December 6, 1962.

In highway relocations the obligation of the United States is to be measured by the costs of a necessary substitute highway which will provide equivalent service and equivalent standards to the highway being taken. That is, the obligation of the United States is measured by the cost of such highway as is required to be constructed as a result of the taking, and where the remaining highway system is adequate or where the taking eliminates the source of traffic, and hence the need for the road, only nominal compensation is required. *California* v. *United States,* 169 F. 2d. 914 (1948), *Fort Worth* v. *U.S.,* 188 F. 2d. 217, 221–222 (1951). While the question of necessity for substitute highways is not necessarily controlled by whether or not an express legal duty is imposed upon the State or other public entity involved, *U.S.* v. *Des Moines County,* 148 F. 2d. 448 (1945), it is clear that the test is one of adequacy, not one merely of convenience or the fulfillment of a desire. *Washington* v. *U.S.,* 214 F. 2d. 33, 40 (1954). ". . . the test . . . is not what the state . . . would like to get or even what might be more desirable, but rather what is reasonable and fair under all the circumstances." *U.S.* v. *0.886 of an acre,* 65 F. Supp. 827, 828 (1946). See also *U.S.* v. *Alderson,* 53 F. Supp. 528 (1944). Memorandum of Assistant Commissioner Golze to Regional Director, Billings, November 7, 1958, in re relocation of State secondary road at Clark Canyon Reservoir.

The Secretary is authorized under section 10 of the Reclamation Project Act of 1939 to grant to a county, with the consent of the water users, a permanent easement in an access road constructed as a part of a project, and under section 14 of the 1939 Act, to make an advance payment to the county in recognition of the saving to the government of costs of maintenance and repair of the road. Dec. Comp. Gen. B–109485 (July 22, 1952), in re contract with Shasta County.

Although it is the general rule that personal services necessary in connection with governmental activities are for performance by regular employees of the government who are responsible to the government and subject to government supervision, it is permissible, under the broad authority of section 14, to reimburse a State for the services of a State highway engineer in connection with the relocation of a State highway, where the services of the State engineer facilitate the work of relocation and the Bureau is unable to locate a qualified engineer to perform this work. Dec. Comp. Gen. B–60222 (September 17, 1946).

3.—Other properties

The terms "relocation" and "any other properties whatsoever", taken together, are broad enough to include transfer of a business or an operation or a function from a site needed for a project to other land. It is not necessary that the transfer involve a physical transfer or relocation of physical property affixed to the old site. Memorandum of Acting Chief Counsel Stinson, May 3, 1941, in re Provo River Project, Utah.

10. Exchanges—Water and water rights

In the event Congress enacts a provision of law, as proposed in an amendment to H.R. 4671 pending before the 89th Congress, directing the Secretary of the Interior, first, to enter into contracts exchanging Colorado River mainstream water for Gila River System water presently used by Arizona users, and second, to offer to enter into contracts making available to New Mexico users the Gila River System water which he had so acquired, no amendment to the

Supreme Court decree in *Arizona* v. *California,* 376 U.S. 340 (1964) would be required to implement the Congressional enactment. Solicitor Barry Opinion, 73 I.D. 252 (1966).

In view of the long history of attempts to resolve disputes with water users diverting water from the Sacramento River, some part of which is attributable to the operation of Shasta Reservoir of the Central Valley Project, and in view of the costs and uncertainties of litigation, it is appropriately within the judgment of the Secretary under the authority of section 14 of the Reclamation Project Act of 1939 to waive payment for past diversions as a part of agreements with the diverters requiring payments for future diversions. Dec. Comp. Gen., B–152983 (January 21, 1964).

In view of the provision in section 14 of the Reclamation Project Act of 1939 authorizing contracts for exchange or replacement of water or water rights, water delivered to the Feather Water District in the Sacramento River at the mouth of the Feather River as replacement for water diverted by the District from the Feather River can be considered as "stored water" of the Central Valley project delivered "for" the lands of the District within the meaning of section 2 of the Act of August 26, 1937, as amended. Memorandum of Associate Solicitor Fisher, July 27, 1959.

The authority of the Secretary under section 14 to enter contracts not only for the exchange or replacement of water but also for the "adjustment of water rights," may reasonably be construed to authorize a contract for a cash payment to a town for the loss of use of its water supply system occasioned by construction and operation of the Colorado-Big Thompson project, in lieu of a contract for replacement of the water system. Dec. Comp. Gen. B–84264 (May 10, 1949), in re contract with Town of Hot Sulphur Springs, Colorado.

11.—Power

The advantages at federal hydroelectric projects to be realized from implementing the "Treaty between Canada and the United States of America Relating to Cooperative Development of the Water Resources of the Columbia River Basin" through the execution of exchange agreements, support, as a matter of law, the Bonneville Power Administrator's determination of "economical operation" as required by section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. § 389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. § 832d(b)). Solicitor Barry Opinion, 71 I.D. 315, 326-28 (1964).

Agreements providing for the delivery to the Bonneville Power Administrator of a quantity of power which cannot, with certainty, be determined but which constitutes a valuable power resource, in return for the delivery by the Administrator of stated amounts of power over the same period, constitute power-for-power exchange agreements which the Administrator is authorized to enter into under section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197, 43 U.S.C. §389) and section 5(b) of the Bonneville Project Act (50 Stat. 734, 16 U.S.C. §832d(b)). Solicitor Barry Opinion, 71 I.D. 315 (1964), in re Canadian Entitlement Exchange agreements.

The Secretary of the Interior is authorized to construct transmission lines, such as the Creston-Fairport intertie between the Missouri River Basin project and the Southwestern Power Administration, which are necessary to effectuate an exchange of power for the purpose of orderly and economical construction or operation and maintenance of any reclamation project, as provided in section 14 of the Reclamation Project of 1939. Memorandum of Associate Solicitor Weinberg to Director, Division of Budget and Finance, July 23, 1962.

As a prerequisite to the execution of a proposed agreement with the Washington Public Power Supply System to furnish firm power in exchange for the total electric power generated at the Atomic Energy Commission's New Production Reactor at Hanford, Washington, the Bonneville Power Administration must make a determination that the agreement is in the interest of economical operation, as required by section 14 of the Reclamation Project Act of 1939 and section 5(b) of the Bonneville Project Act. Dec. Comp. Gen. B–149016, B–149083 (letter to Chairman Holifield, July 16, 1962).

A proposed agreement whereby the Washington Public Power Supply System would furnish to the Bonneville Power Administration the total electric power generated from steam to be purchased from the Atomic Energy Commission's New Production Reactor at Hanford, Washington, and would receive in exchange therefor firm power from BPA, is clearly a contract for the exchange of power and comes within the general authority granted by section 5(b) of the Bonneville Project Act and section 14 of the Reclamation Project Act of 1939, which governs the operation of the Columbia Basin project as provided by section 1 of the Columbia Basin Project Act. Dec. Comp. Gen. B–149016, B–149083 (letter to Chairman Holifield, Joint Committee on Atomic Energy, July 16, 1962).

Sec. 15. [Authority of the Secretary.]—The Secretary is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect. (53 Stat. 1198; 43 U.S.C. § 485i)

NOTE OF OPINION

1. Necessary and proper

In cases where, because of administrative laxity in enforcing the excess land limitations of reclamation law, or because projects were initiated prior to the enactment of section 46 of the 1926 Act, owners of excess lands have been receiving water therefor without having executed recordable contracts, the Secretary, in the exercise of his authority to perform all acts necessary and proper to carry the reclamation laws into full force and effect (sec. 10 of the Reclamation Act of 1902; sec. 15 of the Reclamation Project Act of 1939), may permit the continued delivery of water to such excess lands on condition that the owner, by the execution of a recordable contract, agrees to dispose of such lands within a reasonable time on reasonable conditions. Associate Solicitor Cohen Opinion, M–34999 (October 22, 1947).

Sec. 16. [Effect on existing laws.]—The provisions of previous Acts of Congress not inconsistent with the provisions of this Act shall remain in full force and effect. (53 Stat. 1198; 43 U.S.C. § 485j)

Sec. 17. (a) [Extension of time for modification of existing repayment contracts.—The authority granted in section 3 of this Act for modification of existing repayment contracts or other forms of obligations to pay construction charges shall continue through December 31, 1960.

(b) [Deferment of construction charges.]—The Secretary is hereby authorized, subject to the provisions of this subsection, to defer the time for the payment of such part of any installments of construction charges under any repayment contract or other form of obligation as he deems necessary to adjust such installments to amounts within the probable ability of the water users to pay. Any such deferment shall be effected only after findings by the Secretary that the installments under consideration probably cannot be paid on their due date without undue burden on the water users, considering the various factors which in the Secretary's judgment bear on the ability of the water users so to pay.

The Secretary may effect the deferments hereunder subject to such conditions and provisions relating to the operation and maintenance of the project involved as he deems to be in the interest of the United States. If, however, any deferments would affect installments to accrue more than twelve months after the action of deferment, they shall be effected only by a formal supplemental contract. Such a contract shall provide by its terms that, it being only an interim solution of the repayment problems dealt with therein, its terms are not, in themselves, to be construed as a criterion of the terms of any amendatory contract that may be negotiated and that any such amendatory contract must be approved by the Congress unless it does not lengthen the repayment period for the project in question beyond that permitted by the laws applicable to that project, involves no reduction in the total amount payable by the water users, and is not in other respects less advantageous to the Government than the existing contract arrangements. The Secretary shall report to the Congress all deferments granted under this subsection. (53 Stat. 1198; Act of April 24, 1945, 59 Stat. 76; Act of

August 8, 1958, 72 Stat. 543; Act of September 21, 1959, 73 Stat. 584; 43 U.S.C. § 485b–1)

EXPLANATORY NOTES

1959 Amendment. The Act of September 21, 1959, amended section 17, subsection (b) to read as it appears above. The 1939 language of the subsection read: "The authority of the Secretary under the Act entitled 'An act to authorize further relief to water users on United States and on Indian reclamation projects,' approved May 31, 1939 (Public, Numbered 97, Seventy-sixth Congress, first session), is hereby extended in connection with the construction charges due and payable, under any existing obligation to pay construction charges, for each of the years 1939 to 1943, inclusive, to the extent such charges are not covered by modification of said obligation under section 3 or 4 of this Act." The 1959 Act appears herein in chronological order.

1958 Amendment. Section 3 of the Act of August 8, 1958, amended section 17, as amended, by substituting the expression "Section 3" for the expression "Sections 3 and 4", where the latter occurred in the section—section 4 having been repealed by the same 1958 Act. The repealed section 4 authorized the "normal and percentages plan" of repayment which was superseded in the 1958 Act by a variable repayment plan. The 1958 Act appears herein in chronological order.

1945 Amendment. Section 3 of the Act of April 24, 1945, 59 Stat. 75, amended section 17 by extending the time in which payment contracts may be modified and by broadening the authority of the Secretary to grant deferments. The 1945 Act appears herein in chronological order.

Supplementary Provision: Application of Subsection "(b)" Provisions. Section 3 of the Act of September 21, 1959, the act which amended subsection 17(b), provides that the amended subsection "shall apply to any project within the administrative jurisdiction of the Bureau of Reclamation to which, if it had been constructed as a project under the Federal reclamation laws . . . these provisions would be applicable." The 1959 Act appears herein in chronological order.

Supplementary Provisions: Extension of Time for Modification of Repayment Contracts—Repeal of Section 4. The Act of March 6, 1952, 66 Stat. 16, provided that the authority vested in the Secretary of the Interior by sections 3, 4 and 7 of this Act be extended through December 31, 1954. The Act of August 31, 1954, 68 Stat. 1044, amended the 1952 Act by inserting "1957" in place of "1954." The 1954 Act was in turn amended by the Act of August 21, 1957, 71 Stat. 390, which replaced "1957" with "1960." The authority vested in the Secretary by sections 3, 4 and 7 of this Act was thus extended through December 31, 1960. The Act of August 8, 1958, 72 Stat. 542, repealed section 4 of this Act and amended the 1952 Act referred to in this note by deleting the reference in it to section 4. Each of these Acts appears herein in chronological order.

Sec. 18. [Act not to amend Boulder Canyon Project Act.]—Nothing in this Act shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended. (53 Stat. 1198; 43 U.S.C. § 485j, note)

Sec. 19. [Short title.]—This Act may be cited as the "Reclamation Project Act of 1939." (53 Stat. 1198; 43 U.S.C. § 485k)

EXPLANATORY NOTE

Legislative History. H.R. 6984, Public Law 260 in the 76th Congress. H.R. Rept. No. 995. S. Rept. No. 758. H.R. Rept. No. 1027 (on H. Res. 242). H.R. Rept. No. 1252 (conference report).

HIGHWAY AND RAILROAD BRIDGE ACROSS COLUMBIA RIVER

An act granting the consent of Congress to the Secretary of the Interior, the State of Washington, and the Great Northern Railway Company to construct, maintain, and operate either a combined highway and railroad bridge or two separate bridges across the Columbia River, at or near Kettle Falls, Washington. (Act of August 7, 1939, ch. 504, 53 Stat. 1235)

[**Sec. 1. Bridge authorized across Columbia River at Kettle Falls.**]—The consent of Congress is hereby granted to the Secretary of the Interior, the State of Washington, the Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, and their successors and assigns, jointly or separately, to construct, maintain, and operate either a combined highway and railroad bridge or two separate bridges, one to be a highway bridge and one a railroad bridge, across the Columbia River at a point or points suitable to the interests of navigation, at or near Kettle Falls, and between Ferry County and Stevens County, Washington, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, and subject to the conditions and limitations contained in this Act. (53 Stat. 1235)

Sec. 2. [**Reservation clause.**]—The right to alter, amend, or repeal this Act is hereby expressly reserved. (53 Stat. 1235)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, referred to in section 1, is found at 34 Stat. 84, 33 U.S.C. § 491–98.

Legislative History. H.R. 6271, Public Law 302 in the 76th Congress. H.R. Rept. No. 1356.

COOPERATION WITH FARM SECURITY ADMINISTRATION

An act relating to the development of farm units on public lands under Federal reclamation projects with funds furnished by the Farm Security Administration. (Act of August 7, 1939, ch. 509, 53 Stat. 1238)

[**Advance of funds by Farm Security Administration—Funds to be repaid by settler before entry allowed.**]—During the fiscal year of 1943, in order to further cooperation between the Bureau of Reclamation and the Farm Security Administration in the development of farm units on public lands under Federal reclamation projects, the Secretary of the Interior is authorized, in pursuance of cooperative agreements between the Secretary of Agriculture and the Secretary of the Interior, (1) to consider the money or any part of the money made available to settlers or prospective settlers by the Farm Security Administration, as all or a portion of the capital required of such settlers under subsection C of section 4 of the Act of December 5, 1924 (43 Stat. 702); and (2) where such farm units have been or may be improved by means of funds made available by the Farm Security Administration, to require an entryman of any such unit to enter into a mortgage contract with the Farm Security Administration to repay the value of such improvements thereon before an entry is allowed. (53 Stat. 1238)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1940, 1941 and 1942 Amendments. As originally enacted, the Act applied during the fiscal year 1940. It was extended through the fiscal year 1941 by the Act of June 17, 1940, 54 Stat. 402; through the fiscal year 1942 by the Act of May 28, 1941, 55 Stat. 206; and through the fiscal year 1943 by the Act of August 1, 1942, 56 Stat. 732.

Reference in the Text. Subsection C of section 4 of the Act of December 5, 1924 (43 Stat. 702), referred to in the text, deals with the qualifications of applicants for entry. The Act is the Fact Finders' Act, which appears herein in chronological order.

Legislative History. S. 2410, Public Law 307 in the 76th Congress. S. Rept. No. 795. H.R. Rept. No. 1224 (on H.R. 6372).

ALAMOGORDO DAM AND RESERVOIR, CARLSBAD PROJECT

[Extract from] An act amending previous flood-control acts and authorizing certain preliminary examinations and surveys for flood control, and for other purposes. (Act of August 11, 1939, ch. 699, 53 Stat. 1414)

* * * * *

Sec. 7. [Alamogordo Dam authorized.]—The Alamogordo Dam and Reservoir on the Pecos River, New Mexico, is hereby authorized and declared to be for the purposes of controlling floods, regulating the flow of the Pecos River, providing for storage and for delivery of stored waters, for the reclamation of lands, and other beneficial uses, and said dam and reservoir shall be used, first, for irrigation; second, for flood control and river regulation; and third, for other purposes. The Chief of Engineers and the Secretary of War are directed to report to the Congress the amount of the total cost of said Alamogordo Dam and Reservoir which is properly allocable to flood control. The appropriation and transfer of such amount from the general fund of the Treasury to the reclamation fund, for credit by reduction of the maximum obligation of the Carlsbad Irrigation District to repay the total cost thereof, is hereby authorized. (53 Stat. 1417; 33 U.S.C. § 707.)

Explanatory Notes

Purpose of the Act. Alamogordo Dam was authorized by the President on November 6, 1935, initial funds having been approved on August 14, 1935, under the Emergency Relief Appropriations Act of 1935. The dam was completed in 1938. The purpose of this act is to include flood control as a purpose of the dam and reservoir, and to provide for the allocation of a portion of the total cost of the dam and reservoir to flood control.

Legislative History. H.R. 6634, Public Law 396 in the 76th Congress. H.R. Rept. No. 799. S. Rept. No. 816. H.R. Rept. No. 1026 (on H. Res. 241).

WATER CONSERVATION AND UTILIZATION ACT

An act authorizing construction of water conservation and utilization projects in the Great Plains and arid and semiarid areas of the United States. (Act of August 11, 1939, ch. 717, 53 Stat. 1418)

[**Sec. 1. Construction authorized—U.S. to retain title to project works—Limits on irrigation and flood control costs.**]—For the purpose of stabilizing water supply and thereby rehabilitating farmers on the land and providing opportunities for permanent settlement of farm families, the Secretary of the Interior (hereinafter referred to as "the Secretary") is hereby authorized to investigate and, upon compliance with the provisions of this Act, to construct water conservation and utilization projects in the Great Plains and arid and semiarid areas of the United States, and to operate and maintain each such project in accordance with the provisions of this Act: *Provided,* That the United States shall retain title to the dams, reservoirs, irrigation, and other project works until Congress otherwise provides: *And provided further,* That expenditures from appropriations made directly pursuant to the authority contained in section 12 (1) to meet reimbursable construction costs allocated to irrigation as defined in section 4 (b) shall not exceed $2,000,000 for dams and reservoirs in any one project, and that expenditures from appropriations made directly pursuant to the authority contained in section 12 (1) to meet costs allocated to flood control by the Secretary after consultation with the Chief of Engineers, War Department, shall not exceed $500,000 on any one project. (53 Stat. 1418; Act of October 14, 1940, 54 Stat. 1119; Act of March 7, 1942, 56 Stat. 142; § 1, Act of July 16, 1943, 57 Stat. 566; 16 U.S.C. § 590y)

EXPLANATORY NOTES

1943 Amendment. Section 1 of the Act of July 16, 1943, raised the limitation on irrigation costs from $1,000,000 to $2,000,000. For legislative history of the 1943 Act see S. 1252, Public Law 152 in the 78th Congress; S. Rept. No. 365; H.R. Rept. No. 597 (on H.R. 3019).

1942 Amendment. The Act of March 7, 1942, 56 Stat. 142, added the limitation on flood control costs. For legislative history of the 1942 Act see H.R. 4648, Public Law 488 in the 77th Congress; H.R. Rept. No. 1447; companion bill S. 1441.

1940 Amendment. The Act of October 14, 1940, completely revised the 1939 Act and expanded it from 4 to 12 sections. For legislative history of the 1940 Act see H.R. 10122, Public Law 848 in the 76th Congress; H.R. Rept. No. 2944.

Original Text. As originally enacted, section 1 of the Act of August 11, 1939, provided as follows: "The Secretary of the Interior is hereby authorized to undertake the construction, including acquisition of water rights, rights-of-way, and other interests in land, of water conservation and utilization projects in the Great Plains and arid and semiarid areas of the United States."

Earlier Enactment, May 10, 1939. The Interior Department Appropriation Act, 1940, approved May 10, 1939, appropriated $5,000,000 for the construction of water conservation and utilization projects by the Secretary of the Interior. The Act appears herein in chronological order.

Popular Names. The authority in the appropriation act of May 10, 1939, is variously referred to as the Water Conservation and Utilization Act, the 1940 Water conservation appropriation, or the Great Plains projects program. The Act of August 11, 1939, as amended, is variously referred to as the Case-Wheeler Act, the Wheeler-Case Act, or the Water Conservation and Utilization Act. Projects constructed under both

authorities are generally called water conservation and utilization projects and are considered to be part of the same program.

Cross Reference, Water Facilities Act. The Act of August 28, 1937, 50 Stat. 869, 16 U.S.C. §§ 590r–590x–4 (1958 ed.), popularly known as the Water Facilities Act, authorized the Secretary of Agriculture to construct or to assist in the construction of facilities for water storage and utilization in arid and semiarid areas of the United States. The Act of August 17, 1954, 68 Stat. 734, terminated the construction phase of the program, expanded the purposes to include land conservation and improvement projects, authorized the Secretary of Agriculture to make loans and to insure loans for purposes of the Act, and extended the coverage of the program to all of the States and Territories. This authority in turn was repealed and replaced by Title III of the Act of August 8, 1961, Public Law 87–128, 75 Stat. 294, 307, 7 U.S.C. §§ 1921–91. Extracts from this title, which may be cited separately as the Consolidated Farmers Home Administration Act of 1961, appear herein in chronological order.

Sec. 2. [Federal and State agencies.]—In connection with the investigation, construction, or operation and maintenance of a project, pursuant to the authority of this Act, the Secretary is authorized to utilize (1) in such manner as the President may direct, services, labor, materials, or other property, including money, supplied by the Work Projects Administration, the Civilian Conservation Corps, the Office of Indian Affairs, the Department of Agriculture, or any other Federal agency, for which the United States shall be reimbursed in such amounts as the President may fix for each project, within the limits of the water users' ability to repay costs as found by the Secretary under subsection 3(a)(iv); and (2) such services, labor, materials, easements or property, including money, as may be contributed by any State or political subdivision thereof, State agency, municipal corporation, or other organization, or individuals, if, in the judgment of the Secretary, the acceptance thereof will not impair the title of the United States to the project works and will not reduce the probability that the project water users can meet the obligations to the United States entered into pursuant to this Act. Moneys received and accepted under (2) of this section shall be and remain available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes. (53 Stat. 1419; Act of October 14, 1950, 54 Stat. 1120; 16 U.S.C. § 590z)

EXPLANATORY NOTES

1940 Amendment. The Act of October 14, 1940, completely revised the 1939 Act and expanded it from 4 to 12 sections.

Original Text. As originally enacted, section 2 of the Act of August 11, 1939, provided as follows:

"SEC. 2. Any money expended on such construction from appropriations made under the authority of this Act shall be repaid to the United States by the water users in not to exceed forty annual installments. Any labor or materials supplied for such construction by the Work Projects Administration, the Civilian Conservation Corps, or any other Federal agency shall be utilized in such manner as the President may determine, and for such labor and materials the water users shall reimburse the United States in such amounts and on such terms as the President may fix for each project."

Sec. 3. [Report on feasibility and cost allocations—Presidential approval—Land and water rights—Definitions.]—(a) No construction of a project may be undertaken pursuant to the authority of this Act unless and until the Secretary has made an investigation thereof and has submitted to the President his report and findings on—

(i) the engineering feasibility of the proposed construction;

(ii) the estimated cost of the proposed construction;

(iii) the part of the estimated cost which properly can be allocated to irrigation;

(iv) the part of the estimated cost which probably can be repaid by the water users in accordance with the requirements of section 4;

(v) the part of the estimated cost which can properly be allocated to municipal or miscellaneous water supplies or power and probably be returned to the United States in revenues therefrom;

(vi) the part of the estimated cost which can properly be allocated to the irrigation of Indian trust and tribal lands, and be repayable in accordance with existing law relating to Indian lands;

(vii) the part of the estimated cost which can properly be allocated to flood control as recommended by the Secretary after consultation with the Chief of Engineers, War Department.

In connection with each such investigation, report, and finding, the Secretary shall consult with the Secretary of Agriculture regarding participation in the proposed project by the Department of Agriculture under the authority of sections 5 and 6; and the Secretary shall also transmit to the President a report by the Secretary of Agriculture to the President on the participation, if any, proposed by the Department of Agriculture. The project shall be deemed authorized and may be undertaken pursuant to this Act if (1) the Secretary finds and certifies to the President that the project has engineering feasibility and that the water users probably can repay, in accordance with the requirements of section 4, an amount equal to or in excess of that part of the estimated cost allocated by him to irrigation to be met by expenditure of moneys appropriated pursuant to section 12(1); and (2) the President has approved said report and findings and has found that services, labor, materials, easements, and other property, including money, for the construction of the project, should be made available to the Department of the Interior by the Work Projects Administration or other Federal agencies, to the extent found necessary by the Secretary to make up the difference between the estimated cost of project construction and (i) the part thereof to be met by expenditure of moneys appropriated pursuant to section 12(1), together with (ii) such services, materials, money, easements, and other property as non-Federal agencies or parties have agreed to contribute and the Secretary has found acceptable under section 2.

EXPLANATORY NOTE

1944 Supplementary Provision: Federal and State Review; Congressional Authorization. Section 1(c) of the Flood Control Act of December 22, 1944, requires that project reports shall be reviewed by the Secretary of the Army and affected States, and provides that if objections are set forth, the proposed works shall not be deemed authorized except by Act of Congress. The 1944 Act appears herein in chronological order.

(b) No actual construction of the physical features of a project shall be undertaken unless and until (1) the Secretary has found that lands, or interests in lands, deemed necessary for the construction and operation of the major features of the projects have been secured, or sufficient progress made in their

procurement to indicate the probability that all these lands or interests in lands can be secured, with titles and at prices satisfactory to him; and (2) the Secretary has found (i) that water rights adequate for the purposes of the project have been acquired with titles and at prices satisfactory to him, or that such water rights have been initiated and in his judgment can be perfected in conformity with State law and any applicable interstate agreements and in a manner satisfactory to him; and (ii) that such water rights can be utilized for the purposes of the project in conformity with State law and any applicable interstate agreements and in a manner satisfactory to him.

(c) Any part of a project hereunder may be designated as a division of the project by the Secretary if he, after consultation with the Secretary of Agriculture, deems this desirable for orderly and efficient construction or administration. The term 'project', as used in subsection 3(b) and section 4, shall be deemed to mean also 'division of a project', designated as provided in this subsection. Any project authorized for construction from appropriations under the head 'Water Conservation and Utility Projects' in the Interior Department Appropriation Act, 1940 (53 Stat. 685), hereinafter called the 1940 water conservation appropriation, may be designated by the Secretary, upon agreement with the Secretary of Agriculture, a project under this Act and shall thereupon be subject to all the provisions and requirements thereof, except those of subsections 3(a) and 3(b). (53 Stat. 1419; Act of October 14, 1940, 54 Stat. 1120; §§ 2–4, Act of July 16, 1943, 57 Stat. 567; 16 U.S.C. § 590z–1)

EXPLANATORY NOTES

1943 Amendments. Section 2 of the Act of July 16, 1943, amended subparagraph vii of subsection (a) to provide that the allocation to flood control would be recommended by the Secretary of the Interior after consultation with the Chief of Engineers, rather than by the Chief of Engineers himself. Section 3 of the Act of July 16, 1943, amended subsection (b) by adding to clause (1) the alternative of a finding of sufficient progress in the acquisition of lands and by making certain technical changes in the wording of clause (2). Section 4 of the Act of July 16, 1943, added subsection (c).

1940 Amendment. The Act of October 14, 1940, completely revised the 1939 act and expanded it from 4 to 12 sections.

Original Text. As originally enacted, section 3 of the Act of August 11, 1939, provided as follows:

"SEC. 3. No moneys may be expended on a project pursuant to the authority of this Act unless and until (1) the Secretary of the Interior has found, and has certified to the President, that the project has engineering feasibility and that the moneys to be expended on the project from appropriations made under the authority of this Act probably can be repaid by the water users within forty years; and (2) the President has approved said findings and has determined that labor and materials for the construction of the project should be made available to the Department of the Interior by the Work Projects Administration or a similar Federal agency, in the amount found by the Secretary of the Interior to make up the difference, if any, between the estimated cost of construction and the amount which can be expended from appropriations made under this Act and probably can be repaid by the water users: *Provided,* That the Secretary of the Interior may accept for the construction of the project such labor or materials as may be offered by any State or political subdivision thereof, State agency, or municipal corporation, and may reduce by the amount thereof the estimated cost of construction to be met by the expenditure of Federal moneys."

Reference in Text. The Interior Department Appropriation Act, 1940, referred to in the text, was approved May 10, 1939. Extracts from the Act appear herein in chronological order.

1944 Supplementary Amendment: Federal and State Review; Congressional Authorization. Section 1(c) of the Flood Control Act of December 22, 1944, requires

that W.C.U. project reports shall be reviewed by the Secretary of the Army and affected States, and provides that if objections are set forth, the proposed works shall not be deemed authorized except by Act of Congress. The text of the 1944 Act appears herein in chronological order.

Sec. 4. (a) **[Repayment contract required.]**—No water for irrigation may be delivered from the works of any project constructed under the authority of this Act until after the repayment contract or contracts required by this section have been executed. Where practicable in the judgment of the Secretary, the repayment contract shall be with a water users' organization or organizations satisfactory in form and powers to the Secretary; and otherwise the repayment contract shall be with the individual landowners. The contract or contracts shall contain such provisions as the Secretary deems necessary to carry out the purposes of this Act and to protect the interests of the United States.

(b) **[Term "reimbursable construction costs" defined.]**—The term "reimbursable construction costs" as used in this Act means that part of the costs of investigating, constructing, and operating and maintaining the project, which are allocated by the Secretary to irrigation, and which are met by expenditures of moneys therefor appropriated under the authority of section 12(1), plus such amounts as the President, under section 2(1), may determine to be reimbursable: *Provided,* That administrative expenses incurred in the District of Columbia in connection with the investigation, construction, or operation and maintenance of a project shall not be included in the reimbursable construction costs nor shall they be charged to the water users in any way.

(c) **[Repayment contract terms.]**—The repayment contract or contracts for a project shall, in their aggregate, provide for repayment to the United States of the total amount of the reimbursable construction costs of the project allocated to irrigation. Each such contract shall provide, among other things, that—

(1) **[Development period.]**—The Secretary shall fix a development period for each project of not to exceed ten years from and including the first calendar year in which water is delivered for the lands in said project; and during the development period water shall be delivered to the lands in the project involved at a charge per acre-foot, or other charge, to be fixed by the Secretary each year and to be paid in advance of delivery of water. Such charges shall be fixed with a view of returning such amounts as in the Secretary's judgment are justified by the rate of project development, including as a minimum the return over the full development period of that part of the cost of operating and maintaining the project, during said period, allocated by the Secretary to irrigation; and collections of such charges in excess of the cost of the operation and maintenance during the development period, as thereafter determined by the Secretary, shall be credited to the reimbursable construction costs of the project in the manner determined by the Secretary.

(2) **[Operation and maintenance.]**—The United States shall operate and maintain the project during the development period fixed for it. After the development period, the United States shall operate and maintain the project or any part thereof as long as is deemed necessary by the Secretary, and shall be paid in advance for each year that part of the estimated cost of operating and maintaining the project for such year allocated by the Secretary to irrigation.

In the event charges due the United States are not paid when due the United States may, at its election, suspend operations in whole or in part.

(3) [**Repayment.**]—The repayment of the reimbursable construction costs, except as to Indian lands which shall be repayable in accordance with existing law relating to Indian lands, shall be spread in not to exceed forty annual installments, of the number and amounts fixed by the Secretary; and the first annual installment under each contract shall become due and payable on the date fixed by the Secretary, in the year next following the last year of the development period fixed under subsection (c) (1): *Provided,* That the provisions of this subsection shall not be construed to modify the provisions of special legislation pertaining to any particular project.

(4) [**Accounting—Protection—Delinquencies.**]—The water users or their organization will take such measures as the Secretary deems proper to secure the adoption of proper accounting, to protect the condition of project works, and to provide for the proper use thereof, and to protect project lands against deterioration due to improper use of water. Delinquencies in any payments due to the United States shall be penalized by a penalty of not less than one-half of 1 per centum per month. No water shall be delivered to or for any land or party while either said land or the organization in which it is located or said party is in arrears in the advance payment of operation and maintenance charges or development period charges under subsection (c) (1), or in arrears for more than twelve months in the payment of an installment of the reimbursable construction costs.

(5) [**Farm units—Anti-speculation—Prior water rights.**]—The Secretary shall establish the size of farm units of irrigable lands on each project in accordance with his findings of the area sufficient in size for the support of a family on the lands to be irrigated. No water may be delivered to or for more than the farm unit area of irrigable lands in the project owned by a single landowner: *Provided,* That this subsection shall not apply to the United States or any agency or instrumentality thereof, corporate or otherwise. No water shall be delivered to or for any land, in a project area, transferred or disposed of subsequent to approval of the project by the President, and within three years from the time water becomes available, unless and until it has been shown to the satisfaction of the Secretary or his duly authorized representative that the land has been transferred or disposed of at a price not exceeding the appraised value as determined by the Secretary or his duly authorized representatives, and upon proof of fraudulent representation as to the true consideration involved the Secretary is authorized to cancel the water right attaching to the land involved: *Provided further,* That nothing herein shall be construed to create authority to interfere with the delivery of water under prior rights.

(d) [**Existing projects.**]—For each project, on which construction is commenced or continued under this subsection, appropriations heretofore or hereafter made pursuant to section 12 and the unexpended balance of the 1940 water conservation appropriations, in addition to being available for other authorized objects of expenditure, shall be available for expenditure, by the agency to which available, in lieu of the 'services, labor, materials, or other property,

including money', authorized to be utilized under section 2 and subsection 5(b). All expenditures on each such project may be excluded (1) from the project construction costs to the extent the Secretary finds necessary to keep the reimbursable costs within the findings made under subsections 3(a)(iv), 3(a)(v), and 3(a)(vi), and (2) from the costs that but for this subsection would be required to be returned under section 5, to the extent deemed necessary by the Secretary of Agriculture for the successful prosecution of the project; and as to each such project the limitations on expenditures provided in sections 1 and 9 shall be inoperative. Appropriations made pursuant to section 12 shall be available for expenditures for continuation of construction on any project heretofore undertaken under the 1940 water conservation appropriation, and such expenditures and those from the 1940 water conservation appropriation may be excluded from the costs of any such project in determining the amounts required to be reimbursed, to the extent the Secretary and the Secretary of Agriculture jointly determine is necessary to keep reimbursable costs within the ability of the water users to repay. No project may be initiated for construction or, if heretofore authorized, continued under this subsection unless the Secretary, following consultation with the Secretary of Agriculture, finds that the proposed construction under this subsection is justifiable as an aid in the production of needed agricultural products and the President approves said finding. The utilization of services or labors of prisoners of war under section 2 is authorized, subject to the approval of, and regulations by, the War Department or other Federal agency having control of said prisoners. From and after the date six months after the cessation of hostilities in the present war as determined by proclamation of the President or concurrent resolution of the Congress, this subsection shall no longer be of any force or effect except as to projects on which construction has been initiated or continued under this subsection prior to said date. (Added by Act of October 14, 1940, 54 Stat. 1121; § 5, Act of July 16, 1943, 57 Stat. 567; 16 U.S.C. § 590z-2)

EXPLANATORY NOTES

1943 Amendment. Section 5 of the Act of July 16, 1943, added subsection (d).

Cessation of Hostilities. The cessation of hostilities referred to in subsection (d), was proclaimed at 12 o'clock noon of December 31, 1946, by Proclamation No. 2714, 12 F.R. 1 (1946).

Cross Reference, Variable Payment Plans. Section 2 of the Act of August 8, 1958, authorizes the Secretary of the Interior to extend to any organization with which he has contracted under the Water Conservation and Utilization Act the benefits of a variable payment plan as authorized by section 1 of the 1958 Act. The text of the 1958 Act appears herein in chronological order.

Cross Reference, Newton Water Users' Association. The Act of May 28, 1964, 78 Stat. 203, found herein in chronological order, authorized the Secretary of the Interior to execute an amended repayment contract, including a variable repayment schedule, with the Newton Water Users' Association, Utah.

Cross Reference, Big Flat Irrigation District. The Act of May 28, 1964, 78 Stat. 203, found herein in chronological order, authorized the Secretary of the Interior to negotiate and execute a contract amending the repayment contract between the United States and the Big Flat Irrigation District dated April 2, 1945, by reducing the construction charge obligation of the district in the amount of $7,190, representing the unmatured charges as of December 30, 1962, against one hundred and sixty-four and three-tenths acres of irrigable land at that time classified as nonproductive. The reclassification of the lands of the Big Flat unit of the Missoula Valley project, Montana, dated January 1963, was approved in the same Act.

NOTES OF OPINIONS

1. Acreage limits

The excess land limits of general reclamation law do not apply to projects established under the Water Conservation and Utilization Act. The farm units established by the Secretary may be greater or less than 160 acres. Solicitor Harper Opinion, M–34062 (August 9, 1945), in re Balmorhea project.

The limitation in section 4(c)(5) of the Water Conservation and Utilization Act, as amended, against delivery of water to more than one farm unit in single ownership would not be superseded by the granting of a loan under the Small Reclamation Projects Act of 1956 for improvement of a W.C.U. Act project. Memorandum of Associate Solicitor Fisher to Commissioner, February 24, 1958, in re application of Reeves County Water Improvement District, Balmorhea project.

Under Section 4(c)(5) of the Water Conservation and Utilization Act of October 14, 1940, two farm units held either separately or jointly by husband and wife are eligible for the delivery of water. The phrase "owned by a single landowner" in this act should be given the same interpretation as given to similar phrases in reclamation acts by the Solicitor's Opinion, M–34172 (August 21, 1945). Memorandum of Associate Solicitor Fisher to Regional Solicitor, Denver, April 8, 1958.

The Secretary may revise the size of the farm units on the Eden project under the authority of section 4(c)(5) of the Water Conservation and Utilization Act as amended. Nothing in the Colorado River Storage Project Act of 1956 altered, repealed or superseded the original authority for the Eden project, except as to the extent of participation in power revenues; and the Act of June 28, 1949, did not alter the original authorization except with respect to repayment and participation in revenues. Memorandum of Associate Solicitor Hogan, April 13, 1965.

Sec. 5. [Activities of Secretary of Agriculture.]—(a) In connection with the construction or operation and maintenance of projects undertaken pursuant to the authority of this Act, and in order to further in the Great Plains and arid and semiarid areas of the United States an effective rehabilitation program, stabilization of the agricultural economy and maximum utilization of funds spent for relief purposes, the Secretary of Agriculture is hereby authorized, pursuant to cooperative agreement with the Secretary of the Interior, (1) to arrange for the settlement of the projects on a sound agricultural basis, and insofar as practicable, the location thereon of persons in need; (2) to extend guidance and advice to settlers thereon in matters of farm practice, soil conservation, and efficient land use; (3) to acquire agricultural lands within the boundaries of such projects, with titles and at prices satisfactory to him; and (4) to arrange for the improvement of lands within the project boundaries, including clearing, leveling, and preparing them for distribution of irrigation water. Contracts between the United States and water users or water users' organizations for the lease or purchase of, or the improvement of, lands within such projects shall provide for annual or semiannual payments to the United States, of the number and amounts fixed by the Secretary of Agriculture. The lease, purchase, or improvement contracts for each tract of land shall provide in the aggregate for the return, in not to exceed fifty years from the date the land is first settled upon, of the costs incurred by the United States in acquiring and improving such tract of land with funds appropriated under authority of section 12 (2), except administrative expenses incurred in the District of Columbia, together with interest on unpaid balances of said costs at not less than 3 per centum per annum. Such lease, purchase, or improvement contracts shall also provide for the fulfillment of such obligations related to reimbursable construction costs

and operation and maintenance charges as may be applicable to such lands in accordance with the repayment contract or contracts required by section 4.

(b) For the purposes of this section, the Secretary of Agriculture may utilize (1) in such manner as the President may direct, services, labor, materials, or other property, including money, supplied by the Work Projects Administration, the Civilian Conservation Corps, the Office of Indian Affairs, the Department of Agriculture, or any other Federal agency to the extent that the President, upon the report and recommendations of the Secretary of Agriculture, finds that the same should be supplied in assistance of such improvement work, and for which the United States shall be reimbursed in such amounts as the President may fix for each project; and (2) such services, labor, materials, easements, or other property, including money, as may be contributed by any State or political subdivision thereof, State agency, municipal corporation, or other organization, or individuals. Moneys received and accepted under (2) of this subsection shall remain available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes.

(c) Where the aggregate amount involved does not exceed $300, the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to any purchase or service authorized for the Department of Agriculture under this Act or under the 1940 water conservation appropriation. (Added by Act of October 14, 1940, 54 Stat. 1122; § 6, Act of July 16, 1943, 57 Stat. 568; 16 U.S.C. § 590z–3)

EXPLANATORY NOTES

1943 Amendment. Section 6 of the Act of July 16, 1943, added subsection (c).

Reference in the Text. Section 3709 of the Revised Statutes (41 U.S.C. 5), referred to in the text, deals with competitive bidding. The section appears herein in the Appendix.

Editor's Note, Annotations. Annotations of opinions regarding activities of the Secretary of Agriculture are not included.

Sec. 6. [Cooperative agreements with Agriculture and other Federal or State agencies.]—The Secretary, by cooperative agreements, may arrange with the Department of Agriculture or with such other Federal or State agencies, as the President may deem desirable, for cooperation in the investigations and surveys of projects proposed under the authority of this Act; and in connection with any such project which is undertaken the Secretary by such cooperative agreements may arrange for such cooperation in the construction or operation and maintenance of the project as he deems desirable. Any such cooperative agreement with the Department of Agriculture may provide, among other things (1) that the Secretary of Agriculture shall enter into the repayment contracts, required by section 4, and shall handle the collections of repayments and shall take over the other administrative duties connected with the project, after the Secretary of the Interior announces that the project is ready for operation; (2) if such agreement be entered into after construction of the project has been undertaken by the Secretary of the Interior and after he has entered into the repayment contracts required by section 4, that the Secretary of Agriculture shall take over the collection of repayments and other administrative duties connected with the

project; (3) that no water shall be delivered to or for any land or party while the owner of said land or said party is in arrears for more than twelve months in the payment to the United States of money due and payable under a land contract entered into pursuant to section 5 (a); and (4) that any repayment contract with a water user or water users' organization entered into pursuant to section 4 and any land contract with the same water user or organization entered into pursuant to section 5 (a), if said contracts involve the same land, may be combined in a single instrument. The Secretary of Agriculture is hereby authorized to carry out the provision of any such cooperative agreements. (Added by Act of October 14, 1960, 54 Stat. 1123; 16 U.S.C. § 590z–4)

Sec. 7. [Limit on size of water facilities projects of Department of Agriculture.]—*Repealed.* (Added by Act of October 14, 1940, 54 Stat. 1124; Act of June 10, 1949, 63 Stat. 171; repealed by § 2, Act of August 17, 1954, 68 Stat. 736; 16 U.S.C. § 590z–5)

EXPLANATORY NOTES

1940 and 1949 Amendments; Repeal. As added by the Act of October 14, 1940, this section imposed a limit of $50,000 on expenditures for any one water facilities project of the Department of Agriculture under the Act of August 28, 1937. The Act of June 10, 1949, increased the limit to $100,000, and section 2 of the Act of August 17, 1954, repealed the limit at this point, but substituted a limit on outstanding loans.

Cross Reference, Water Facilities Act. The Act of August 28, 1937, 50 Stat. 869, 16 U.S.C. §§ 590r–590x–4 (1958 ed.), popularly known as the Water Facilities Act, authorized the Secretary of Agriculture to construct or to assist in the construction of facilities for water storage and utilization in arid and semiarid areas of the United States. The Act of August 17, 1954, 68 Stat. 734, terminated the construction phase of the program, expanded the purposes to include land conservation and improvement projects, authorized the Secretary of Agriculture to make loans and to insure loans for purposes of the Act, and extended the coverage of the program to all of the States and Territories. This authority in turn was repealed and replaced by Title III of the Act of August 8, 1961, Public Law 87–128, 75 Stat. 294, 307, 7 U.S.C. §§ 1921–91. Extracts from this title, which may be cited separately as the Consolidated Farmers Home Administration Act of 1961, appear herein in chronological order.

Sec. 8. [Disposition of receipts.]—All payments made to the United States under repayment contracts on account of reimbursable construction costs, including penalties collected for delinquencies in such payments, and all other receipts from project operations pursuant to sections 4 and 9 shall be covered into the Treasury to the credit of miscellaneous receipts. Charges collected during the development period of a project under section 4(c)(1), excepting such amounts thereof as may be credited to reimbursable construction costs, and charges collected for the operation and maintenance of a project under section 4(c)(2) shall be available for expenditure for operation and maintenance of said project in like manner as if said funds had been specifically appropriated for said purposes. (Added by Act of October 14, 1940, 54 Stat. 1124; 16 U.S.C. § 590z–6)

Sec. 9. [Municipal or miscellaneous water supply and power—Sales—Cost allocations.]—In connection with any project undertaken pursuant to this Act, provisions, including contracts of sale, may be made for furnishing municipal or miscellaneous water supplies, or for developing and furnishing power in addition to the power requirements of irrigation: *Provided,* That expenditures from appropriations made directly pursuant to the authority contained in section 12 (1) to meet costs allocated to municipal or miscellaneous water supplies or surplus

power shall not exceed $500,000 for any one project: *Provided further,* That no contract relating to a water supply for municipal or miscellaneous purposes or to electric power shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes. On any project where such provisions are made, the Secretary shall allocate to municipal or miscellaneous water purposes or to surplus power the part of the estimated construction costs of the project which he deems properly so allocable; and such allocations shall not be included in the reimbursable construction costs covered by the repayment contract or contracts required under section 4. All right, title, and interest in the facilities provided for such municipal or miscellaneous water supplies or surplus power and the revenues derived therefrom shall be and remain in the United States. Contracts for such municipal or miscellaneous water supplies or for such surplus power shall be at such rates as, in the Secretary's judgment, will produce revenues at least sufficient to cover the appropriate share of the annual operation and maintenance cost of the project and such fixed charges, including interest, as the Secretary deems proper. Contracts for the sale of surplus power shall be for periods not to exceed forty years and contracts for water supply for municipal or miscellaneous purposes shall be for such periods as the Secretary may determine and may include such renewal options as the Secretary deems desirable: *And provided further,* That in sales or leases of such power, preference shall be given to municipalities and other public corporations or agencies; and also to cooperatives and other non-profit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof. (Added by Act of October 14, 1940; 54 Stat. 1124; 16 U.S.C. § 590z–7)

EXPLANATORY NOTE

Reference in the Text. The Rural Electrification Act of 1936, referred to in the text, was enacted May 20, 1936, 49 Stat. 1363, and has been amended at intervals since its enactment. The Act as amended is found in title 7, United States Code, section 901, *et seq.*

Sec. 10. [Authorities under reclamation laws.]—(a) In connection with any project constructed pursuant to the provisions of this Act, the Secretary shall have the same authority, with regard to the utilization of lands owned by the United States, other than lands acquired under section 5 as he has in connection with projects undertaken pursuant to the Federal reclamation laws, Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto.

(b) In connection with the construction or operation and maintenance of a project undertaken pursuant to the authority of this Act, the Secretary shall have with respect to construction and supply contracts, and with respect to the acquisition, exchange, and disposition of lands, interest in lands, water rights, and other property and the relocation thereof, the same authority, including authority to acquire lands and interests in land and water rights with titles and at prices satisfactory to him, which he has in connection with projects under the Federal reclamation laws. (Added by Act of October 14, 1940; 16 U.S.C. § 590z–8)

Sec. 11. [Regulations—Necessary acts.]—The Secretary of the Interior and the Secretary of Agriculture are hereby authorized to perform any and all Acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out their respective functions under this Act and for the purpose of carrying the provisions of this Act into full force and effect. (Added by Act of October 14, 1940; 16 U.S.C. § 590z–9)

Sec. 12. [Appropriations.]—To carry out the purposes of this Act there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated (1) for the Department of the Interior such sums as may be necessary to carry out its functions under this Act, and (2) for the Department of Agriculture such sums as may be necessary to carry out its functions under this Act. (§ 4, Act of August 11, 1939, 53 Stat. 1419; Act of October 14, 1940, 54 Stat. 1125; 16 U.S.C. § 590z–10)

EXPLANATORY NOTES

1940 Amendment. Section 12 of the Act of October 14, 1940, constitutes a revision of section 4 of the Act of August 11, 1939, which also authorized appropriations. The principal change was to specify appropriations for both the Secretary of the Interior and the Secretary of Agriculture.

Legislative History. S. 1802, Public Law 398 in the 76th Congress. S. Rept. No. 863. H.R. Rept. No. 1446 (on H.R. 6613).

EASEMENTS OVER INDIAN LANDS, RIVERTON PROJECT

An act granting easements on Indian lands of the Wind River or Shoshone Indian Reservation, Wyo., for dam site and reservoir purposes in connection with the Riverton reclamation project. (Act of March 14, 1940, ch. 51, 54 Stat. 49)

[**Sec. 1. Easement over lands of the Wind River or Shoshone Indian Reservation—$6,500 to be deposited in Treasury for credit to the Shoshone and Arapahoe Indians.**]—There is hereby granted to the United States and its assigns, including its successors in control of the operation and maintenance of the Riverton reclamation project, Wyoming, a flowage easement and an easement for a dam site, together with all rights and privileges incident to the use and enjoyment of said easements, over tribal and allotted lands of the Wind River or Shoshone Indian Reservation within that part of said reservation required for the construction of the Bull Lake Dam and Reservoir on Bull Lake Creek, a tributary of the Wind River, in connection with the Riverton reclamation project, Wyoming, and for the impounding of approximately one hundred and fifty-five thousand acre-feet of water, including a ten-foot freeboard: *Provided,* That in consideration of the said rights insofar as they affect tribal lands there shall be deposited into the Treasury of the United States pursuant to the provisions of the Act of May 17, 1926 (44 Stat. 560), for credit to the Shoshone and Arapahoe Indians of the Wind River Reservation the sum of $6,500, from moneys appropriated for the construction of the said Bull Lake Dam and Reservoir, and the said sum when so credited shall draw interest at the rate of 4 per centum per annum. (54 Stat. 49; 43 U.S.C. § 597a)

Sec. 2. [**Compensation to be made to the Indians—If appraised price not accepted, Secretary authorized to acquire easement by condemnation proceedings.**]—Compensation to the individual Indian owners of the allotted lands within the area described in section 1 shall be made from moneys appropriated for the construction of the Bull Lake Dam and Reservoir at the appraised value of the easements: *Provided,* That should any individual Indian not agree to accept the appraised value of the easement as it affects his land, the Secretary of the Interior be, and he is hereby, authorized to acquire such easement by condemnation proceedings. (54 Stat. 49; 43 U.S.C. § 597b)

Sec. 3. [**Use by Indians of lands dealt with and waters of Bull Lake Creek and reservoir.**]—The easements herein granted shall not interfere with the use by the Indians of the Wind River or Shoshone Indian Reservation of the lands herein dealt with and the waters of Bull Lake Creek and the reservoir insofar as the use by the Indians shall not be inconsistent with the use of said lands for reservoir purposes. (54 Stat. 49; 43 U.S.C. § 597c)

Sec. 4. [**Authority of the Secretary.**]—The Secretary of the Interior is authorized to perform any and all acts and to prescribe such regulations as may be necessary to carry out the provisions of this Act. (54 Stat. 49; 43 U.S.C. § 597d)

Explanatory Notes

Reference in the Text. The Act of May 17, 1926 (44 Stat. 560), referred to in the text, provides that miscellaneous revenues derived from Indian reservations, agencies and schools, not otherwise earmarked by law, shall be set aside in a special Treasury account and used, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies and schools on whose behalf they were collected.

Cross References, Indian Lands, Riverton Project. The Act of August 15, 1953, 67 Stat. 592, provided compensation to the Shoshone and Arapahoe Tribes of Indians for certain lands of the Riverton project within the ceded portion of the Wind River Indian Reservation, and extinguished the Indians' title to the minerals of such lands. The Act of August 27, 1958, 72 Stat. 935, provided that such minerals be held in trust by the United States for the Shoshone and Arapahoe Tribes of Indians. Both Acts appear herein in chronological order.

Background: Appraisal of Land. On July 31, 1937, the Department issued instructions for the appraisal of lands sought to be acquired from the Wind River Indians in Wyoming for the Bull Lake reservoir site, holding that (1) the tribal lands to be taken and now being used by the United States are to be appraised at their value at the time of appraisal; (2) the value is to be the reasonable market value of the Indian interest taken; (3) in determining the value, improvements placed on the lands by the United States prior to its appraisal are not to be considered but improvements placed on the lands by the Indians are to be considered; (4) a second appraisal is to be made of damages accruing to the Indians by reason of the occupancy of the land from the date withheld from Indian use until its appraisal, measured by the market value of any use of such land of which the Indians were deprived; (5) a third appraisal is to be made of incidental damages to lands remaining in tribal ownership by reason of the severance therefrom of lands to be taken by the United States, deducting any benefits accruing to the remaining tribal lands, and (6) in determining the value of the lands, consideration is to be given the easement to be reserved to the Indians to use such lands as may not be permanently flooded. Acting Solicitor Kirgis Opinion, M-29200 (July 31, 1937)

Legislative History. S. 2843, Public Law 431 in the 76th Congress. S. Rept. No. 1036. H.R. Rept. No. 1617.

Note of Opinion

1. Regulation of hunting and fishing

The tribal councils may regulate hunting and fishing on Bull Lake, this being within the diminished portion of the Wind River Reservation, and the State may regulate hunting and fishing on the ceded portion of that reservation, including fishing on Ocean Lake, except that the tribal councils may regulate hunting and fishing on such areas thereof as may be restored to tribal ownership. Solicitor Gardner Opinion, 58 I.D. 331 (1943).

AMEND CONSULTING ENGINEERS, GEOLOGISTS, AND ECONOMISTS ON IMPORTANT RECLAMATION WORK ACT

An act to amend section 1 of an act entitled "An act authorizing the Secretary of the Interior to employ engineers and economists for consultation purposes on important reclamation work," approved February 28, 1929 (45 Stat. 1406). (Act of April 22, 1940, ch. 125, 54 Stat. 148)

[**Ten consulting engineers, geologists, appraisers, and economists authorized.**]—Section 1 of the Act of February 28, 1929 (45 Stat. 1406), authorizing the Secretary of the Interior to employ engineers and economists for consultation purposes on important reclamation work is hereby amended to read as follows:

"That the Secretary of the Interior is authorized, in his judgment and discretion, to employ for consultation purposes on important reclamation work ten consulting engineers, geologists, appraisers, and economists, at rates of compensation to be fixed by him, but not to exceed $50 per day for any engineer, geologist, appraiser, or economist so employed: *Provided,* That the total compensation paid to any engineer, geologist, appraiser, or economist during any fiscal year shall not exceed $5,000: *Provided further,* That notwithstanding the provisions of any other Act, retired officers of the Army or Navy may be employed by the Secretary of the Interior as consulting engineers in accordance with the provisions of this Act." (54 Stat. 148; 43 U.S.C. § 411b)

Explanatory Notes

1944 Amendment. The Act of February 28, 1929, which was amended by this act, was further amended by the Act of December 23, 1944, 58 Stat. 915, to permit the Secretary to hire retired Interior Department personnel as consultants. The 1944 Act appears herein in chronological order.

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of February 28, 1929.

Legislative History. H.R. 6379, Public Law 468 in the 76th Congress. H.R. Rept. No. 1148. S. Rept. No. 1263.

REPAYMENT OF REPAIRS TO ARROWROCK DAM

An act to authorize the Secretary of the Interior to permit the payment of the costs of repairs, resurfacing, improvement, and enlargement of the Arrowrock Dam in twenty annual installments, and for other purposes. (Act of April 22, 1940, ch. 132, 54 Stat. 155)

[Repairs to be repaid in twenty annual installments.]—For the purpose of avoiding an unduly high operation and maintenance assessment in any one year and to keep the operation and maintenance charges in connection with the Arrowrock Division of the Boise reclamation project within the ability of the water users to pay, the Secretary of the Interior is authorized to allow the irrigation districts of the said Arrowrock Division and the irrigation districts, ditch companies, and water users who have assumed obligations to pay proportionate parts of the estimated cost of the operation and maintenance of the Arrowrock Reservoir, to pay the costs, as determined conclusively by said Secretary, incurred in the repair, resurfacing, and improvement of the Arrowrock Dam and in increasing the height thereof (to provide additional capacity to offset past and, to some extent, future losses of capacity resulting from the deposit of silt in the said reservoir) in twenty annual installments instead of requiring the payment of all of such operation and maintenance costs in one year as provided in section 5 of the Act of Congress of August 13, 1914 (38 Stat. 686): *Provided,* That such costs, for the purpose of any amendatory contracts affecting the construction charges of Arrowrock Dam that may be entered into as authorized by the Act of August 4, 1939 (53 Stat. 1187), may, in the discretion of the Secretary, be treated as part of the construction charges of said dam, and as payable in the same manner as such charges. (54 Stat. 155; 43 U.S.C. § 591a)

Explanatory Notes

References in the Text. The Act of August 13, 1914 (38 Stat. 686), referred to in the text, is the Reclamation Extension Act. Section 5 of the Act deals with the payment of project operation and maintenance charges and the transfer to water users' associations or irrigation districts of the care, operation, and maintenance of project works. The Act of August 4, 1939 (53 Stat. 1187), also referred to in the text is the Reclamation Project Act of 1939. Both acts appear herein in chronological order.

Legislative History. H.R. 8498, Public Law 475 in the 76th Congress. H.R. Rept. No. 1712. S. Rept. No. 1379.

INTERIOR DEPARTMENT APPROPRIATION ACT, 1941

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1941, and for other purposes. (Act of June 18, 1940, ch. 395, 54 Stat. 406)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[Rio Grande project—Power revenues.]—Rio Grande project, New Mexico-Texas: For operation and maintenance, $30,000: *Provided,* That not to exceed $50,000 from power revenues shall be available during the fiscal year 1941 for the operation and maintenance of the power system; (54 Stat. 434)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes of the Rio Grande project is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781.

* * * * *

[Boise project—Funds made available for Anderson Ranch Reservoir as substitute for Twin Springs Dam.]—Boise project, Idaho, . . . the sum heretofore appropriated for construction of the Twin Springs Dam and Snake River pumping plant shall remain available for construction of either or both of the same or such other project works on the Boise River or its tributaries as may be found by the Secretary of the Interior, following current investigations, to be more feasible; (54 Stat. 435)

EXPLANATORY NOTES

Implementation. In his letter of June 25, 1940, to the President, the Secretary of the Interior made a finding that the Anderson Ranch reservoir project was preferable to the Twin Springs development and that it met the requirements for authorization under section 9 of the Reclamation Project Act of 1939.

Reference in the Text. The previous appropriation referred to is contained in the Act of May 9, 1938, 52 Stat. 321.

* * * * *

[Klamath project—Modoc unit—Reimbursement from grazing and farming leases.]—Klamath project, Oregon-California, $200,000: *Repealed.*

EXPLANATORY NOTE

Provision Repealed. Subsection 2(e) of the Act of August 1, 1956, 70 Stat. 799, which appears herein in chronological order, repealed the proviso attached to the item of this Act appropriating funds for construction of the Klamath project. The repealed proviso read:

"*Provided,* That expenditures from this appropriation and from any other appropriation for the construction of the Modoc

Unit shall be reimbursed from net revenues hereafter received from the lease of grazing and farming lands within the Tule Lake Division, notwithstanding the provisions of subsection I of section 4 of the Act of December 5, 1924 (43 Stat. 703; 43 U.S.C. 373a);" (54 Stat. 436)

* * * * *

[**Boulder City—Leases of reserved lands—Disposition of revenues.**]—Boulder Canyon project: . . . *Provided,* That the Secretary of the Interior is hereby authorized and empowered, under such rules and regulations as he may prescribe, to establish rental rates for the lease of reserved lands of the United States situate within the exterior boundaries of Boulder City, Nevada, and, without prior advertising, to enter into leases therefor at not less than rates so established and for periods not exceeding fifty-three years from the date of such leases: *Provided further,* That all revenues which may accrue to the United States under the provisions of such leases shall be deposited in the Treasury and credited to the Colorado River Dam fund established by section 2 of the Boulder Canyon Project Act. (54 Stat. 437; 43 U.S.C. § 617u)

EXPLANATORY NOTES

Cross Reference, Sale of Boulder City Houses. The Act of May 25, 1948, 62 Stat. 268, authorizes the Secretary to sell each house, including furniture, fixtures, and appurtenances, acquired from the Defense Homes Corporation and situated in Boulder City, Nevada, and to lease the lot on which the house is situated to the purchaser in accordance with the terms of this provision. The 1948 Act appears herein in chronological order.

Cross Reference, Boulder City Act of 1958. The Act of September 2, 1958, 72 Stat. 1726, authorizes the sale of federal property to facilitate the municipal corporation of the city under the laws of the State of Nevada. The Act appears herein in chronological order.

* * * * *

[**San Luis Valley project—Conditions for construction of Closed Basin Drain—No interference with Rio Grande Interstate Compact.**]—San Luis Valley project, Colorado: For further investigations, exploratory and preparatory work, and commencement of construction in accordance with House Document Numbered 693, Seventy-sixth Congress, third session: *Provided,* That commencement of construction of the Closed Basin Drain feature shall be contingent on (a) a conclusive finding of justification for the drain on the basis of cost and the quantity and quality of water to be secured, and (b) adequate arrangements for maintenance of the drain, $150,000: *Provided further,* That any works to be constructed by virtue of investigations or surveys resulting from this appropriation, shall be so constructed and operated as not to interfere with the operation of or abrogate any of the terms of the Rio Grande Interstate Compact, and any contracts, permits, or licenses relating to such works entered into by the United States shall provide specifically that all rights thereunder shall be subject to and controlled by the provisions of said Rio Grande Interstate Compact; (54 Stat. 438)

* * * * *

[**Preference to needy families.**]—It is hereby declared to be the policy of the Congress that, in the opening to entry of newly irrigated public lands, preference shall be given to families who have no other means of earning a livelihood, or

who have been compelled to abandon, through no fault of their own, other farms in the United States, and with respect to whom it appears after careful study, in the case of each such family, that there is a probability that such family will be able to earn a livelihood on such irrigated lands. (54 Stat. 439; 43 U.S.C. § 433a)

NOTE OF OPINION

1. Former homestead entrymen

This provision does not prevent (a) the recognition of apparent equities in the relinquishers of former homestead entries now in the Payette division of the Boise project and (b) the granting of preference rights of entry to such relinquishers. Solicitor Margold Opinion, 57 I.D. 288 (1941).

* * * * *

Sec. 6. [Short title.]—This Act may be cited as the "Interior Department Appropriation Act, 1941". (54 Stat. 462)

EXPLANATORY NOTES

Not Codified. Extracts of this Act shown here are not codified in the U.S. Code with the exception of those sections dealing with Boulder City and preference to needy families.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 8745, Public Law 640 in the 76th Congress. H.R. Rept. No. 1709. S. Rept. No. 1567. H.R. Rept. No. 2173 (conference report).

AUTHORIZE DETAIL OF EMPLOYEE TO AUSTRALIA AND INDIA

An act authorizing the temporary detail of John L. Savage, an employee of the United States, to service under the Government of the State of New South Wales, Australia, and the Government of the Punjab, India. (Act of June 29, 1940, ch. 448, 54 Stat. 691)

[Detail of employee authorized.]—The President of the United States is authorized, if he finds that the public interest renders such a course advisable, to detail J. L. Savage, chief designing engineer of the Bureau of Reclamation, Department of the Interior, for temporary service under the Government of the Commonwealth of Australia, and the Government of the Punjab, India. Such detail, if authorized by the President, shall be made in accordance with and subject to the provisions of the Act of May 25, 1938 (52 Stat. 442), as amended May 3, 1939 (Public, Numbered 63, Seventy-sixth Congress). (54 Stat. 691)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

1941 Amendment. The Act of July 14, 1941, amended this Act by deleting "State of New South Wales, Australia" and inserting in lieu thereof "Commonwealth of Australia."

Reference in the Text. The Act of May 25, 1938 (52 Stat. 442), as amended May 3, 1939 (Public, Numbered 63, Seventy-sixth Congress), referred to in the text, authorized the temporary detail of U.S. employees possessing special qualifications to the Governments of American Republics, the Philippines and Liberia. The Act was repealed by the Act of January 27, 1948, 62 Stat. 6, 13, the United States Information and Educational Exchange Act of 1948. Title III of the Act, codified in 22 U.S.C. § 1451–53, governs the assignment of specialists to foreign governments desiring their services. See also other provisions in title 22, U.S. Code, relating to the same subject.

Legislative History. H.R. 7254, Public Law 678 in the 76th Congress. H.R. Rept. No. 2062. S. Rept. No. 1882.

ACQUISITION OF INDIAN LANDS FOR COLUMBIA BASIN PROJECT

An act for the acquisition of Indian lands for the Grand Coulee Dam and Reservoir, and for other purposes. (Act of June 29, 1940, ch. 460, 54 Stat. 703)

[**Sec. 1. Acquisition of Indian lands and property within Spokane and Colville Reservations for Columbia Basin project—Indian hunting, fishing and boating rights in reservoir.**]—In aid of the construction, operation and maintenance of the Columbia Basin project (formerly the Grand Coulee Dam project), authorized by the Act of August 30, 1935 (49 Stat. 1028), the Act of August 4, 1939 (53 Stat. 1187), and the Columbia Basin Project Act (Public, Numbered 8, Seventy-eighth Congress, first session, 57 Stat. 14), there is hereby granted to the United States, subject to the provisions of this Act, (a) all the right, title, and interest of the Indians in and to the tribal and allotted lands within the Spokane and Colville Reservations, including sites of agency and school buildings and related structures and unsold lands in the Klaxta town site, as may be designated therefor by the Secretary of the Interior from time to time: *Provided,* That no lands shall be taken for reservoir purposes above the elevation of one thousand three hundred and ten feet above sea level as shown by General Land Office surveys, except in Klaxta town site and except where in the judgment of the Secretary of the Interior, special circumstances concerning the reservoir or its operation and maintenance require the taking of land above that elevation; and (b) such other interests in or to any such lands and property within these reservations as may be required and as may be designated by the Secretary of the Interior from time to time for the construction of pipe lines, highways, railroads, telegraph, telephone, and electric-transmission lines in connection with the project, or for the relocation or reconstruction of such facilities made necessary by the construction of the project.

The Secretary of the Interior, in lieu of reserving rights of hunting, fishing, and boating to the Indians in the areas granted under this Act, shall set aside approximately one-quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations for hunting, fishing, and boating purposes, which rights shall be subject only to such reasonable regulations as the Secretary may prescribe for the protection and conservation of fish and wildlife: *Provided,* That the exercise of the Indians' rights shall not interfere with project operations. The Secretary shall, also, where necessary, grant to the Indians reasonable rights of access to such area or areas across any project lands. (54 Stat. 703; Act of December 16, 1944, 58 Stat. 813; 16 U.S.C. § 835d)

Explanatory Notes

1944 Amendment. The Act of December 16, 1944, 58 Stat. 813, which appears herein in chronological order, amended the first paragraph of section 1 to authorize the Secretary of the Interior to take Indian land for reservoir purposes above the elevation of 1,310 feet above sea level where special circumstances require the taking of land above that elevation. Prior to its amendment, the first paragraph of section 1 read as follows: "In aid of the construction of the Grand Coulee Dam project, authorized by the Act of August 30, 1935 (49 Stat. 1028), there is hereby granted to the United States,

subject to the provisions of this Act, (a) all the right, title, and interest of the Indians in and to the tribal and allotted lands within the Spokane and Colville Reservations, including sites of agency and school buildings and related structures and unsold lands in Klaxta town site, as may be designated therefor by the Secretary of the Interior from time to time: *Provided,* That no lands shall be taken for reservoir purposes above the elevation of one thousand three hundred and ten feet above sea level as shown by General Land Office surveys, except in Klaxta town site; and (b) such other interests in or to any of such lands and property within these reservations as may be required and as may be designated by the Secretary of the Interior from time to time for the construction of pipe lines, highways, railroads, telegraph, telephone, and electric-transmission lines in connection with the project, or for the relocation or reconstruction of such facilities made necessary by the construction of the project."

References in the Text. The Act of August 30, 1935 (49 Stat. 1028), authorized construction of the Grand Coulee and Parker Dams. The Act of August 4, 1939 (53 Stat. 1187), is the Reclamation Project Act of 1939. The Columbia Basin Project Act (Public Numbered 8, Seventy-eighth Congress, first session, 57 Stat. 14), was enacted March 10, 1943. Among other things, it renamed the former Grand Coulee Dam Project. Each of these Acts, referred to in the text, appears herein in chronological order.

Notes of Opinions

1. Indian rights in Columbia River reservoir

The act imposes a mandatory duty upon the Secretary to set aside approximately one quarter of the entire reservoir area for the paramount use of the Indians of the Spokane and Colville Reservations. Solicitor Gardner Opinion, 59 I.D. 147 (1945).

Although the act in terms permits the Secretary to set aside one or more areas for Indian use, it also makes separate provision for two different tribes of Indians. The Secretary is therefore required to allocate at least one area to each of the two tribes. While he may also set aside more than two areas, his power is limited by a rule of reason which would prevent him from setting aside so many areas that he would bring about the very evil which the statute was designed to prevent. The object of the statute was, so to speak, to secure a consolidation of the areas of Indian interest. *Ibid.*

The interest of the Colville and Spokane Indians in one-quarter of the reservoir area is not joint but several. In view of the failure of the statute to prescribe a formula for dividing between the two tribes the 25 percent of the reservoir area to be set aside for both of them, the Secretary may make the apportionment in such a manner as will be equitable under all the circumstances. However, the ratio that was employed in determining the percentage of the entire reservoir area that was to be set aside for both tribes could reasonably be applied in determining the share of each tribe. This ratio was obtained by comparing the length of the original river shore line of Indian lands acquired or to be acquired for the reservoir with the total original shore line of the river in the reservoir area. The result would also be in harmony with the relative populations of the Colville and Spokane Indian Reservations. *Ibid.*

While the Secretary has discretion in the location of the Indian areas, his discretion in this respect is limited by the requirement that the areas set aside for the Indians be readily accessible to them. The Indian areas must therefore be located in reasonable proximity to the Indian lands, namely, adjacent to such lands. The application of this rule would require the location of the Indian areas along the former shoreline of Indian lands. However, in view of the scope of the Secretary's discretion he is under no duty to locate the Indian areas within the exterior boundaries of the reservations as they existed prior to the construction of the reservoir. *Ibid.*

The Secretary is not confined to setting aside one-quarter of the water surface of the reservoir for the use of the Indians. He may include free-board areas in the areas set aside for the Indians because (a) the Indians are given hunting rights which can also be enjoyed on the shorelands; (b) the "entire" reservoir area is made the basis for calculating the Indians' share; (c) the rights of access to the Indian reservoir areas are granted only "when necessary". *Ibid.*

The special rights given to the Indians under the act are expressly limited to hunting, fishing and boating. These rights are not enlarged by the "access" provision of the act since a right of access is not a separate and independent right but a means of enjoying property rights or special rights otherwise possessed. However, the rights of access are not limited to mere rights of ingress and egress but are commensurate with the purposes to which the portions of

the reservoir to be set aside for the Indians are to be put. *Ibid.*

No special rights inure to the Indians from any other source. By virtue of the act of July 1, 1892 (27 Stat. 62), the southern and eastern boundary of the Colville Reservation extends to the middle of the channel of the Columbia River. By the Executive order of January 18, 1881, the bed of the Spokane River to the south bank thereof was included in the Spokane Indian Reservation. Even if it be assumed that the titles to the beds of the Columbia and Spokane Rivers were not taken and extinguished under the act of June 29, 1940, it cannot be made a source of additional special rights for the Indians. The special rights accorded to the Indians by the act are plainly denominated lieu rights. They are therefore to be deemed an exclusive substitute for whatever rights the Indians may have enjoyed prior to the enactment of the statute by reason of their rights of ownership. *Ibid.*

However, the Indians are not confined to those parts of the reservoir set aside for their "paramount" use. In such areas of the reservoir they will enjoy special rights. But in the reservoir as a whole, insofar as they may have access to it, they may enjoy such privileges as are accorded to the general public in navigable waters, which include those of hunting and fishing, floating logs and navigation. The Indians may also take advantage of section 10 of the act of August 4, 1939 (43 U.S.C. sec. 387), which gives the Secretary power to grant leases, licenses, easements or rights-of-way over lands acquired and administered under the Federal reclamation laws. *Ibid.*

Since the act declares that the areas set aside for the Indians shall be for their "paramount" use for hunting, fishing and boating, such use is neither exclusive of the same use by other persons, nor exclusive of any other use by other persons. However, the Secretary is under a duty to maintain the paramount character of the Indian use, and if he finds that this can be accomplished only by according the Indians exclusive rights in the areas set aside for them, he is empowered to do so. He may make such rights exclusive in all parts of the Indian areas, or at particular locations, or at particular times, or give greater freedom to the Indians in making use of the reservoir than is permitted to others. *Ibid.*

Since the rights of the Indians will not necessarily be exclusive, there is no present need to decide whether the Indians may license others to enjoy their rights. *Ibid.*

Although the Bureau of Reclamation, the Bureau of Indian Affairs, the National Park Service, and the Fish and Wildlife Service are all interested in the Columbia River Reservoir area, its administration is vested in the Secretary of the Interior rather than in any particular bureau, and the Secretary by virtue of Section 161 of the Revised Statutes (now 5 U.S.C. sec. 22) may elect any one or more of the interested agencies to administer any part of the reservoir area. *Ibid.*

There is no good reason to doubt the constitutionality of the provision of the act which gives the Secretary of the Interior authority to prescribe reasonable regulations for the protection and conservation of fish and wildlife in the areas set aside for Indian use. The constitutionality of the act is supported by the property interest of the United States in the reservoir area; the power of Congress to control the navigable waters of the United States; and the powers of Congress over Indians and Indian affairs. *Ibid.*

Sec. 2. [Secretary to determine equitable compensation—Compensation for tribal lands to be deposited in Treasury to credit of appropriate tribe—Compensation for individuals to be paid to superintendent of the Colville Indian Agency for individuals.]—As lands or interests in lands are designated from time to time under this Act, the Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation therefor. As to the tribal lands, the amounts so determined shall be transferred in the Treasury of the United States from the funds now or hereafter made available for the construction of the Grand Coulee Dam project to the credit of the appropriate tribe pursuant to the provisions of the Act of May 17, 1926 (44 Stat. 560). The amounts due individual landowners or their heirs or devisees shall be paid from funds now or hereafter made available for the construction of said project to the superintendent of the Colville Indian Agency or such other officer as shall be designated by the Secretary of the Interior for

credit on the books of said agency to the accounts of the individuals concerned. (54 Stat. 703; 16 U.S.C. § 835e)

EXPLANATORY NOTE

References in the Text. The Act of May 17, 1926 (44 Stat 560), referred to in the text, provides that miscellaneous revenues derived from Indian reservations, agencies and schools, not otherwise earmarked by law, shall be set aside in a special Treasury account and used, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies and schools on whose behalf they were collected.

Sec. 3. [Funds of allottees may be used for acquisition of other lands—Lands thus acquired to be held in same status—Nontaxable until otherwise provided by Congress.]—Funds deposited to the credit of allottees, their heirs or devisees may be used in the discretion of the Secretary of the Interior, for the acquisition of other lands and improvements, or the relocation of existing improvements or construction of new improvements on the lands so acquired for the allottees or heirs whose lands and improvements are acquired under the provisions of this Act. Lands so acquired shall be held in the same status as those from which the funds were derived, and shall be nontaxable until otherwise provided by Congress. (54 Stat. 703; 16 U.S.C. § 835f)

Sec. 4. [Secretary to select other cemetery lands—Authorized to remove bodies and markers thereto—Costs to be paid from project appropriations—Rights of Indians in cemeteries relocated to terminate—Sites of relocated cemeteries shall be held in trust by United States for Indians.]—As to any Indian cemetery lands required for the project, the Secretary of the Interior is authorized, in his discretion, in lieu of requiring payment therefor, to establish cemeteries on other lands that he may select and acquire for the purpose, and to remove bodies, markers, and other appurtenances to the new sites. All costs incurred in connection with any such relocation shall be paid from moneys appropriated for the project. All right, title, and interest of the Indians in the lands within any cemetery so relocated shall terminate and the grant of title under this Act take effect as of the date the Secretary of the Interior authorizes the relocation. Sites of the relocated cemeteries shall be held in trust by the United States for the Spokane or Colville Tribe, as the case may be, and shall be nontaxable. (54 Stat. 703; 16 U.S.C. § 835g)

Sec. 5. [Authority of the Secretary.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to prescribe such regulations as he may deem appropriate to carry out the provisions of this Act. (54 Stat. 704; 16 U.S.C. § 835h)

EXPLANATORY NOTE

Legislative History. H.R. 9445, Public Law 690 in the 76th Congress. H. R. Rept. No. 2350.

SALE OF LANDS TO CONCONULLY CEMETERY ASSOCIATION

An act authorizing the Secretary of the Interior to sell certain land to the Conconully Cemetery Association. (Act of June 29, 1940, ch. 492, 54 Stat. 705)

[**Secretary of Interior may cause patent to issue to Conconully Cemetery Association excepting land necessary for Reclamation purposes.**]—Subject to Executive Order Numbered 1032 of February 25, 1909, withdrawing lot 5, section 7, township 35 north, range 25 east, Willamette meridian, Okanogan County, Washington, and other lands, and setting them apart for the use of the Department of Agriculture as preserves and breeding grounds for native birds, the Secretary of the Interior, upon payment therefor at the rate of $1.25 per acre, may cause a patent to issue to the Conconully Cemetery Association, for cemetery uses, for all of lot 5, section 7, township 35 north, range 25 east, Willamette meridian, Okanogan County, Washington, except the three hundred-foot strip along the westerly border of such lot, heretofore determined by the Commissioner of Reclamation to be necessary for reclamation purposes, which shall be excepted from such grant. Except for the uses herein authorized, neither this Act nor the patent that may issue thereunder shall be construed as abrogating or in any manner affecting the aforesaid Executive order of February 25, 1909, which order shall otherwise remain in full force unless and until revoked by the President or by Act of Congress. (54 Stat. 705)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 8316, Public Law 693 in the 76th Congress. H.R. Rept. No. 1917. S. Rept. No. 1791.

ADDITIONAL WATER FOR WAPATO INDIAN IRRIGATION PROJECT

An act to authorize the appropriation for payment of the cost of providing additional water for the Wapato Indian irrigation project, Washington. (Act of July 1, 1940, ch. 496, 54 Stat. 707)

[**$800,000 to be credited to Reclamation Fund to defray cost of additional water.**]—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $800,000, and credited to the reclamation fund, to defray the actual cost of furnishing an additional quantity of water annually of one hundred thousand acre-feet which is needed to provide adequate irrigation for forty acres each of the Indian allotments of the Yakima Reservation as contemplated by the Act of August 1, 1914, and as set out in the terms of the agreement between the Bureau of Reclamation and the Office of Indian Affairs, approved by the Secretary of the Interior September 3, 1936, the same to be made available in amounts not to exceed $20,000 annually for forty years. (54 Stat. 707)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of August 1, 1914, referred to in the text, appears herein in chronological order.

Cross Reference: Irrigation Construction Costs, Wapato Project. The Act of February 24, 1938, 52 Stat. 80, authorizes a per-acre per-annum assessment of $1.25 against those lands of the Wapato Indian irrigation project subject to construction assessments. The 1938 Act appears herein in chronological order.

Legislative History. H.R. 3402, Public Law 695 in the 76th Congress. H.R. Rept. No. 2477. S. Rept. No. 882 (on S. 1065).

AMEND COLORADO RIVER FRONT WORK AND LEVEE SYSTEM ACT

An act to authorize defraying cost of necessary work between the Yuma project and Boulder Dam. (Act of July 1, 1940, ch. 498, 54 Stat. 708)

[Appropriation from Treasury of $100,000 annually to defray cost of Colorado River Front Work and Levee System.]—The provision of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes", approved January 21, 1927, is amended to read as follows:

"There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States not otherwise appropriated, for the fiscal year ending June 30, 1928, and annually thereafter, the sum of $100,000, or so much thereof as may be necessary, to be spent by the Reclamation Bureau under the direction of the Secretary of the Interior to defray the cost of operating and maintaining the Colorado River front work and levee system adjacent to the Yuma Federal irrigation project in Arizona and California and to defray the cost of other necessary protection works and systems along the Colorado River between said Yuma project and Boulder Dam." (54 Stat. 708)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

1946 Amendment. The Act of June 28, 1946, 60 Stat. 338, amended the Act of January 21, 1927, 44 Stat. 1010, as amended by this Act. The amendment has been incorporated herein in the 1927 Act. Both the 1927 and 1946 Acts appear herein in chronological order.

Editor's Note, Annotations. Annotations of opinions, if any, are found under the Act of January 21, 1927.

Legislative History. H.R. 7116, Public Law 697 in the 76th Congress. H.R. Rept. No. 2011. S. Rept. No. 1712.

ACQUISITION OF INDIAN LANDS FOR PARKER DAM

An act for the acquisition of Indian lands for the Parker Dam and Reservoir project, and for other purposes. (Act of July 8, 1940, ch. 552, 54 Stat. 744)

[**Sec. 1. Grant to United States.**]—In aid of the construction of the Parker Dam project, authorized by the Act of August 30, 1935 (49 Stat. 1028), there is hereby granted to the United States, its successors and assigns, subject to the provisions of this Act, all the right, title, and interest of the Indians in and to the tribal and allotted lands of the Fort Mohave Indian Reservation in Arizona and the Chemehuevi Reservation in California as may be designated by the Secretary of the Interior. (54 Stat. 744)

EXPLANATORY NOTE

Reference in the Text. Extracts of the Act of August 30, 1935 (49 Stat. 1028), including the authorization of the Parker Dam project referred to in the text, appear herein in chronological order.

Sec. 2. [Secretary to determine compensation to Indians.]—The Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation for the rights granted under section 1 hereof. Such amount of money shall be paid to the Secretary of the Interior by the Metropolitan Water District of Southern California, a public corporation of the State of California, in accordance with the terms of the contract made and entered into on February 10, 1933, between the United States of America, acting through the Secretary of the Interior, and the Metropolitan Water District of Southern California. In the case of tribal lands, the amount due to the appropriate tribe shall be deposited by the said Secretary in the Treasury of the United States, pursuant to the provisions of the Act of May 17, 1926 (44 Stat. 560), as amended. The amounts due individual allottees, their heirs, or devisees shall be deposited by the said Secretary to the credit of the Superintendent of the Colorado River Indian Agency, or such other officer as shall be designated by the Secretary, for the credit on the books of the said agency to the accounts of the individual Indians concerned. (54 Stat. 744)

EXPLANATORY NOTE

Reference in the Text. The Act of May 17, 1926 (44 Stat. 560), referred to in the text, provides that miscellaneous revenues derived from Indian reservations, agencies and schools, not otherwise earmarked by law, shall be set aside in a special Treasury account and used, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies and schools on whose behalf they were collected.

Sec. 3. [Use of funds credited to allottees, etc.]—Funds deposited to the credit of the allottees, their heirs, or devisees may be used, in the discretion of the Secretary of the Interior, for the acquisition of other lands and improvements now in Indian ownership, or the construction of improvements for the allottees, their heirs, or devisees whose lands and improvements are acquired

under the provisions of this Act. Lands so acquired shall be held in the same status as those from which the funds were derived. (54 Stat. 744)

Sec. 4. [Authority of the Secretary.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to prescribe such regulations as may be deemed appropriate to carry out the provisions of this Act. (54 Stat. 744)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Cross Reference, Acquisition of Indian Lands for Parker Dam Power Project. The Act of October 28, 1942, 56 Stat. 1011, authorized the acquisition of Indian lands required in connection with the construction, operation, and maintenance of electric transmission lines and other works of the Parker Dam power project—Arizona-California. The 1942 Act appears herein in chronological order.

Background: Conflicting Withdrawals, Fort Mohave Indian Reservation. The Secretary of the Interior, by departmental orders of January 31 and September 8, 1903, withdrew for flowage purposes under the reclamation act of June 17, 1902, land in sections 4, 6, 8, 16, 20, 22, 28, and 34, T. 16 N., R. 21 W., and in section 12, T. 16 N., R. 22 W., G. & S. R. M. Executive order of February 2, 1911, subsequently withdrew these lands as an addition to the Fort Mohave Indian Reservation. Congress by act of May 23, 1934 (48 Stat. 795), recognized Indian ownership of the lands and confirmed the Executive order of February 2, 1911. The Department held that the reclamation withdrawals of January 31 and September 8, 1903, were ineffective and that title to said lands being in the Fort Mohave Indian Reservation, the Indians are entitled to compensation for land required by the Bureau of Reclamation for flowage purposes on account of the construction of Parker Dam, Arizona. Solicitor Margold Opinion, M–28589 (August 24, 1936).

Background: Indian Lands, Parker Dam Project. The Chemehuevi Indians claimed compensation for lands to be flooded by Parker Reservoir, Parker Dam project, but the Metropolitan Water District, which was acquiring the right of way for the reservoir under contract with the United States, contended that it was not necessary to purchase the lands since they had been withdrawn for reclamation purposes by the departmental orders of July 2, August 26 and September 15, 1902, and February 5 and September 8, 1903. On February 2, 1907, the lands were withdrawn from settlement and entry pending action by Congress authorizing the addition of the lands to various mission Indian reservations. The Department held that at most the reclamation withdrawals established the right of the Bureau of Reclamation to utilize the land for reclamation purposes as and when the need arose, but that the Indians must be paid for the land, their occupation of which long antedated the reclamation withdrawals, and was subsequently recognized by the order of February 2, 1907. Solicitor Margold Opinion, 57 I.D. 87 (1939).

Legislative History. S. 3931, Public Law 730 in the 76th Congress. S. Rept. No. 1807. H.R. Rept. No. 2684 (on H.R. 9707).

BOULDER CANYON PROJECT ADJUSTMENT ACT

An act authorizing the Secretary of the Interior to promulgate and to put into effect charges for electrical energy generated at Boulder Dam, providing for the application of revenues from said project, authorizing the operation of the Boulder Power Plant by the United States directly or through agents, and for other purposes. (Act of July 19, 1940, ch. 643, 54 Stat. 774)

[**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 during the period beginning June 1, 1937, and ending May 31, 1987, 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 during the period beginning June 1, 1937, and ending May 31, 1987;

(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 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;

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

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

Such charges may be made subject to revisions and adjustments at such times, to such extent, and in such manner, as by the terms of their promulgation the Secretary shall prescribe. (54 Stat. 774; 43 U.S.C. § 618)

NOTES OF OPINIONS

1. Upstream reservoirs

Appropriations for the Colorado River Storage project are authorized to be expended to meet costs of deficiencies in the generation of energy at the Hoover Dam powerplant occasioned by the necessity to fill Colorado River Storage project reservoirs, if the Secretary of the Interior concludes that such a step is appropriate to maintaining a reasonable schedule in meeting the statutory payout requirements of both Hoover Dam and Glen Canyon Dam imposed by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Colorado River Storage Project Act. Memorandum of Associate Solicitor Weinberg, July 17, 1962.

If an upstream project, such as the proposed Central Arizona project and Bridge Canyon project in the Lower Colorado River Basin, interferes with the statutory responsibility of the Secretary to recover the costs of Hoover Dam by June 1, 1987, or to recover the costs of Davis and Parker Dams within a reasonable period of time, then the cost of such interference should be included as one of the "costs" of the new upstream development under section 9(a) of the Reclamation Project Act of 1939. Memorandum of Chief Counsel Fix, October 9, 1947.

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 for:

(a) Annual appropriation for the operation, maintenance, and replacements of the project, including emergency replacements necessary to insure continuous operations;

(b) Repayment to the Treasury, with interest (after making provision for the payments and transfers provided in subdivisions (c) and (d) hereof), of advances to the Colorado River Dam Fund for the construction of the project (excluding the amount allocated to flood control by section 2(b) of the Project Act), and any readvances made to said fund under section 5 hereof; and

(c) Payment subject to the provisions of section 3 hereof, in commutation of the payments now provided for the States of Arizona and Nevada in section 4 (b) of the Project Act, to each of said States of the sum of $300,000 for each year of operation, beginning with the year of operation ending May 31, 1938, and continuing annually thereafter until and including the year of operation ending May 31, 1987, and such payments for any year of operation which shall have expired at the time when this subdivision (c) shall become effective shall be due immediately, and be paid, without interests, as expeditiously as administration of this Act will permit, and each such payment for subsequent years of operation shall be made on or before July 31, following the close of the year of operation for which it is made. All such payments shall be made from revenues hereafter received in the Colorado River Dam Fund.

Notwithstanding the foregoing provisions of this subsection, in the event that there are levied and collected by or under authority of Arizona or Nevada or by any lawful taxing political subdivision thereof, taxes upon—

(i) the project as herein defined;

(ii) the electrical energy generated at Boulder Dam by means of facilities, machinery, or equipment both owned and operated by the United States, or owned by the United States and operated under contract with the United States;

(iii) the privilege of generating or transforming such electrical energy or of use of such facilities, machinery, or equipment or of falling water for such generation or transforming; or

(iv) the transmission or control of such electrical energy so generated or transformed (as distinguished from the transmission lines and other physical properties used for such transmission or control) or the use of such transmission lines or other physical properties for such transmission or control,

payments made hereunder to the State by or under the authority of which such taxes are collected shall be reduced by an amount equivalent to such taxes. Nothing herein shall in anywise impair the right of either the State of Arizona or the State of Nevada, or any lawful taxing political subdivision of either of them,

to collect nondiscriminatory taxes upon that portion of the transmission lines and all other physical properties, situated within such State and such political subdivision, respectively, and belonging to any of the lessees and/or allottees under the Project Act and/or under this Act, and nothing herein shall exempt or be construed so as to exempt any such property from nondiscriminatory taxation, all in the manner provided by the constitution and laws of such State. Sums, if any, received by each State under the provisions of the Project Act shall be deducted from the first payment or payments to said State authorized by this Act. Payments under this section 2(c) shall be deemed contractual obligations of the United States, subject to the provision of section 3 of this Act.

(d) Transfer, subject to the provisions of section 3 hereof, from the Colorado River Dam Fund to a special fund in the Treasury, hereby established and designated the "Colorado River Development Fund", of the sum of $500,000 for the year of operation ending May 31, 1938, and the like sum of $500,000 for each year of operation thereafter, until and including the year of operation ending May 31, 1987. The transfer of the said sum of $500,000 for each year of operation shall be made on or before July 31 next following the close of the year of operation for which it is made: *Provided,* That any such transfer for any year of operation which shall have ended at the time this section 2(d) shall become effective, shall be made, without interest, from revenues received in the Colorado River Dam Fund, as expeditiously as administration of this Act will permit, and without readvances from the general funds of the Treasury. Receipts of the Colorado River Development Fund for the years of operation ending in 1938, 1939, and 1940 (or in the event of reduced receipts during any of said years, due to adjustments under section 3 hereof, then the first receipts of said fund up to $1,500,000), are authorized to be appropriated only for the continuation and extension, under the direction of the Secretary, of studies and investigations by the Bureau of Reclamation for the formulation of a comprehensive plan for the utilization of waters of the Colorado River system for irrigation, electrical power, and other purposes, in the States of the upper division and the States of the lower division, including studies of quantity and quality of water and all other relevant factors. The next such receipts up to and including the receipts for the year of operation ending in 1955 are authorized to be appropriated only for the investigation and construction of projects for such utilization in and equitably distributed among the four States of the upper division: *Provided, however,* That in view of distributions heretofore made, and in order to expedite the development and utilization of water projects within all of the States of the upper division, the distribution of such funds for use in the fiscal years 1949 to 1955, inclusive, shall be on a basis which is as nearly equal as practicable. Such receipts for the years of operation ending in 1956 to 1987, inclusive, are authorized to be appropriated for the investigation and construction of projects for such utilization in and equitably distributed among the States of the upper division and the States of the lower division. The terms "Colorado River system", "States of the upper division", and "States of the lower division" as so used shall have the respective meanings defined in the Colorado River compact mentioned in the Project Act. Such projects shall be only such as are found by the Secretary to be

physically feasible, economically justified, and consistent with such formulation of a comprehensive plan. Nothing in this Act shall be construed so as to prevent the authorization and construction of any such projects prior to the completion of said plan of comprehensive development; nor shall this Act be construed as affecting the right of any State to proceed independently of this Act or its provisions with the investigation or construction of any project or projects. Transfers under this section 2(d) shall be deemed contractual obligations of the United States, subject to the provisions of section 3 of this Act.

(e) Annual appropriation for the fiscal years 1948, 1949, 1950, 1951 for payment of the Boulder City School District, as reimbursement for the actual cost of instruction, during each school year, in the schools operated by said district, of pupils who are dependents of any employee or employees of the United States living in or in the immediate vicinity of Boulder City, such reimbursement not to exceed the sum of $65 per semester per pupil and to be payable semiannually, after the term of instruction in each semester has been completed, under regulation to be prescribed by the Secretary. (54 Stat. 774; Act of May 14, 1948. 62 Stat. 235; Act of June 1, 1948, 62 Stat. 284; 43 U.S.C. § 618a)

EXPLANATORY NOTES

1948 Amendment. The Act of May 14, 1948, 62 Stat. 235, amended section 2 by adding to it subsection (e). The 1948 Act appears herein in chronological order.

1948 Amendment. Section 1 of the Act of June 1, 1948, 62 Stat. 284, amended subsection 2(d) by adding the second proviso that appears in the text above. The 1948 Act appears herein in chronological order.

Supplementary Provision: Expenditure of Funds. Section 2 of the Act of June 1, 1948, 62 Stat. 284, provides: "The availability of appropriations from the Colorado River Development Fund for the investigation and construction of projects in any of the States of the Colorado River Basin shall not be held to forbid the expenditure of other funds for those purposes in any of those States where such funds are otherwise available therefor." The 1948 Act appears herein in chronological order.

NOTES OF OPINIONS

Investigation costs 2
Revenues "hereafter received" 1

1. Revenues "hereafter received"

The word "hereafter" in the expression "hereafter received" in the first paragraph of section 2(c) of this Act, refers to the period after the Boulder Canyon Project Adjustment Act becomes effective for all purposes under the provisions of section 10 and not to the period subsequent to the date of approval of the Act; and payments to the States of Arizona and Nevada under section 2(c) may be made only out of revenues received in the Colorado River Dam Fund after the act shall have become fully effective. Dec. Comp. Gen. B–12615 (October 29, 1940).

2. Investigation costs

Costs of investigations made with Colorado River Development Funds are not reimbursable by the water users even though a project investigated with such funds is authorized for construction. Letter of Administrative Assistant Secretary Beasley to Comptroller General, June 11, 1959; Memorandum of Chief Counsel Fix, December 28, 1949.

Sec. 3. [If revenues insufficient, payments to Arizona and Nevada and transfer to Colorado River Development Fund to be proportionately reduced.]—If, by reason of any act of God, or of the public enemy, or any major catastrophe, or any other unforeseen and unavoidable cause, the revenues, for any year of operation, after making provision for costs of operation, maintenance, and the amount to be set aside for said year for replacements, should be

insufficient to make the payments to the States of Arizona and Nevada and the transfers to the Colorado River Development Fund herein provided for, such payments and transfers shall be proportionately reduced, as the Secretary may find to be necessary by reason thereof. (54 Stat. 776; 43 U.S.C. § 618b)

Sec. 4. (a) **[Charges to be applicable as from June 1, 1937, and adjustments made with contractors by means of credits.]**—Upon the taking effect of this Act, pursuant to section 10 hereof, the charges, or the basis of computation thereof, promulgated hereunder, shall be applicable as from June 1, 1937, and adjustments of accounts by reason thereof, including charges by and against the United States, shall be made so that the United States and all parties that have contracted for energy, or for the privilege of generating energy, at the project, shall be placed in the same position, as nearly as may be, as determined by the Secretary, that they would have occupied had such charges, or the basis of computation thereof, and the method of operation which may be provided for under section 9 hereof, been effective on June 1, 1937: *Provided,* That such adjustments with contractors shall not be made in cash, but shall be made by means of credits extended over such period as the Secretary may determine.

(b) **[If payments to Arizona and Nevada reduced by taxes, adjustments by credits to be made with each allottee for taxes paid by them.]**—In the event payments to the States of Arizona and Nevada, or either of them, under section 2(c) hereof, shall be reduced by reason of the collection of taxes mentioned in said section, adjustments shall be made, from time to time, with each allottee which shall have paid any such taxes, by credits or otherwise, for that proportion of the amount of such reductions which the amount of the payments of such taxes by such allottee bears to the total amount of such taxes collected. (54 Stat. 776; 43 U.S.C. § 618c)

Sec. 5. **[Readvances to be made by Treasury if Colorado Dam Fund insufficient to meet cost of replacements.]**—If at any time there shall be insufficient sums in the Colorado River Dam Fund to meet the cost of replacements, however necessitated, in addition to meeting the other requirements of this Act, or of regulations authorized hereby and promulgated by the Secretary, the Secretary of the Treasury, upon request of the Secretary of the Interior, shall readvance to the said fund, in amounts not exceeding, in the aggregate, moneys repaid to the Treasury pursuant to Section 2(b) hereof, the amount required for replacements, however necessitated, in excess of the amount currently available therefor in said Colorado River Dam Fund. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums, not exceeding said aggregate amount, as may be necessary to permit the Secretary of the Treasury to make such readvances. All such readvances shall bear interest. (54 Stat. 777; 43 U.S.C. § 618d)

Sec. 6. **[Interest to be computed at 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. (54 Stat. 777; 43 U.S.C. § 618e)

Sec. 7. **[First $25,000,000 advance to be made to flood control without interest—To be repayable 1987 as Congress determines.]**—The first $25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 2(b) of the Project Act and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine. (54 Stat. 777; 43 U.S.C. § 618f)

Sec. 8. **[Secretary authorized to promulgate regulations and enter into contracts—No allotments heretofore promulgated to be modified or changed without consent of allottee.]**—The Secretary is hereby authorized from time to time to promulgate such regulations and enter into such contracts as he may find necessary or appropriate for carrying out the purposes of this Act and the Project Act, as modified hereby, and, by mutual consent, to terminate or modify any such contract: *Provided, however,* That no allotment of energy to any allottee made by any rule or regulation heretofore promulgated shall be modified or changed without the consent of such allottee. (54 Stat. 777; 43 U.S.C. § 618g)

Sec. 9. **[Secretary authorized to negotiate for termination of existing lease of Boulder Power Plant—If lease terminated, operation and maintenance and replacements authorized—Secretary to agree that (a) lessees be designated agents for operation of power plant, (b) agency contract not revocable, and (c) suits or proceedings to restrain termination may be maintained against Secretary.]**—The Secretary is hereby authorized to negotiate for and enter into a contract for the termination of the existing lease of the Boulder Power Plant made pursuant to the Project Act, and in the event of such termination the operation and maintenance, and the making of replacements, however necessitated, of the Boulder Power Plant by the United States, directly or through such agent or agents as the Secretary may designate, is hereby authorized. The powers, duties, and rights of such agent or agents shall be provided by contract, which may include provision that questions relating to the interpretation or performance thereof may be determined, to the extent provided therein, by arbitration or court proceedings. The Secretary in consideration of such termination of such existing lease is authorized to agree (a) that the lessees therein named shall be designated as the agents of the United States for the operation of said power plant; (b) that (except by mutual consent or in accordance with such provisions for termination for default as may be specified therein) such agency contract shall not be revocable or terminable; and (c) that suits or proceedings to restrain the termination of any such agency contract, otherwise than as therein provided, or for other appropriate equitable relief or remedies, may be maintained against the Secretary. Suits or other court proceedings pursuant to the foregoing provisions may be maintained in, and jurisdiction to hear and determine such suits or proceedings and to grant such relief or remedies is hereby conferred upon, the United States District Court for the District of Columbia, with the like right of appeal or review as in other like suits or proceedings in said court. The Secretary is hereby authorized to act for the United States in such arbitration proceedings. (54 Stat. 777; 43 U.S.C. § 618h)

Sec. 10. [Act to be effective when Secretary finds existing lease power plant terminated and allottees have entered into contracts consenting to operation—If contracts not entered into prior to June 1, 1941, act shall be of no further effect.]—This Act shall be effective immediately for the purpose of the promulgation of charges, or the basis of computation thereof, and the execution of contracts authorized by the terms of this Act, but neither such charges, nor the basis of computation thereof, nor any such contract, shall be effective unless and until this Act shall be effective for all purposes. This Act shall take effect for all purposes when, but not before, the Secretary shall have found that provision has been made for the termination of the existing lease of the Boulder Power Plant and for the operation thereof as authorized by section 9 hereof, and that allottees obligated under contracts in force on the date of enactment of this Act to pay for at least 90 per centum of the firm energy shall have entered into contracts (1) consenting to such operation, and (2) containing such other provisions as the Secretary may deem necessary or proper for carrying out the purposes of this Act. For purposes of this section such 90 per centum shall be computed as of the end of the absorption periods provided for in regulations heretofore promulgated by the Secretary and in effect at the time of the enactment of this Act.

If contracts in accordance with the requirements of this section shall not have been entered into prior to June 1, 1941, this Act shall cease to be operative and shall be of no further force or effect. (54 Stat. 778; 43 U.S.C. § 618i)

EXPLANATORY NOTE

Effective Date of Act. The Boulder Canyon Project Adjustment Act became fully effective on May 29, 1941, the requirements of Sec. 10 of the Act having been met by the execution of a contract for the operation of the Boulder Power Plant by the City of Los Angeles and Southern California Edison Company, Ltd. as operating agents of the United States and by execution of contracts with allottees obligated under contracts in force upon the date of enactment of the Act to pay for 100 per centum of the firm energy, as follows: City of Los Angeles, and its Department of Water and Power; Southern California Edison Company Ltd.; The Metropolitan Water District of Southern California; The City of Pasadena; State of Nevada; City of Burbank; City of Glendale; The Nevada-California Electric Corporation.

Sec. 11. [Any contractor refusing to modify its existing contract to conform to this act, shall continue under its existing contract.]—Any contractor for energy from the project failing or refusing to execute a contract modifying its existing contract to conform to this Act shall continue to pay the rates and charges provided for in its existing contract, subject to such periodic readjustments as are therein provided, in all respects as if this Act had not been passed, and so far as necessary to support such existing contract all of the provisions of the Project Act shall remain in effect, anything in this Act inconsistent therewith notwithstanding. (54 Stat. 778; 43 U.S.C. § 618j)

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

"Project Act" shall mean the Boulder Canyon Project Act;

"Project" shall mean the works authorized by the Project Act to be constructed

and owned by the United States, exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal;

"Secretary" shall mean the Secretary of the Interior of the United States;

"Firm energy" and "allottees" shall have the meaning assigned to such terms in regulations heretofore promulgated by the Secretary and in effect at the time of the enactment of this Act;

"Replacements" shall mean such replacements as may be necessary to keep the project in good operating condition during the period from June 1, 1937, to May 31, 1987, inclusive, 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

"Year of operation" shall mean the period from and including June 1 of any calendar year to and including May 31 of the following calendar year. (54 Stat. 778; 43 U.S.C. § 618k)

Sec. 13. [Secretary to submit to Congress each January financial statement and complete report of operations.]—*Repealed.*

EXPLANATORY NOTE

Reporting Requirement Discontinued. The Act of August 30, 1954, 68 Stat. 966, repealed the requirement for the annual report and financial statement under section 13. The section read: "The Secretary of the Interior shall, in January of each year, submit to the Congress a financial statement and a complete report of operations under this Act during the preceding year of operation as herein defined." The 1954 Act appears herein in chronological order.

Sec. 14. [Act shall not in anywise limit or prejudice any right of any State in or to waters of the Colorado River system under the Colorado River compact.]—Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement. Neither the promulgation of charges, or the basis of charges, nor anything contained in this Act or done thereunder, shall in anywise affect, limit, or prejudice any right of any State in or to the waters of the Colorado River system under the Colorado River compact. Sections 13 (b), 13 (c), and 13 (d) of the Project Act and all other provisions of said Project Act not inconsistent with the terms of this Act shall remain in full force and effect. (54 Stat. 779; 43 U.S.C. § 618m)

Sec. 15. [Laborers and mechanics shall be paid not less than prevailing rate of wages.]—All laborers and mechanics employed in the construction of any part of the project, or in the operation, maintenance, or replacement of any part of the Boulder Dam, shall be paid not less than the prevailing rate of wages or compensation for work of a similar nature prevailing in the locality of the project. In the event any dispute arises as to what are the prevailing rates, the determination thereof shall be made by the Secretary of the Interior, and his decision, subject to the concurrence of the Secretary of Labor, shall be final. (54 Stat. 779; 43 U.S.C. § 618n)

NOTES OF OPINIONS

1. Employees covered

The legislative history of the Act leads to the conclusion that section 15 applies only to employees of the Federal Government and not to employees of the non-Federal operating agents. Letter of First Assistant Secretary Burlew to Senator McCarran, May 2, 1947.

The first sentence of section 15 makes a distinction between two groups of ungraded laborers and mechanics, namely, those engaged in construction and those engaged in operation, maintenance or replacement. Members of the two groups doing the same type of work may be paid at different rates if the facts disclose that such a distinction prevails in the locality. Solicitor White Opinion, 60 I.D. 47 (1947).

Sec. 16. [Short title.]—This Act may be cited as "Boulder Canyon Project Adjustment Act". (54 Stat. 779; 43 U.S.C. § 618o)

EXPLANATORY NOTE

Legislative History. H.R. 9877, Public Law 756 in the 76th Congress. H.R. Rept. No. 2328. H.R. Rept. No. 2745 (conference report). H.R. Rept. No. 2482 (on H. Res. 503).

OVERHEAD CHARGES, STRAWBERRY WATER USERS' ASSOCIATION

An act to authorize the Secretary of the Interior to accept payment of an annual equitable overhead charge in connection with the repayment contract between the United States and the Strawberry Water Users' Association of Payson, Utah, in full satisfaction of delinquent billings upon the basis of an annual fixed overhead charge, and for other purposes. (Act of August 27, 1940, ch. 692, 54 Stat. 862)

[**Payment of an annual equitable overhead charge.**]—In connection with any amendment heretofore or hereafter made to the repayment contract between the Strawberry Water Users' Association of Payson, Utah, and the United States, dated September 28, 1926, as amended, to pay construction charges under the provisions of the Federal reclamation laws providing for payment annually of an amount as is determined by the Secretary each year to be sufficient to cover the Strawberry Valley project's equitable portion of the expense of the Chief Engineer's office, the field legal office, and the other detached offices of the Bureau of Reclamation, the Secretary of the Interior is authorized, subsequent to the effective date of such an amendment, to accept in full satisfaction for all flat overhead charges owing or allocable to the period up to the effective date of the amendment under the contract provisions in effect prior to such amendment a sum determined at the rate of $400 for each year. (54 Stat. 862)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 4011, Public Law 773 in the 76th Congress. S. Rept. No. 1789. H.R. Rept. No. 2715 (on H.R. 10069).

FISH HATCHERIES ON GRAND COULEE DAM PROJECT

An act to authorize the maintenance and operation of fish hatcheries in connection with the Grand Coulee Dam Project. (Act of October 9, 1940, ch. 794, 54 Stat. 1085)

[Secretary authorized to contract with State of Washington.]—In connection with fish hatcheries built or to be built as a part of the fish-protection program required on the Grand Coulee Dam project, the Secretary of the Interior is authorized to contract with the State of Washington for the maintenance and operation of any of them at the expense of said State. (54 Stat. 1085; 16 U.S.C. § 835i)

EXPLANATORY NOTE

Legislative History. H.R. 9921, Public Law 826 in the 76th Congress. H.R. Rept. No. 2849. S. Rept. No. 2073.

SACO DIVIDE UNIT, MILK RIVER PROJECT

An act authorizing allocation of funds for the construction of Saco Divide unit, Milk River project, and for other purposes. (Act of October 10, 1940, ch. 850, 54 Stat. 1108)

[Sec. 1. Funds allocated to Saco Divide Unit to be covered into Milk River water users repayment obligations—Costs of Fresno Dam to be repaid in 40 annual installments—Other common facilities allocated to Saco Divide unit to be repaid in 20 annual installments.]—In connection with the Saco Divide unit of the Milk River project there shall be included in the water users repayment obligations, in addition to the amounts that may be allocated by the President for the construction of pumping and distribution facilities and land development of this unit from funds appropriated for water conservation and utility projects by the Interior Department Appropriation Act, 1940, to be repaid as therein provided, that portion of the cost of the facilities of the Milk River project common to the Saco Divide unit and other units of the Milk River project that may be allocated to the Saco Divide unit by the Secretary of the Interior. The costs of Fresno Dam and Reservoir so allocated by the Secretary shall be included for repayment in not to exceed forty annual installments along with the costs of pumping and distribution facilities allocated by the President for repayment as provided by the water conservation and utility projects item in the Interior Department Appropriation Act, 1940; the cost of the other common facilities of the Milk River project allocated by the Secretary to the Saco Divide unit shall be repaid in not to exceed twenty annual installments, the first to accrue not later than the year following the last installment due and payable to the United States from the water users of the unit on the obligation comprising the amounts allocated by the President for construction of pumping and distribution facilities and the costs of the Fresno Dam and Reservoir allocated to the unit by the Secretary. Payments on account of the costs allocated by the Secretary shall be credited to the Reclamation Fund, and the component of such payments attributable to costs of construction prior to 1935 as determined by the Secretary shall be credited to write-offs made on the Milk River project pursuant to the Act of May 25, 1926 (44 Stat. 636). (54 Stat. 1108)

Explanatory Notes

Reference in the Text. The Interior Department Appropriation Act, 1940, referred to in the text, was enacted May 10, 1939. Extracts from the Act, including the water conservation and utility projects item referred to, appear herein in chronological order.

Reference in the Text. The Act of May 25, 1926 (44 Stat. 636), referred to in the text, is the Omnibus Adjustment Act. The Act appears herein in chronological order.

Sec. 2. [No water delivered for the Saco Divide unit until required contracts made.]—No water shall be delivered for the Saco Divide unit until the Secretary of the Interior has entered into the contract or contracts required, in his judgment, to carry into full effect the provisions of section 1 and to provide

for repayment of the reimbursable construction costs chargeable to the Saco Divide unit. (54 Stat. 1109)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 9734, Public Law 841 in the 76th Congress. H.R. Rept. No. 2853. S. Rept. No. 2142.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

[Extract from] An act to promote and strengthen the national defense by suspending enforcement of certain civil liabilities of certain persons serving in the Military and Naval Establishments, including the Coast Guard. (Act of October 17, 1940, ch. 888, 54 Stat. 1178)

* * * * *

ARTICLE V—TAXES AND PUBLIC LANDS

* * * * *

Sec. 508. [Delivery of water to lands of servicemen.]—The Secretary of the Interior is hereby authorized, in his discretion, to suspend as to persons in military service during the period while this Act remains in force and for a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in line of duty that provision of the act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. (54 Stat. 1189; 50 U.S.C. App. § 568)

Explanatory Notes

Supplementary Provision: Termination Date Suspended. While section 604 of the Soldiers and Sailors Civil Relief Act of 1940 provides that the Act would terminate on May 15, 1945, or, if the United States be then engaged in a war, six months after a treaty of peace be proclaimed by the President, the Act of June 24, 1948, 62 Stat. 623, as amended by the Act of September 27, 1950, 64 Stat. 1074; 50 U.S.C. App. § 464, provides that the Soldiers and Sailors Relief Act of 1940, as amended, shall remain in force and effect until such time as it is repealed or otherwise terminated by subsequent Act of Congress.

Cross Reference, Suspension of Residence Requirements for Servicemen of World War I. Sections 11 and 12 of the Act of August 10, 1917, authorized the Secretary of the Interior, in his discretion, to suspend residence requirements generally during the duration of World War I. Sections 11 and 12 of the 1917 Act appear herein in chronological order.

Legislative History. S. 4270, Public Law 861 in the 76th Congress. S. Rept. No. 2109. H.R. Rept. No. 3001 (on H.R. 10338). H.R. Rept. No. 3030 (conference report).

AMEND CENTRAL VALLEY PROJECT AUTHORIZATION

[Extract from] An act authorizing the improvement of certain rivers and harbors in the interest of the national defense, and for other purposes. (Act of October 17, 1940, ch. 895, 54 Stat. 1198)

* * * * *

Sec. 2. [Project modifications.]—

* * * * *

[Distribution system included in Central Valley project.]—The second proviso in section 2 of the Act of August 26, 1937 (50 Stat. 844, 850), authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, is hereby amended to read as follows: "*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 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." (54 Stat. 1199)

* * * * *

Explanatory Notes

Not Codified. This extract is not codified in the U.S. Code.

Distribution Systems. This Act adds the following to the authorized purposes of the Central Valley project: "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."

Editor's Note, Annotations. Annotations of opinions, if any, are found under section 2 of the Act of August 26, 1937.

Legislative History. H.R. 9972, Public Law 868 in the 76th Congress. H.R. Rept. No. 2361. S. Repts. Nos. 1872 and 2072. H.R. Rept. No. 3028 (conference report).

EXCESS LANDS, TRUCKEE STORAGE AND HUMBOLDT PROJECTS

An act to make the excess land provisions of the Federal reclamation laws inapplicable to the lands of the Washoe County Water Conservation District, Truckee storage project, Nevada, and the Pershing County Water Conservation District, Nevada. (Act of November 29, 1940, ch. 922, 54 Stat. 1219)

[**Excess land provisions.**]—The excess land provisions of the Federal reclamation laws shall not be applicable to land in the Washoe County Water Conservation District, Nevada, irrigated from the Boca Reservoir, Truckee River storage project, Nevada, nor to the Pershing County Water Conservation District, Nevada, irrigated from the Humboldt River Reservoir, and the Secretary of the Interior is authorized to enter into a contract with said districts, amending, in accordance with this Act, the contract of December 18, 1936, between the United States and the Washoe County Water Conservation District, and the contract of October 1, 1934, between the United States and the Pershing County Water Conservation District. (54 Stat. 1219)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 10543, Public Law 883 in the 76th Congress. H.R. Rept. No. 3036.

COMPLETION OF BOCA DAM

An act to provide for the completion and delivery of the Boca Dam, in the Little Truckee River, in accordance with the contract between the United States and the Washoe County Water Conservation District. (Act of May 29, 1941, ch. 153, 55 Stat. 210)

[Sec. 1. Secretary of Interior to complete construction—To make required expenditures.]—The Secretary of the Interior is authorized and directed to complete construction on the dam in the Little Truckee River, near Boca, California, which has been begun and substantially completed under a contract with the Washoe County Water Conservation District. The Secretary is authorized to make such expenditures, from funds now available for the completion of the Boca Dam, as may be required therefor. (55 Stat. 210)

Sec. 2. [Secretary to deliver custody to District for operation and maintenance.]—The Secretary of the Interior is authorized and directed to deliver custody of such dam to such district for operation and maintenance purposes in accordance with the contract between the United States and such district, dated December 12, 1936, at the earliest practicable time. (55 Stat. 211)

Explanatory Note

Transfer to District for Operation and Maintenance. On January 2, 1942, the Secretary notified the Washoe County Water Conservation District that the Boca Dam and appurtenant works were available for storage of water and that the transfer of operation and maintenance to the District would become effective January 15, 1942.

Sec. 3. [District's required payment not to exceed $1 million.]—The amount which such district is required to pay the United States under articles 11 and 12 of such contract of December 12, 1936, shall not exceed $1,000,000. (55 Stat. 211)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 15, Public Law 86 in the 77th Congress. S. Rept. No. 173. H.R. Rept. No. 453.

RECONVEYANCE OF LANDS FOR EDEN PROJECT

An act relating to certain Carey Act lands in Wyoming. (Act of June 25, 1941, ch. 251, 55 Stat. 263)

[**Reconveyance of lands authorized.**]—For use in connection with the Eden water conservation and utility project in the State of Wyoming and subject to such terms and conditions as he may prescribe, the Secretary of Agriculture may accept on behalf of the United States the reconveyance of any lands within the Eden project which have been patented to the State of Wyoming pursuant to the provisions of section 4 of the Act of August 18, 1894 (28 Stat. 372, 422, as amended). (55 Stat. 263)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Reference in the Text. The Act of August 18, 1894 (28 Stat. 372, 422, as amended), referred to in the text, is popularly known as the Carey Act and is codified at 43 U.S.C. §641. The Act authorized the grant of desert lands to States for reclamation purposes. Extracts from the Act appear herein in chronological order.

Legislative History. S. 879, Public Law 131 in the 77th Congress. S. Rept. No. 310. H.R. Rept. No. 642.

INTERIOR DEPARTMENT APPROPRIATION ACT, 1942

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1942, and for other purposes. (Act of June 28, 1941, ch. 259, 55 Stat. 303)

* * * * *

BUREAU OF RECLAMATION

* * * * *

[Colorado-Big Thompson project—Power revenues.]—Colorado-Big Thompson project, Colorado: Not to exceed $100,000 from power revenues shall be available during the fiscal year 1942 for the operation and maintenance of the power system; (55 Stat. 332)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power revenues for operation and maintenance purposes of the Colorado-Big Thompson project is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 780.

* * * * *

[Boise project—Cascade Reservoir storage capacity.]—Boise project, Idaho, Payette division, $1,500,000: *Provided,* That such part of the storage capacity of the Cascade Reservoir, and the costs thereof, shall be reserved for other irrigation or power developments in and adjacent to the Boise project, as shall be determined by the Secretary of the Interior; (55 Stat. 334)

* * * * *

[Yakima project, Sunnyside division—Repayment contract required.]—Yakima project, Washington, Sunnyside division, $100,000, for betterment construction of irrigation works serving lands in Sunnyside Valley irrigation district: *Provided,* That no expenditure from this appropriation shall be made unless and until said district has entered into a contract with the United States, upon terms and conditions satisfactory to the Secretary of the Interior, providing for the repayment of expenditures from this appropriation in not to exceed twenty annual installments and for the settlement of controversies between said district and its water users and the United States; (55 Stat. 334)

* * * * *

[Boulder Canyon project—School, hospital and recreation grounds in Boulder City.]—Boulder Canyon project: . . . subject to approval of plans therefor by the Secretary of the Interior, for construction of and equipment for (1) a school building and grounds, (2) an emergency hospital, and (3) recreation grounds in Boulder City, to be operated and maintained under regulations to be prescribed by said Secretary; . . . . (55 Stat. 335)

* * * * *

[**Bullshead project—Subject to Colorado River Compact.**]—Bullshead project, Arizona-Nevada, $4,000,000, for the purposes and substantially in accordance with the report thereon heretofore submitted under section 9 of the Reclamation Project Act of 1939, and subject to the terms of the Colorado River Compact; (55 Stat. 336)

EXPLANATORY NOTES

Authorization. The Bullshead Dam project was found feasible and authorized by the Secretary of the Interior on April 26, 1941, under the provisions of the Reclamation Project Act of 1939.

Change of Name. On June 26, 1941, Secretary of the Interior Ickes named Bullshead Dam "Davis Dam" in honor of Arthur Powell Davis, first director of the Reclamation Service.

Consolidation of Projects. Parker-Davis Project was consolidated from the Davis Dam project and the Parker Dam power project by the Act of May 28, 1954, 68 Stat. 143. The Act appears herein in chronological order.

NOTE OF OPINION

1. Archeological sites

Funds appropriated for the construction of the Davis Dam Project may be used to defray the cost of excavating archeological sites on lands owned by the Government in order to preserve from loss by flooding valuable relics belonging to the Government which would necessarily be lost otherwise as a result of the construction of the project and the spreading of the waters in the reservoir. Solicitor White Opinion, 59 I.D. 465 (1947).

* * * * *

[**Grand Coulee Dam project—Payments to school districts.**]—Grand Coulee Dam project, Washington: . . . (3) not to exceed $550,000 may be used for operation, maintenance, and replacements, including payment to the Mason City and Coulee Dam school districts as reimbursement for instruction during the 1941–42 school year in the schools operated by said districts of each pupil who is a dependent of any employee of the United States living in or in the vicinity of Coulee Dam, in the sum of $25 per semester per pupil in average daily attendance at said schools, payable after the term of instruction in any semester has been completed, under regulations to be prescribed by the Secretary of the Interior; (55 Stat. 337)

EXPLANATORY NOTES

Provision Repeated. Similar provisions authorizing payments to school districts are contained in each subsequent annual Interior Department Appropriation Act through the Act of July 1, 1946, 60 Stat. 366.

Change of Name. The Act of March 10, 1943, 57 Stat. 14, changed the name of the Grand Coulee project to the Columbia Basin project. The Act appears herein in chronological order.

[**Valley Gravity Canal and Storage Project, Texas.**]—Valley Gravity Canal and Storage Project, Texas: For the completion of investigations and commencement of construction of the Valley Gravity Canal and Storage Project, Texas, in substantial compliance with the engineering plan described in a report dated February 3, 1940, entitled "Report of Conference of Engineers to the American Commissioner, International Boundary Commission, United States and Mexico, on the Valley Gravity Canal and Storage Project (Federal Project Numbered 5)" and report appended thereto, $2,500,000 to be immediately available and to remain available until expended: *Provided,* That said sum shall be available to the President for allocation in accordance with the Act

entitled "An Act to amend the Act of May 13, 1924, entitled 'An Act providing for a study regarding the equitable use of the waters of the Rio Grande', and so forth, as amended by the public resolution of March 3, 1927", approved August 19, 1935: *Provided further,* That from said sum expenditures may be made for personal services in the District of Columbia (not exceeding $15,000), and in the field, for the payment of fees for professional services, including experts, engineers, and attorneys, and for all other objects of expenditure as specified for projects hereinbefore in this Act under the caption "Bureau of Reclamation", under the headings "Salaries and expenses" and "Administrative provisions and limitations", but without regard to the amounts of the limitations therein set forth: *Provided further,* That of said sum, $250,000 shall, upon approval by the President of an allocation therefor, be available to the Secretary of State (acting through the American Commissioner of the International Boundary Commission, United States and Mexico) for continuing the investigations authorized by such Act of August 19, 1935: *Provided further,* That the Secretary of State, with the approval of the President, shall designate the features of the project which he deems international in character, and shall direct such changes in the general project plan as he deems advisable with respect to such features; and the features so designated shall be built, after consultation with the Bureau of Reclamation as to general design, by the American section of the International Boundary Commission, United States and Mexico, and shall be operated and maintained by said Commission insofar as their operation and maintenance in such manner is, in the opinion of the Secretary of State, necessary because of their international character. The construction, operation, and maintenance of such project shall be pursuant to the Federal reclamation laws, except as hereinbefore provided and except that—

(1) In addition to the nonreimbursable allocation to flood control or navigation which may be made by the Secretary of the Interior under section 9 (b) of the Reclamation Project Act of 1939, the President, after consultation with the Secretary of State and the Secretary of the Interior, shall allocate such part of the total estimated cost of the project as he deems proper to the protection of American interests from drought hazards resulting from the uncontrolled and unregulated flow of the international portion of the Rio Grande below Old Fort Quitman, Texas. Provisions of law applicable with respect to allocations to flood control under section 9 (b) of the Reclamation Project Act of 1939 shall, insofar as they are not inconsistent with the foregoing provisions, be applicable in like manner with respect to any allocation made under this subparagraph; and

(2) All revenues received by the United States in connection with the construction, operation, and maintenance of such projects shall be covered into the Treasury as miscellaneous receipts. (55 Stat. 338; 22 U.S.C. § 277f)

EXPLANATORY NOTES

Project Not Constructed. As of 1966 this project has not been constructed.

International Boundary Commission. The International Boundary Commission was created pursuant to the Convention with Mexico of March 1, 1889 (effective December 24, 1890), 26 Stat. 1512. It was reconstituted the International Boundary and Water Commission, United States and Mexico, by the Treaty with Mexico of

February 3, 1944 (effective November 8, 1945), 59 Stat. 1219. The 1944 Treaty appears herein in chronological order.

Reference in Text. The Act of August 19, 1935, referred to in the text, appears herein in chronological order. Notes following the Act briefly explain other statutory authorities relating to programs of the Commission.

* * * * *

[**Protection against sabotage and other depredations.**]—Protection of project works: For the purpose of providing protective devices such as floodlights, gates, and barricades for the protection against sabotage and other depredations of any and all dams, powerhouses, and other structures and works whatsoever, heretofore or hereafter constructed by the Bureau of Reclamation, which in the opinion of the Secretary require such protection, $50,000, to be immediately available: *Provided,* That the Secretary may, in his discretion, enter into agreements with other Federal agencies or with States, counties, irrigation, construction, or reclamation districts or other political subdivisions or water users' associations for the protection of any such works and for reimbursement from this appropriation for amounts expended by them in furnishing protection for any such works. (55 Stat. 339)

EXPLANATORY NOTES

Provision Repeated. Similar provisions are contained in the Interior Department Appropriation Act, 1943, 56 Stat. 535, and 1944, 57 Stat. 475, together with authority for the employment of civilian guards and other necessary expenses.

Circular Letters. C.L. 2845, September 22, 1941, has attached regulations governing the protection of structures. C.L. 2852, October 3, 1941, encloses an analysis of certain State laws bearing on the deputizing of reclamation project guards, and on the question as to whether injury to reclamation works of the United States constitutes a criminal offense.

NOTE OF OPINION

1. Protection of Bitter Root project

The estimates submitted to Congress covering cost of protection of projects against sabotage included an item for the Bitter Root project, and as the expenditures made by the project for the protection of structures were necessary for the safety of the entire project including those structures built by the Government under supervision of this bureau, the Comptroller General approved the expenditures and held that the appropriation should be available for any necessary expense in connection with the protection of the project. Dec. Comp. Gen. B–27425 (August 7, 1942).

* * * * *

Sec. 8. [**Short title.**]—This Act may be cited as the "Interior Department Appropriation Act, 1942" (55 Stat. 361)

EXPLANATORY NOTES

Not Codified. The extracts shown here, with the exception of the item on the Valley Gravity Canal, are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 4590, Public Law 136 in the 77th Congress. H.R. Rept. No. 476. S. Rept. No. 366. H.R. Rept. No. 773 (conference report).

ACQUISITION OF INDIAN LANDS FOR CENTRAL VALLEY PROJECT

An act for the acquisition of Indian lands for the Central Valley project, and for other purposes. (Act of July 30, 1941, ch. 334, 55 Stat. 612)

[Sec. 1. **Indian rights to tribal and allotted lands granted—Other interests granted.**]—In aid of the construction of the Central Valley project, authorized by the Acts of April 8, 1935 (49 Stat. 115), and August 26, 1937 (50 Stat. 850), there is hereby granted to the United States, subject to the provisions of this Act, (a) all the right, title, and interest of the Indians in and to the tribal and allotted lands within the area embraced by the Central Valley project, including sites of agency and school buildings and related structures, as may be designated therefor by the Secretary of the Interior from time to time, and (b) such other interests in or to any of such lands and property as may be required and as may be designated by the Secretary of the Interior from time to time for the construction of reservoirs, canals, ditches, pipe lines, highways, railroads, telegraph, telephone, and electric-transmission lines in connection with the project, or for the relocation or reconstruction of such facilities made necessary by the construction of the project. (55 Stat. 612)

EXPLANATORY NOTE

References in the Text. The Act of April 8, 1935 (49 Stat. 115), and extracts from the Act of August 26, 1937 (50 Stat. 850), both referred to in the text as authorizing the Central Valley project, California, appear herein in chronological order.

Sec. 2. [**Secretary to determine compensation—Funds to be transferred to credit of appropriate tribe.**]—As lands or interests in lands are designated from time to time under this Act, the Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation therefor. As to the tribal lands, the amounts so determined shall be transferred in the Treasury of the United States from the funds now or hereafter made available for the construction of the Central Valley project to the credit of the appropriate tribe pursuant to the provisions of the Act of May 17, 1926 (44 Stat. 560). The amounts due individual landowners or their heirs or devisees shall be paid from funds now or hereafter made available for the construction of said project to the superintendent of the appropriate Indian Agency or such other officer as shall be designated by the Secretary of the Interior for credit on the books of such agency to the accounts of the individuals concerned. (55 Stat. 612)

EXPLANATORY NOTE

Reference in the Text. The Act of May 17, 1926 (44 Stat. 560), referred to in the text, provides that miscellaneous revenues derived from Indian reservations, agencies and schools, not otherwise earmarked by law, shall be set aside in a special Treasury account and used, in the discretion of the Secretary of the Interior, for the benefit of the Indian tribes, agencies and schools on whose behalf they were collected.

Sec. 3. [Funds may be used for acquisition of other lands.]—Funds deposited to the credit of allottees, their heirs, or devisees may be used, in the discretion of the Secretary of the Interior, for the acquisition of other lands and improvements, or the relocation of existing improvements or construction of new improvements on the lands so acquired for the allottees or heirs whose lands and improvements are acquired under the provisions of this Act. Lands so acquired shall be held in the same status as those from which the funds were derived, and shall be nontaxable until otherwise provided by Congress. (55 Stat. 612)

Sec. 4. [Secretary authorized to establish cemeteries on other lands.]—As to any Indian cemetery lands required for the project, the Secretary of the Interior is authorized, in his discretion, in lieu of requiring payment therefor, to establish cemeteries on other lands that he may select and acquire for the purpose, and to remove bodies, markers, and other appurtenances to the new sites. All costs incurred in connection with any such relocation shall be paid from moneys appropriated for the project. All right, title, and interest of the Indians in the lands within any cemetery so relocated shall terminate and the grant of title under this Act take effect as of the date the Secretary of the Interior authorizes the relocation. Sites of the relocated cemeteries shall be held in trust by the United States for the appropriate tribe, or family, as the case may be, and shall be nontaxable. (55 Stat. 612)

Sec. 5. [Authority of the Secretary.]—The Secretary of the Interior is hereby authorized to perform any and all acts and to prescribe such regulations as he may deem appropriate to carry out the provisions of this Act. (55 Stat. 613)

EXPLANATORY NOTES

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. S. 1120, Public Law 198 in the 77th Congress. S. Rept. No. 245.

DELEGATION OF AUTHORITY

An act to facilitate and simplify the administration of the Federal reclamation laws and the Act of August 11, 1939, as amended (Act of December 19, 1941, ch. 595, 55 Stat. 842)

[**Delegation of power.**]—For the purpose of facilitating and simplifying the administration of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof or supplementary thereto) and the Act of August 11, 1939 (53 Stat. 1418), as amended, the Secretary of the Interior is hereby authorized to delegate, from time to time and to the extent and under such regulations as he deems proper, his powers and duties under said laws to the Commissioner of Reclamation, an Assistant Commissioner, or the officer in charge of any office, division, district, or project of the Bureau of Reclamation. (55 Stat. 842; 16 U.S.C. § 590z–11)

Explanatory Notes

Reference in the Text. The Act of August 11, 1939 (53 Stat. 1418), as amended, referred to in the text, is the Water Conservation and Utilization Act. The Act appears herein in chronological order.

Legislative History. H.R. 4854, Public Law 356 in the 77th Congress. H.R. Rept. No. 751. S. Rept. No. 842.

Note of Opinion

1. Authority to delegate

The action of the Secretary of the Interior in requesting passage of the Act of December 19, 1941, must be regarded as an effort to obtain specific authority to delegate to officials of the Bureau of Reclamation those functions, if any, under the reclamation laws which could not otherwise be delegated to subordinate officials of the Department. Consequently, the Act of December 19, 1941, does not preclude the Secretary from assigning to the Southwestern Power Administration the function of marketing power from reclamation projects. Solicitor White Opinion, 59 I.D. 453 (1947).

INVESTIGATION OF CLAIMS, OWYHEE PROJECT

An act to authorize the Secretary of the Interior to investigate the claims of any landowner or water user on the Owyhee reclamation project, Oregon, arising in 1940 by reason of a break in the North Canal of such project. (Act of June 5, 1942, ch. 344, 56 Stat. 322)

[**Secretary authorized to investigate claims.**]—The Secretary of the Interior is authorized and directed to investigate the claims of any landowner or water user on the Owyhee reclamation project arising in 1940 by reason of a break in the North Canal of such project. The Secretary of the Interior shall report to Congress the results of his investigation as soon as possible during the present or next succeeding Congress.

The cost of said investigation and report shall be accounted for as part of the cost of operating and maintaining said project, and such expenditures as are deemed necessary therefor by said Secretary shall be made from moneys heretofore or hereafter appropriated to the Department of the Interior for operation and maintenance, Owyhee project, Oregon. (56 Stat. 322)

Explanatory Notes

Not Codified. This act is not codified in the U.S. Code.

Legislative History. H.R. 5142, Public Law 584 in the 77th Congress. H.R. Rept. No. 1244. S. Rept. No. 1311.

QUITCLAIM LANDS OF GOOSE LAKE

An act to authorize the Secretary of the Interior to quitclaim to the States of Oregon and California, respectively, all the right, title, and interest of the United States in and to the lands of Goose Lake in Oregon and California. (Act of June 5, 1942, ch. 348, 56 Stat. 323)

[**Conveyance of lands in Oregon and California.**]—The Secretary of the Interior is authorized to quitclaim to the State of Oregon for the benefit of the State and/or of those claiming under the State at the date of such quitclaim deed, all the right, title, interest, and estate of the United States in and to the lands of Goose Lake held, or that might be asserted, by the United States under or in pursuance of section 2 of chapter 5 of the General Laws of Oregon, 1905, and to quitclaim to the State of California for the benefit of the State and/or of those claiming under the State at the date of such quitclaim, deed, all the right, title, interest, and estate of the United States in and to the lands of Goose Lake held, or that might be asserted, by the United States under or in pursuance of the act of February 3, 1905, of the State of California (California Statutes, 1905, page 4). (56 Stat. 323)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Deeds of Conveyance. In accordance with this statute, by deeds dated February 9, 1943, the United States conveyed to the State of Oregon all of its right, title and interest to the lands of Goose Lake situated in Oregon; and conveyed to the State of California, all its right, title and interest in the lands of Goose Lake situated in California.

Cross Reference, Consent of the United States to Suit by California. The Act of March 3, 1923, 42 Stat. 1438, authorizes the State of California to institute a suit or suits in the Supreme Court of the United States to determine the right, title and interest of the State to certain lands in Siskiyou County, California, including the Goose Lake lands, authorized to be quitclaimed to the State by this statute. The 1923 Act appears herein in chronological order.

Legislative History. H.R. 5490, Public Law 588 in the 77th Congress. H.R. Rept. No. 1233. S. Rept. No. 1393.

INTERIOR DEPARTMENT APPROPRIATION ACT, 1943

[Extracts from] An act making appropriations for the Department of the Interior for the fiscal year ending June 30, 1943, and for other purposes. (Act of July 2, 1942, ch. 473, 56 Stat. 506)

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BUREAU OF RECLAMATION

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[Parker Dam power project—Power and other revenues.]—Parker Dam power project, Arizona-California, $1,939,400: *Provided,* That not to exceed $250,000 from power and other revenues shall be available for the operation and maintenance of this project; (56 Stat. 536)

EXPLANATORY NOTE

Provision Repeated. A similar appropriation of power and other revenues for operation and maintenance purposes is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 780.

* * * * *

[Grand Coulee Dam project—Camp and construction facilities.]—Grand Coulee Dam project, Washington: For continuation of construction of Grand Coulee Dam and appurtenant works, including the operation and maintenance of camp and construction facilities, heretofore or hereafter turned over by construction contractors, and similar facilities and the furnishing of services related thereto, ... (56 Stat. 536)

EXPLANATORY NOTES

Provision Repeated. A similar provision relating to construction camp facilities is contained in each subsequent annual Interior Department Appropriation Act through the Act of October 12, 1949, 63 Stat. 781, with the following modifications: the Act of July 12, 1943, 57 Stat. 473, and subsequent acts substitute "other" for "construction" after "camp and"; and the Act of July 1, 1946, 60 Stat. 366, and subsequent acts make the appropriation for this purpose from power revenues.

Change of Name. The Act of March 10, 1943, 57 Stat. 14, changed the name of the Grand Coulee Dam project to the Columbia Basin project. The Act appears herein in chronological order.

* * * * *

Sec. 9. [Short title.]—This Act may be cited as the "Interior Department Appropriation Act, 1943". (56 Stat. 561)

EXPLANATORY NOTES

Not Codified. The above extracts are not codified in the U.S. Code.

Editor's Note, Provisions Repeated in Appropriation Acts. Provisions which are repeated in two or more appropriation acts appear herein only in the act in which first used.

Legislative History. H.R. 6845, Public Law 645 in the 77th Congress. H.R. Rept. No. 1935. S. Rept. No. 1380. H.R. Rept. No. 2260 and H.R. Rept. No. 2294 (conference reports).

USE OF MILLERTON RANCHERIA

An act to authorize the use of a tract of land in California known as the Millerton Rancheria in connection with the Central Valley project, and for other purposes. (Act of July 8, 1942, ch. 494, 56 Stat. 650)

[**Sec. 1. Authority to use.**]—There is hereby authorized to be used for any and all purposes in connection with the Central Valley project in California, as authorized by the Acts of April 8, 1935 (49 Stat. 115) and August 26, 1937 (50 Stat. 850), the following-described land situated in the county of Madera, State of California.

The north half of the southeast quarter and lots 2 and 3 of section 33, township 10 south, range 21 east, Mount Diablo meridian, containing one hundred and forty and eighty-six one-hundredths acres. (56 Stat. 650)

Explanatory Note

References in the Text. The extracts from the Act of August 26, 1937 (50 Stat. 850), referred to in the text as authorizing the Central Valley project, California, appears herein in chronological order, and explanatory notes following it discuss the Act of April 8, 1935.

Sec. 2. [Indian right terminated.]—All right, title, and interest of the Indians, or any of them, to such land is hereby terminated. (56 Stat. 650)

Sec. 3. [$2,800 authorized to purchase other lands.]—Since said land was originally acquired by the United States for the use of Indians in California in accordance with the Act of June 21, 1906 (34 Stat. 325, 333), there is hereby made available for expenditure by the Secretary of the Interior, from moneys now or hereafter available for the construction of the Central Valley project, the sum of $2,800 for the purchase of other lands or interests in lands for the same uses and purposes as authorized by said Act of June 21, 1906. (56 Stat. 650)

Explanatory Note

Reference in the Text. The Act of June 21, 1906 (34 Stat. 325, 333), referred to in the text, is an act making appropriations for the "Indian Department." The provision referred to authorized the Secretary of the Interior to purchase lands suitable for cultivation for those California Indians living on reservations whose land was not suitable for cultivation.

Sec. 4. [Authority of the Secretary.]—The Secretary of the Interior is authorized to perform any and all acts and to prescribe such regulations as may be deemed necessary to carry out the provisions of this Act. (56 Stat. 650)

Explanatory Notes

Not Codified. This Act is not codified in the U.S. Code.

Legislative History. H.R. 2989, Public Law 659 in the 77th Congress. H.R. Rept. No. 1894. S. Rept. No. 1497.

RELIEF OF BRIDGEPORT IRRIGATION DISTRICT

An act for the relief of the Bridgeport irrigation district. (Act of August 1, 1942, ch. 541, 56 Stat. 732.)

[Contract canceled—judgment released.]—The contract of June 14, 1915, between the United States and the Bridgeport irrigation district, North Platte reclamation project, and the indebtedness of the district thereunder for operation and maintenance charges delinquent under said contract for the years 1926 to 1942, both inclusive, are hereby canceled and released, and the judgment entered on July 30, 1929, in the United States District Court for the District of Nebraska against the district and in favor of the United States is hereby released and discharged: *Provided,* That the $23,286 heretofore paid under the contract of June 14, 1915, shall be retained by the United States for the benefits heretofore received by the district under said contract: *And provided further,* That the water right of the district under its Nebraska appropriation, upon the approval of this Act, shall be the same legal status under the laws of Nebraska as if said contract of June 14, 1915, had never been executed. (56 Stat. 732)

Explanatory Notes

Not Codified. This act is not codified in the U.S. Code.

Cross Reference, Amendatory Repayment Contract Authorized. The Act of June 24, 1936, 49 Stat. 1897, authorized the Secretary of the Interior to enter into an amendatory repayment contract with the Bridgeport Irrigation District. However, no contract was ever entered into pursuant to the authorization. The 1936 Act appears herein in chronological order.

Legislative History. S. 2440, Public Law 692 in the 77th Congress. S. Rept. No. 1520.

ACQUISITION OF INDIAN LANDS FOR PARKER DAM POWER PROJECT

An act for the acquisition of Indian lands required in connection with the construction, operation, and maintenance of electric transmission lines and other works, Parker Dam power project, Arizona-California. (Act of October 28, 1942, ch. 630, 56 Stat. 1011.)

[**Sec. 1. Granting rights for transmission lines—Relocation of properties.**]—In aid of the construction of the Parker Dam power project, there is hereby granted to the United States, subject to the provisions of this Act, such right, title, and interest of the Indians as may be required in and to such tribal and allotted lands as may be designated by the Secretary of the Interior from time to time for the construction, operation, and maintenance of electric transmission lines and other works of the project or for the relocation or reconstruction of properties made necessary by the construction of the project. (56 Stat. 1011)

Sec. 2. [**Secretary to determine moneys to be paid.**]—As lands or interests in lands are designated from time to time under this Act, the Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation therefor. The amounts due the tribe and the individual allottees or their heirs or devisees shall be paid from funds now or hereafter made available for the Parker Dam power project to the superintendent of the appropriate Indian agency, or such other officer as may be designated by the Secretry of the Interior, for credit on the books of such agency to the accounts of the tribe and the individuals concerned. (56 Stat. 1011)

Sec. 3. [**Funds may be used for acquisition of other land—Lands to have same status and be nontaxable.**]—Funds deposited to the credit of allottees, their heirs, or devisees, may be used, in the discretion of the Secretary of the Interior, for the acquisition of other lands and improvements, or the relocation of existing improvements or construction of new improvements on the lands so acquired for the allottees or heirs whose lands and improvements are acquired under the provisions of this Act. Lands so acquired shall be held in the same status as those from which the funds were derived, and shall be nontaxable until otherwise provided by Congress. (56 Stat. 1011)

Sec. 4. [**Authority of the Secretary.**]—The Secretary of the Interior is hereby authorized to perform any and all acts and to prescribe such regulations as he may deem appropriate to carry out the provisions of this Act. (56 Stat. 1011)

Explanatory Notes

Not Codified. This act is not codified in the U.S. Code.

Cross Reference, Acquisition of Indian Lands for Parker Dam. The Act of July 8, 1940, 54 Stat. 744, authorized the acquisition of tribal and allotted lands of the Fort Mohave Indian Reservation in Arizona and the Chemehuevi Reservation in California in aid of the construction of the Parker Dam project. The 1940 Act appears herein in chronological order.

Legislative History. S. 2369, Public Law 764 in the 77th Congress. S. Rept. No. 1354. H.R. Rept. No. 2532 (on H.R. 6813).